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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–2008–0909; Directorate Identifier 2007–NM–363–AD; Amendment 39–16301; AD 2010–10–22]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (Operations) Limited Model BAe 146 Airplanes and Model Avro 146–RJ Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to Model BAe 146 airplanes and Model Avro 146–RJ airplanes. That AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This new AD requires incorporating new and more restrictive life limits for certain items and for certain inspections to detect fatigue cracking in certain structures. This AD also requires revising the airworthiness limitations to include critical design configuration control limitations for the fuel system. This AD results from issuance of a later revision to the airworthiness limitations. We are issuing this AD to ensure that fatigue cracking of certain structural elements is detected and corrected, and to prevent ignition sources in the fuel tanks; fatigue cracking of certain structural elements could adversely affect the structural integrity of these airplanes.

DATES: This AD becomes effective June 25, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 25, 2010.

ADDRESSES: For BAE SYSTEMS (Operations) Limited service information identified in this AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm*.

For Messier-Dowty service information identified in this AD, contact Messier-Dowty Limited, Cheltenham Road, Gloucester GL2 9QH, England; telephone +44(0)1452 712424; fax +44(0)1452 713821; Internet *https://techpubs.services.messier-dowty.com*.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005–23–12, Amendment 39–14370 (70 FR 70483, November 22, 2005). The existing AD applies to all BAE SYSTEMS (Operations) Limited Model BAe 146 airplanes and Model Avro 146–RJ airplanes. That supplemental NPRM was published in the **Federal Register** on March 9, 2010 (75 FR 10701). That supplemental NPRM proposed to continue to require revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. That supplemental NPRM proposed to require incorporating new and more restrictive life limits for certain items and for certain inspections to detect fatigue cracking in certain structures. That supplemental NPRM also proposed to require revising the airworthiness limitations to include critical design configuration control limitations for the fuel system.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
ALS Revision (required by AD 2005–23–12).	1	$85	None	$85	1	$85
ALS Revision (new action)	1	85	None	85	1	85

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 this AD:

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

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

(3) 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

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 Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–14370 (70 FR 70483, November 22, 2005) and by adding the following new airworthiness directive (AD):

2010–10–22 BAE SYSTEMS (Operations) Limited: Amendment 39–16301. Docket No. FAA–2008–0909; Directorate Identifier 2007–NM–363–AD.

Effective Date

(a) This AD becomes effective June 25, 2010.

Affected ADs

(b) This AD supersedes AD 2005–23–12, Amendment 39–14370.

Applicability

(c) This AD applies to all BAE SYSTEMS (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 05.

Unsafe Condition

(e) This AD results from issuance of a later revision to the airworthiness limitations of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro146–RJ Series Aircraft Maintenance Manual (AMM), which specifies new inspections and compliance times for inspection and replacement actions. We are issuing this AD to ensure that fatigue cracking of certain structural elements is detected and corrected, and to prevent ignition sources in the fuel tanks; fatigue cracking of certain structural elements could adversely affect the structural integrity of these airplanes.

Compliance

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

RESTATEMENT OF CERTAIN REQUIREMENTS OF AD 2005–23–12:

Airworthiness Limitations Revision

(g) Within 30 days after December 27, 2005 (the effective date of AD 2005–23–12), revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new and more restrictive life limits for certain items and new and more restrictive inspections to detect fatigue cracking in certain structures, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent).

NEW REQUIREMENTS OF THIS AD:

New Airworthiness Limitations Revisions

(h) Within 90 days after the effective date of this AD, revise Chapter 5 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro146–RJ Series AMM to incorporate new and more restrictive life limits for certain items and new and more restrictive inspections to detect fatigue cracking in certain structures, and to add fuel system critical design configuration control limitations (CDCCLs) to prevent ignition sources in the fuel tanks, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). Incorporating the new and more restrictive life limits and inspections into the ALS terminates the requirements of paragraph (g) of this AD, and after incorporation has been done, the limitations required by paragraph (g) of this AD may be removed from the ALS.

Note 2: Guidance on revising Chapter 5 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro146–RJ Series AMM, Revision 97, dated July 15, 2009, can be found in the applicable sub-chapters listed in Table 1 of this AD.

TABLE 1—APPLICABLE AMM SUB-CHAPTERS

AMM Sub-chapter	Subject
05–10–01	Airframe Airworthiness Limitations before Life Extension Programme.
05–10–05 [1]	Airframe Airworthiness Limitations, Life Extension Programme Landings Life Extended.
05–10–10 [2]	Airframe Airworthiness Limitations, Life Extension Programme Calendar Life Extended.
05–10–15	Aircraft Equipment Airworthiness Limitations.
05–10–17	Power Plant Airworthiness Limitations.
05–15–00	Critical Design Configuration Control Limitations (CDCCL)—Fuel System Description and Operation.
05–20–00 [3]	Scheduled Maintenance.
05–20–01	Airframe Scheduled Maintenance—Before Life Extension Programme.
05–20–05 [1]	Airframe Scheduled Maintenance—Life Extension Programme Landings Life Extended.
05–20–10 [2]	Airframe Scheduled Maintenance—Life Extension Programme Calendar Life Extended.
05–20–15	Aircraft Equipment Scheduled Maintenance.

[1] Applicable only to airplanes post-modification HCM20011A or HCM20012A or HCM20013A.

[2] Applicable only to airplanes post-modification HCM20010A.

[3] Paragraphs 5 and 6 only, on the Corrosion Prevention and Control Program (CPCP) and the Supplemental Structural Inspection Document (SSID).

Note 3: Sub-chapter 05–15–00 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro146–RJ Series AMM, is the CDCCL.

Note 4: Within Sub-chapter 05–20–00 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro146–RJ Series AMM, the relevant issues of the support documents are as follows: BAE SYSTEMS (Operations) Limited BAe 146 Series/Avro 146–RJ Corrosion Prevention and Control Program Document CPCP–146–01, Revision 3, dated July 15, 2008, including BAE SYSTEMS (Operations) Limited Temporary Revision (TR) 2.1, dated December 2008; and BAE SYSTEMS (Operations) Limited BAe146 Series Supplemental Structural Inspection Document SSID–146–01, Revision 1, dated June 15, 2009.

Note 5: Within Sub-chapter 05–20–01 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro146–RJ Series AMM, the relevant issue of BAE SYSTEMS (Operations) Limited BAe 146/Avro 146–RJ Maintenance Review Board Report Document MRB 146–01, Issue 2, is Revision 15, dated March 2009 (mis-identified in EASA AD 2009–0215, dated October 7, 2009, as being dated May 2009).

Note 6: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS, as required by paragraph (g) of this AD; or before revision of Chapter 5 of the AMM, as required by paragraph (h) of this AD; do not need to be reworked in accordance with the CDCCLs. However, once the ALS or AMM has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

(i) Except as specified in paragraph (k) of this AD: After the actions specified in paragraph (g) or (h) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (g) or (h) of this AD.

(j) Modifying the main fittings of the main landing gear in accordance with Messier-Dowty Service Bulletin 146–32–171, dated August 11, 2009, extends the safe limit of the main landing gear main fitting from 32,000 landings to 50,000 landings on the main fitting.

Alternative Methods of Compliance (AMOCs)

(k) 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–4056; telephone (425) 227–1175; 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.

Related Information

(l) EASA Airworthiness Directive 2009–0215, dated October 7, 2009; and Messier-Dowty Service Bulletin 146–32–171, dated August 11, 2009; also address the subject of this AD.

Material Incorporated by Reference

(m) If you do the optional modification specified in this AD, you must use Messier-Dowty Service Bulletin 146–32–171, dated August 11, 2009, to do those actions, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For Messier-Dowty service information identified in this AD, contact Messier-Dowty Limited, Cheltenham Road, Gloucester GL2 9QH, England; telephone +44(0)1452 712424; fax +44(0)1452 713821; Internet *https://techpubs.services.messier-dowty.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. 2010–11356 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0791; Directorate Identifier 2008–NM–213–AD; Amendment 39–16303; AD 2010–10–24]

RIN 2120–AA64

Airworthiness Directives; Dassault-Aviation Model FALCON 2000 and FALCON 2000EX 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:

During the overhaul of a Main Landing Gear (MLG) of a Falcon 2000, the sleeve on the hydraulic flow restrictor in the shock absorber was found displaced, because of the rupture of its three retaining screws. * * *

Failure of the retaining screws has been determined to be the final phase of a slow unscrewing process under normal operational conditions. The unsafe condition only exists once the three screws have failed.

* * * * *

The unsafe condition is failure of three retaining screws of the MLG shock absorber, which could adversely affect the structural integrity of these airplanes. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 25, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 25, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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 September 24, 2009 (74 FR 48668). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During the overhaul of a Main Landing Gear (MLG) of a Falcon 2000, the sleeve on the hydraulic flow restrictor in the shock absorber was found displaced, because of the rupture of its three retaining screws. In this situation, the energy dissipation function of the shock absorber is lost and high loads may be transmitted to the aircraft structure during landing. Structural integrity may thus not be guaranteed over the entire certified landing conditions domain particularly in combination of high landing weight and high vertical speed.
>
> Failure of the retaining screws has been determined to be the final phase of a slow unscrewing process under normal operational conditions. The unsafe condition only exists once the three screws have failed.
>
> For the reasons described above, Airworthiness Directive (AD) 2008–0178 had been released to require a repetitive borescope inspection of the flow restriction system [for damage; such as condition of the sleeve of the dumping device, and broken or loose screws] and, if necessary, repair of the shock absorber per Dassault Aviation Service Bulletins (SB) F2000–367 and F2000EX–185 (corresponding to modification M3120) developed with the landing gear manufacturer's instructions. * * *
>
> After qualification testing, modification M3120 has been approved by EASA as a definitive solution.
>
> As a consequence, the present AD retains the requirements of AD 2008–0178 which is superseded and introduces M3120 as a terminating action to the repetitive inspections requirement, and further mandates its embodiment no later than the next MLG shock absorber overhaul.

The unsafe condition is failure of three retaining screws of the MLG shock absorber, which could adversely affect the structural integrity of these airplanes. The repair can include additional inspections, modifying the shock absorbers, and contacting the manufacturer for repair instructions and doing the repair. 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 comments received.

Request To Extend Compliance Time

Dassault-Aviation (Dassault) asks that we extend the compliance time for repairing the shock absorber if any damage is found from before further flight to the compliance times specified in European Aviation Safety Agency (EASA) AD 2009–0050, dated March 5, 2009. Dassault states that requiring immediate repair of the shock absorber before further flight is unnecessary because it has been established that a two-tier approach of prompt inspection followed by repair, if necessary, is a more efficient means of addressing the unsafe condition. Dassault adds that this requirement would cause scheduling issues at maintenance facilities with trained personnel available to perform the repair, and would result in unnecessary grounding of its airplanes.

We agree with the commenter. The compliance times referred to in EASA AD 2009–0050, and specified in Dassault Mandatory Service Bulletins F2000–366, Revision 2; and F2000EX–167, Revision 1; both dated December 1, 2008; are based on technical information and calculations coordinated between EASA and Dassault. The compliance times for the repairs are based on inspection results showing the number of loose or broken screws that attach the sleeve of the damping device to the shock absorber. If one, two, or three screws are loose with a visible gap, the screws must be repaired within 12 months after the damage is found. If one screw is broken the screw must be repaired within 6 months after the damage is found. If two screws are broken, the screws must be repaired within 10 flight cycles after the damage is found. And, if three screws are broken and the damping device is no longer attached, the repair must be done before further flight. Extending the compliance times for the repairs based on the number of loose or broken screws would not adversely affect airplane safety. Therefore, we have changed the requirements specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD and added a new Table 1 to allow the repair to be done at the applicable compliance times specified in the Accomplishment Instructions of the applicable service bulletin. We have reidentified subsequent tables accordingly. In addition, we have removed the compliance time difference specified in paragraph (1) under Note 1 of the NPRM.

Request To Change the Description of the Unsafe Condition

Dassault also asks that we revise the NPRM to remove the language describing the unsafe condition as failure of three retaining screws of the MLG shock absorber, which could result in collapse of the landing gear during ground maneuvers or landing. Dassault states that, based on engineering studies, it believes that the failure or absence of these screws will not result in collapse of the landing gear during ground maneuvers or landing. Dassault adds that, as specified in the EASA AD, the failure of these screws would only potentially affect the life of the airplane structure under all landing conditions, particularly with respect to the combination of high landing weights and high vertical speeds at touchdown. Dassault notes that the current language in the NPRM has caused needless alarm and concern among Model Falcon 2000 and Falcon 2000EX owners and operators.

We agree with the commenter for the reasons provided. Based on those reasons, we have changed the description of the unsafe condition throughout this AD as follows: "The unsafe condition is failure of three retaining screws of the MLG shock absorber, which could adversely affect the structural integrity of these airplanes."

Explanation of Change Made to This AD

We have changed this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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

After the NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $80 per work hour to $85 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 236 products of U.S. registry. We also estimate that it will take about 25 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $501,500, or $2,125 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, 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 adding the following new AD:

2010–10–24 Dassault-Aviation: Amendment 39–16303. Docket No. FAA–2009–0791; Directorate Identifier 2008–NM–213–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 25, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Dassault-Aviation Model FALCON 2000 and FALCON 2000EX airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

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

During the overhaul of a Main Landing Gear (MLG) of a Falcon 2000, the sleeve on the hydraulic flow restrictor in the shock absorber was found displaced, because of the rupture of its three retaining screws. In this situation, the energy dissipation function of the shock absorber is lost and high loads may be transmitted to the aircraft structure during landing. Structural integrity may thus not be guaranteed over the entire certified landing conditions domain particularly in combination of high landing weight and high vertical speed.

Failure of the retaining screws has been determined to be the final phase of a slow unscrewing process under normal operational conditions. The unsafe condition only exists once the three screws have failed.

For the reasons described above, Airworthiness Directive (AD) 2008–0178 had been released to require a repetitive borescope inspection of the flow restriction system [for damage; such as condition of the sleeve of the dumping device, and broken or loose screws] and, if necessary, repair of the shock absorber per Dassault Aviation Service Bulletins (SB) F2000–367 and F2000EX–185 (corresponding to modification M3120) developed with the landing gear manufacturer's instructions. * * *

After qualification testing, modification M3120 has been approved by the European Aviation Safety Agency (EASA), as a definitive solution.

As a consequence, the present AD retains the requirements of AD 2008–0178 which is superseded and introduces M3120 as a terminating action to the repetitive inspections requirement, and further mandates its embodiment no later than the next MLG shock absorber overhaul.

The unsafe condition is failure of three retaining screws of the MLG shock absorber, which could adversely affect the structural integrity of these airplanes. The repair can include additional inspections, modifying the shock absorbers, and contacting the manufacturer for repair instructions and doing the repair.

Actions and Compliance

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

(1) For airplanes on which each new or previously overhauled MLG shock absorber has accumulated 4,200 or more total landings since new or overhauled as of the effective date of this AD: Within 8 months after the effective date of this AD, inspect the shock absorber for damage, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F2000–366, Revision 2; or F2000EX–167, Revision 1; both dated December 1, 2008; as applicable. If any damage is found, repair the shock absorber at the time specified in Table 1 of this AD, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F2000–366, Revision 2; or F2000EX–167, Revision 1; both dated December 1, 2008; as applicable.

(2) For airplanes on which each new or previously overhauled MLG shock absorber has accumulated 1,900 or more total landings and less than 4,200 total landings since new or overhauled as of the effective date of this AD: At the applicable compliance time specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, inspect the shock absorber for damage, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F2000–366, Revision 2; or F2000EX–167, Revision 1; both dated December 1, 2008; as applicable. If any damage is found, repair the shock absorber at the applicable time specified in Table 1 of this AD, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F2000–366, Revision 2; or F2000EX–167, Revision 1; both dated December 1, 2008; as applicable.

(i) For airplanes on which 6 or more steep-approach landings have been performed before the effective date of this AD: Within 8 months after the effective date of this AD, do the actions required by paragraph (f)(2) of this AD.

(ii) For airplanes on which less than or equal to 5 steep-approach landings have been performed before the effective date of this AD: Within 18 months after the effective date of this AD or 5,000 total landings since new or overhauled, whichever occurs first, do the actions required by paragraph (f)(2) of this AD.

(3) For airplanes on which each new or previously overhauled MLG shock absorber has accumulated less than 1,900 total landings since new or overhauled as of the effective date of this AD: Before the accumulation of 3,000 total landings since new or overhauled, inspect the shock absorber for damage, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F2000–366, Revision 2; or F2000EX–167, Revision 1; both dated December 1, 2008; as applicable. If any damage is found, repair the shock absorber at the time specified in Table 1 of this AD, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F2000–366, Revision 2; or F2000EX–167, Revision 1; both dated December 1, 2008; as applicable.

TABLE 1—COMPLIANCE TIMES FOR REPAIR

Damage found	Compliance time
1, 2, or 3 loose screws	Within 12 months after the finding.
1 broken screw	Within 6 months after the finding.
2 or 3 broken screws	Within 10 flight cycles after the finding.
3 broken screws with detached damping device	Before further flight.

(4) Repeat the inspections required by paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable, thereafter at intervals not to exceed 1,900 landings until accomplishment of the actions specified in paragraph (f)(6) of this AD.

(5) Accomplishment of any inspection or repair before the effective date of this AD in accordance the applicable service information specified in Table 2 of this AD is acceptable for compliance with the corresponding requirements of this AD.

TABLE 2—CREDIT SERVICE INFORMATION

Document	Revision	Date
Dassault Mandatory Service Bulletin F2000–366	1	August 18, 2008.
Dassault Mandatory Service Bulletin F2000EX–167	Original	August 18, 2008.
Dassault Service Bulletin F2000–366	Original	April 18, 2008.

(6) For airplanes on which Dassault Modification M3120 has not been embodied as of the effective date of this AD: Before the accumulation of 6,000 total landings or 144 months on each new or previously overhauled MLG shock absorber, whichever occurs first: Modify the existing left- and right-hand MLG shock absorbers by installing MLG shock absorbers with part number (P/N) D23365000–4 or P/N D23366000–4 (for Model Falcon 2000 airplanes), or P/N D23745000–2 or P/N D23746000–2 (for Model Falcon 2000EX airplanes), in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000EX–185, Revision 2; or F2000–367, Revision 4; both dated February 4, 2009; as applicable. Where these service bulletins specify contacting the manufacturer for repair instructions, contact the manufacturer and do the repair at the applicable compliance times specified in the Accomplishment Instructions of the applicable service bulletin.

(7) Accomplishment of the modification required by paragraph (f)(6) of this AD before the effective date of this AD in accordance with the applicable service information specified in Table 3 of this AD is acceptable for compliance with the corresponding requirements of this AD.

TABLE 3—CREDIT SERVICE INFORMATION FOR MODIFICATION

Document	Revision	Date
Dassault Service Bulletin F2000EX–185	Original	August 18, 2008.
Dassault Service Bulletin F2000EX–185	1	December 1, 2008.
Dassault Service Bulletin F2000–367	1	July 10, 2008.

TABLE 3—CREDIT SERVICE INFORMATION FOR MODIFICATION—Continued

Document	Revision	Date
Dassault Service Bulletin F2000–367	2	August 18, 2008.
Dassault Service Bulletin F2000–367	3	December 1, 2008.

(8) Accomplishment of the modification required by paragraph (f)(6) of this AD ends the repetitive inspections required by paragraph (f)(4) of this AD.

(9) As of the effective date of this AD, no person may install on any airplane as a replacement part, a MLG shock absorber, unless it has been modified according to the requirements specified in paragraph (f)(6) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Paragraph (1) of the MCAI requires updating the operator's maintenance program; however, that action is not required by this AD. The maintenance program does not require FAA approval.

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:* Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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.

(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 EASA Airworthiness Directive 2009–0050, dated March 5, 2009, and the service information identified in Table 4 of this AD, for related information.

TABLE 4—SERVICE INFORMATION

Document	Revision	Date
Dassault Mandatory Service Bulletin F2000–366	2	December 1, 2008.
Dassault Mandatory Service Bulletin F2000EX–167	1	December 1, 2008.
Dassault Service Bulletin F2000–367	4	February 4, 2009.
Dassault Service Bulletin F2000EX–185	2	February 4, 2009.

Material Incorporated by Reference

(i) You must use the applicable service information contained in Table 5 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 5—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Dassault Mandatory Service Bulletin F2000–366	2	December 1, 2008.
Dassault Mandatory Service Bulletin F2000EX–167	1	December 1, 2008.
Dassault Service Bulletin F2000–367	4	February 4, 2009.
Dassault Service Bulletin F2000EX–185	2	February 4, 2009.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.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 4, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11358 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0491; Directorate Identifier 2009–SW–64–AD; Amendment 39–16293; AD 2010–10–14]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332L2 Helicopters

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 Eurocopter France (Eurocopter) Model AS332L2 helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that the AD was issued after the discovery of broken swashplate bearing attaching screw heads. Failure of these screw heads could lead to the loss of the coupling between the non-rotating and the rotating swashplate. This AD is intended to prevent loss of power to the rotating swashplate and subsequent loss of control of the helicopter.

DATES: This AD becomes effective on June 7, 2010.

The Director of the Federal Register approved the incorporation by reference of Eurocopter Alert Service Bulletin No. 62.00.66, dated September 13, 2006, as of June 7, 2010.

We must receive comments on this AD by July 20, 2010.

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

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

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

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 economic 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: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the technical agent for the Member States of the European Community, has issued EASA AD No. 2006–0339, dated November 9, 2006, to correct an unsafe condition for the specified helicopters. The MCAI AD was issued after the discovery of broken swashplate bearing attaching screw heads. Failure of these screw heads could lead to the loss of the coupling between the non-rotating and the rotating swashplate. This AD is intended to prevent loss of power to the rotating swashplate and subsequent loss of control of the helicopter.

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

Related Service Information

Eurocopter has issued Alert Service Bulletin No. 62.00.66, dated September 13, 2006. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This helicopter has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their Technical Agent, has notified us of the unsafe condition described in the MCAI AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

There are no helicopters 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 helicopters are placed on the U.S. register in the future.

Differences Between This AD and the MCAI AD

- This AD does not require you to send the assembly to an "approved repair center for investigation and reconditioning."
- This AD uses "hours time-in-service" instead of "flying hours."
- This AD does not apply to non-installed parts.
- This AD does not include an inspection for masts that were inspected per a previous MCAI AD.

Costs of Compliance

There are no costs of compliance since there are no helicopters of this type design on the U.S. registry.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of these helicopters, notice and opportunity for public comment before issuing this AD are unnecessary, and this amendment can be made effective in less than 30 days.

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–2010–0491; Directorate Identifier 2009–SW–64–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.

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 adding the following new AD:

2010–10–14 Eurocopter France: Amendment 39–16293. Docket No. FAA–2010–0491; Directorate Identifier 2009–SW–64–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 7, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AS332L2 helicopters, with a main rotor mast assembly (mast) that has not been modified per MOD 0743714, installed, certificated in any category.

Note 1: MOD 0743714 includes replacing the plastic peel shim with a stainless steel peel shim, installing improved swashplate bearing attachment screws, and increasing the torque on those screws.

Reason

(d) The mandatory continued airworthiness information (MCAI) AD was issued after the discovery of broken swashplate bearing attaching screw heads. Failure of these screw heads could lead to the loss of the coupling between the non-rotating and the rotating swashplate. This AD is intended to prevent loss of power to the rotating swashplate and subsequent loss of control of the helicopter.

Actions and Compliance

(e) For each mast that has less than 750 hours TIS since it was installed on any helicopter or since its last overhaul, within 20 hours time-in-service (TIS), unless already done, and thereafter at intervals not to exceed 25 hours TIS, and for each mast that has 750 or more hours TIS since it was installed on any helicopter or since its last overhaul, within 25 hours TIS, unless already done, and thereafter at intervals not to exceed 25 hours TIS:

(1) Inspect for the presence of each mast swashplate bearing attachment screw head by either using a mirror or by feeling for the screw heads under the flange. Do the inspections by following the Accomplishment Instructions, Operational Procedure, paragraphs 2.B.1. through 2.B.2. and Figure 1, of Eurocopter Alert Service Bulletin (ASB) No. 62.00.66, dated September 13, 2006, except this AD does not require you to send the assembly to an "approved repair center for investigation and reconditioning."

(2) If an attachment screw head is missing, before further flight, replace the unairworthy mast with an airworthy mast.

Note 2: If you have complied with ASB No. 62.00.66, dated September 13, 2006, you have met the intent of this AD.

Differences Between the FAA AD and the MCAI AD

(f) This AD differs from the MCAI AD as follows:

(1) This AD does not require you to send the assembly to an "approved repair center for investigation and reconditioning."

(2) This AD uses "hours TIS" instead of "flying hours."

(3) This AD does not apply to non-installed parts.

(4) This AD does not include an inspection for masts that were inspected per a previous MCAI AD.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, Rotorcraft Directorate, FAA, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19. Send AMOC request to DOT/FAA Southwest Region, Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

Related Information

(h) Mandatory Continuing Airworthiness Information (MCAI) Airworthiness Directive No. 2006–0339, dated November 9, 2006, contains related information.

Joint Aircraft System/Component (JASC) Code

(i) The JASC Code is 6230—Main Rotor Mast/Swashplate.

Material Incorporated by Reference

(j) You must use the specified portions of Eurocopter Alert Service Bulletin No. 62.00.66, dated September 13, 2006, to do the actions required.

(1) The Director of the Federal Register approved the incorporation by reference of the service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

(3) You may review copies of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or 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/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on May 4, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–11418 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0169; Directorate Identifier 2009–NM–102–AD; Amendment 39–16305; AD 2010–10–26]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing 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:

A specific batch of nose landing gear (NLG) and NLG door selector valves, part number (P/N) 601R75146–1 (Kaiser Fluid Technologies P/N 750006000), may have had their end caps incorrectly lock-wired and/or incorrectly torqued during assembly. This condition can lead to the end cap backing off, with consequent damage to a seal and internal leakage within the valve. Subsequently, if electrical power is transferred or removed from the aircraft before the NLG safety pin is installed, any pressure, including residual pressure, in the No. 3 hydraulic system can result in an uncommanded NLG retraction.

* * * * *

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

DATES: This AD becomes effective June 25, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 25, 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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

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 February 25, 2010 (75 FR 8559), and proposed to supersede AD 2007–14–02, Amendment 39–15124 (72 FR 38004, July 12, 2007).

That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A specific batch of nose landing gear (NLG) and NLG door selector valves, part number (P/N) 601R75146–1 (Kaiser Fluid Technologies P/N 750006000), may have had their end caps incorrectly lock-wired and/or incorrectly torqued during assembly. This condition can lead to the end cap backing off, with consequent damage to a seal and internal leakage within the valve. Subsequently, if electrical power is transferred or removed from the aircraft before the NLG safety pin is installed, any pressure, including residual pressure, in the No. 3 hydraulic system can result in an uncommanded NLG retraction.

Although there have been no such cases reported on the Challenger models covered by this directive, there have been six cases reported on the CRJ (CL600–2B19) aircraft, one of which resulted in the collapse of the NLG at the departure gate.

This directive mandates a check of the NLG and NLG door selector valves installed on all aircraft in the Applicability section * * *. Depending on the results; replacement, rework and/or additional identification of the valves may be required.

This [MCAI] revision corrects a Service Bulletin number in the Corrective Actions table.

Notes: 1. The check is required whether or not an aircraft has previously been checked in accordance with AD CF–2006–16R1 (now superseded and cancelled by this AD). This is necessary since, following the issuance of AD CF–2006–16R1, it has been determined that the serial number (S/N) range of the affected valves requires expansion from the previous upper limit of S/N 0767 to S/N 2126 and the exact location of each of these additional valves is unknown.

2. Valves that have a S/N with suffix "T" have been manufactured by Tactair Fluid Controls Inc. and do not require any corrective action.

3. Valves manufactured by Kaiser Fluid Technologies, P/N 750006000, with S/N 0001 through 2126, and ink stamp "SB750006000–1", have already been checked and reworked as necessary and do not require any additional corrective action.

4. The Illustrated Parts Catalog, for each of the models covered in the Applicability section * * *, gives instructions not to install a valve manufactured by Kaiser Fluid Technologies, P/N 750006000, with S/N 0001 through 2126, if the marking "SB750006000–1" is not ink stamped on the valve.

5. CL–600–2B16 (CL–605) aircraft, S/Ns 5701 and subsequent, are not affected by this directive. They were delivered with valves, P/N 750006000, that have either a S/N with suffix "T" or have the ink stamp marking "SB750006000–1".

We have clarified the applicability of this AD by removing serial numbers 5666 through 5699 that were included in AD 2007–14–02. Those serial numbers do not exist for the affected airplane models in this AD. 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 received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data 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.

Costs of Compliance

We estimate that this AD will affect about 82 products of U.S. registry.

The actions that are required by AD 2007–14–02 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the new basic requirements of this AD to U.S. operators to be $6,970, or $85 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, 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 39–15124 (72 FR 38004, July 12, 2007) and adding the following new AD:

2010–10–26 Bombardier, Inc.: Amendment 39–16305. Docket No. FAA–2010–0169; Directorate Identifier 2009–NM–102–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 25, 2010.

Affected ADs

(b) This AD supersedes AD 2007–14–02, Amendment 39–15124.

Applicability

(c) This AD applies to Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model CL–600–1A11 (CL–600), serial numbers 1004 through 1085 inclusive.

(2) Model CL–600–2A12 (CL–601), serial numbers 3001 through 3066 inclusive.

(3) Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604), serial numbers 5001 through 5194 inclusive, and serial numbers 5301 through 5665 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

A specific batch of nose landing gear (NLG) and NLG door selector valves, part number (P/N) 601R75146–1 (Kaiser Fluid Technologies P/N 750006000), may have had their end caps incorrectly lock-wired and/or incorrectly torqued during assembly. This condition can lead to the end cap backing off, with consequent damage to a seal and internal leakage within the valve. Subsequently, if electrical power is transferred or removed from the aircraft before the NLG safety pin is installed, any pressure, including residual pressure, in the No. 3 hydraulic system can result in an uncommanded NLG retraction.

Although there have been no such cases reported on the Challenger models covered by this directive, there have been six cases reported on the CRJ (CL600–2B19) aircraft, one of which resulted in the collapse of the NLG at the departure gate.

This directive mandates a check of the NLG and NLG door selector valves installed on all aircraft in the Applicability section * * *. Depending on the results; replacement, rework and/or additional identification of the valves may be required.

This [MCAI] revision corrects a Service Bulletin number in the Corrective Actions table.

Notes: 1. The check is required whether or not an aircraft has previously been checked in accordance with AD CF–2006–16R1 (now superseded and cancelled by this AD). This is necessary since, following the issuance of AD CF–2006–16R1, it has been determined that the serial number (S/N) range of the affected valves requires expansion from the previous upper limit of S/N 0767 to S/N 2126 and the exact location of each of these additional valves is unknown.

2. Valves that have a S/N with suffix "T" have been manufactured by Tactair Fluid Controls Inc. and do not require any corrective action.

3. Valves manufactured by Kaiser Fluid Technologies, P/N 750006000, with S/N 0001 through 2126, and ink stamp "SB750006000–1", have already been checked and reworked as necessary and do not require any additional corrective action.

4. The Illustrated Parts Catalog, for each of the models covered in the Applicability section * * *, gives instructions not to install a valve manufactured by Kaiser Fluid Technologies, P/N 750006000, with S/N 0001 through 2126, if the marking "SB750006000–1" is not ink stamped on the valve.

5. CL–600–2B16 (CL–605) aircraft, S/Ns 5701 and subsequent, are not affected by this directive. They were delivered with valves, P/N 750006000, that have either a S/N with suffix "T" or have the ink stamp marking "SB750006000–1".

Compliance

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

RESTATEMENT OF REQUIREMENTS OF AD 2007–14–02 WITH NEW SERVICE INFORMATION BUT NO CHANGES TO ACTIONS:

Inspection and Corrective Action

(g) For airplanes having serial numbers (S/Ns) as identified in the service bulletins specified in Table 1 of this AD, as applicable: Within 500 flight hours or 12 months after August 16, 2007 (the effective date AD 2007–14–02), whichever occurs first, inspect to determine the manufacturer part numbers (P/Ns) and serial numbers of the selector valves of the nose landing gear (NLG) and nose gear door. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial numbers of the selector valves can be conclusively determined from that review. For any subject selector valve having Tactair Fluid Controls P/N 750006000 and a S/N from 0001 through 0767 inclusive, before further flight, do related investigative (including a general visual inspection for proper installation of the lock wire of the end cap) and corrective actions; in accordance with the applicable service bulletin identified in Table 1 of this AD. After the effective date of this AD, use only the applicable service bulletin specified in Table 2 of this AD.

TABLE 1—BOMBARDIER SERVICE BULLETINS

Model—	Bombardier service bulletin—	Revision—	Dated—
CL–600–1A11 (CL–600) airplanes	600–0721	01	February 20, 2006.
CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes	601–0558	01	February 20, 2006.

TABLE 1—BOMBARDIER SERVICE BULLETINS—Continued

Model—	Bombardier service bulletin—	Revision—	Dated—
CL–600–2B16 (CL–604) airplanes	604–32–021	02	February 20, 2007.

TABLE 2—BOMBARDIER SERVICE BULLETINS FOR ACTIONS IN PARAGRAPH (g) OF THIS AD

Model—	Bombardier service bulletin—	Revision—	Dated—
CL–600–1A11 (CL–600) airplanes	600–0721	03	February 23, 2009.
CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes	601–0558	03	February 23, 2009.
CL–600–2B16 (CL–604) airplanes	604–32–021	04	February 23, 2009.

Note 1: Operators should be aware that selector valves having Bombardier P/N 601R75146–1 may be supplied by different manufacturers and have different manufacturer part numbers. Only airplanes having selector valves manufactured by Tactair Fluid Controls, having P/N 750006000, are subject to the investigative and corrective actions specified in paragraph (g) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: The service bulletins identified in Table 1 of this AD refer to Tactair Fluid Controls Service Bulletin SB750006000–1, Revision A, dated September 6, 2005, as an additional source of guidance for doing the related investigative and corrective actions required by this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(h) Actions accomplished before August 16, 2007, in accordance with Bombardier Service Bulletin 604–32–021, Revision 01, dated February 20, 2006 (for Model CL–600–2B16 (CL–604) airplanes), are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

NEW REQUIREMENTS OF THIS AD:

Actions

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

(1) Within 250 flight hours or within 6 months after the effective date of this AD, whichever occurs first: Do an inspection of the selector valve of the NLG and the door selector valve of the NLG to determine if P/N 601R75146–1 (Kaiser Fluid Technologies P/N 750006000) is installed, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 3 of this AD. Doing the inspection required by this paragraph terminates the inspection required by paragraph (g) of this AD.

TABLE 3—BOMBARDIER SERVICE BULLETINS FOR ACTIONS IN PARAGRAPH (i) OF THIS AD

Model—	Bombardier service bulletin—	Revision—	Dated—
CL–600–1A11 (CL–600) airplanes	600–0721	03	February 23, 2009.
CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes	601–0558	03	February 23, 2009.
CL–600–2B16 (CL–604) airplanes	604–32–021	04	February 23, 2009.

(2) If, during any inspection required by paragraph (i)(1) of this AD, any selector valve having P/N 601R75146–1 (Kaiser Fluid Technologies P/N 750006000) and having a S/N from 0001 through 2126 inclusive without a suffix "T" is found, and the valve is not ink-stamped with the marking "SB750006000–1": Before further flight, do a general visual inspection for proper installation of the lock wire of the end cap, and replace it with a serviceable selector valve as applicable, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 3 of this AD.

(3) Doing the actions before the effective date of this AD in accordance with the applicable service bulletin specified in Table 4 of this AD is acceptable for compliance with the corresponding actions specified in this AD.

TABLE 4—CREDIT SERVICE BULLETINS

Service bulletin	Revision level	Date
Bombardier Service Bulletin 600–0721	02	June 16, 2008.
Bombardier Service Bulletin 601–0558	02	June 16, 2008.
Bombardier Service Bulletin 604–32–021	03	June 16, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. 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

(k) Refer to MCAI Canadian Airworthiness Directive CF–2009–21R1, dated May 20, 2009; Bombardier Service Bulletin 600–0721, Revision 03, dated February 23, 2009; Bombardier Service Bulletin 601–0558, Revision 03, dated February 23, 2009; and Bombardier Service Bulletin 604–32–021, Revision 04, dated February 23, 2009; for related information.

Material Incorporated by Reference

(l) You must use the service information contained in Table 5 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 5—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Bombardier Service Bulletin 600–0721	03	February 23, 2009.
Bombardier Service Bulletin 601–0558	03	February 23, 2009.
Bombardier Service Bulletin 604–32–021	04	February 23, 2009.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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 6, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11743 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0914; Directorate Identifier 2009–NM–122–AD; Amendment 39–16304; AD 2010–10–25]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes, and Model A340–300 Series 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:

In the door 2 area, the hat-racks are supplied with a basic wire harness which includes "Oxygen Masks" activation.

In case of a monument installation, the respective non-used hat-rack connections between monument and outer skin are put on stow. It was noticed in production, that the distance between the stowed wire harness and the monument could be too small. This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

* * * * *

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

DATES: This AD becomes effective June 25, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 25, 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: Vladimir Ulyanov, Aerospace Engineer, 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

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 October 19, 2009 (74 FR 53440). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In the door 2 area, the hat-racks are supplied with a basic wire harness which includes "Oxygen Masks" activation.

In case of a monument installation, the respective non-used hat-rack connections between monument and outer skin are put on stow. It was noticed in production, that the distance between the stowed wire harness and the monument could be too small. This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, this AD requires the modification of the hat rack connectors on stow, and the rerouting of the associated wire harness in case of monument installed in door 2 area.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–92–4073, Revision 02, dated October 12, 2009. Revision 02 includes the following changes:

- Adds a note stating that the modification of cable harness 5302VB/5303VB is necessary only if the cable is installed; and
- Makes minor text corrections.

We referred to Airbus Mandatory Service Bulletin A340–92–4073, Revision 01, dated January 13, 2009, as the appropriate source of service information for accomplishing the actions specified in the NPRM (for Model A340–300 series airplanes).

We have revised paragraphs (f)(1), (f)(2), and (h) of this AD to cite Airbus Mandatory Service Bulletin A340–92–4073, Revision 02, dated October 12, 2009. We have added paragraph (f)(3) of this AD to give credit for accomplishment of the actions done in accordance with the Airbus Mandatory Service Bulletin A340–92–4073, Revision 01, dated January 13, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, dated July 10, 2008.

Airbus has also issued Mandatory Service Bulletin A330–92–3070, Revision 02, dated August 19, 2009. Revision 02 includes the following changes:

- Removes airplanes from the effectivity;
- Makes minor text changes;
- Changes the location of wire harness 5315VB/5316VB in Figure 2; and
- Adds a note stating that modification of wire harness 5302VB/5303VB is only necessary if installed.

We referred to Airbus Mandatory Service Bulletin A330–92–3070, Revision 01, dated January 12, 2009, as the appropriate source of service information for accomplishing the actions specified in the NPRM (for Model A330–200 and A330–300 series airplanes).

We have revised paragraphs (f)(1), (f)(2), and (h) of this AD to cite Airbus Mandatory Service Bulletin A330–92–3070, Revision 02, dated August 19, 2009. We have added paragraph (f)(3) to give credit for accomplishment of the actions done in accordance with Airbus Mandatory Service Bulletin A330–92–3070, dated July 10, 2008; or Airbus Mandatory Service Bulletin A330–92–3070, Revision 01, dated January 12, 2009.

Comments

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

Support for the NPRM

Air Line Pilots Association (ALPA), International supports the NRPM.

Request To Extend Compliance Time

Northwest Airlines (NWA) requests that we extend the proposed compliance time for the modification specified in paragraph (f) of the NPRM from within 24 months to within 24 months for locations where monuments are installed, and for other specified locations, to within 72 months or at the time of a new monument installation, whichever occurs first. NWA explains that its Model A330 airplanes have a monument installed in only one of the four locations specified in the service information, and that according to paragraph (e) of the NPRM, the unsafe condition only exists at locations where there is a monument installed. NWA reasons that allowing a later compliance time for those areas without monuments would allow operators to accomplish the required actions while access is available to the monuments during normally scheduled maintenance.

We do not agree to extend the compliance time specified in paragraph (f) of the final rule for door-2 locations without an installed monument. This AD requires modification of non-used hat-rack connections between the monument and outer skin only for door-2 areas where a monument is installed, as specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3070, Revision 02, dated August 19, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 02, dated October 12, 2009; which ensures the clearance between the wire harnesses and the monument. The service bulletins also specify airplane configurations and the actions for each configuration. There are no actions required for those door-2 areas without monuments. We have clarified paragraph (f)(1) of this AD by adding the phrase "for airplanes on which a monument is installed in the door-2 area, as specified in Airbus Mandatory Service Bulletin A330–92–3070, Revision 02, dated August 19, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 02, dated October 12, 2009."

Request To Revise Proposed Costs of Compliance

NWA requests that we revise the Cost of Compliance section of the NPRM to portray the cost to operators as though all four locations require a monument installation. NWA explains that airplanes configured with only a single lavatory require 57 labor hours for removal, installation, and testing. If an operator were to have a monument installation at each of the four locations, NWA asserts that the labor hours could be as high as 241 hours for an airplane configured with three lavatories and a video control center.

We agree to revise the Cost of Compliance section of the final rule to portray the cost to operators as though all four locations require a monument installation. As the service information indicates, time to get access to the modified area should be included in the cost, with respect to operators having to perform a monument installation at all four locations. We are adding 3 work-hours to NWA's estimate of 241 work-hours to account for the modification. Also, the number of affected products of U.S. registry is now 32. We have revised the Costs of Compliance section of the final rule accordingly.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 32 products of U.S. registry. We also estimate that it will take about 244 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts costs are negligible. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $663,680, or $20,740 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, 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 adding the following new AD:

2010–10–25 Airbus: Amendment 39–16304. Docket No. FAA–2009–0914; Directorate Identifier 2009–NM–122–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 25, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Airbus Model A340–311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers on which Airbus Modification 48825 has been embodied in production, except those on which Airbus Modification 57409 has been embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 92.

Reason

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

In the door 2 area, the hat-racks are supplied with a basic wire harness which includes "Oxygen Masks" activation.

In case of a monument installation, the respective non-used hat-rack connections between monument and outer skin are put on stow. It was noticed in production, that the distance between the stowed wire harness and the monument could be too small. This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, this AD requires the modification of the hat rack connectors on stow, and the rerouting of the associated wire harness in case of monument installed in door 2 area.

Actions and Compliance

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

(1) For airplanes on which a monument is installed in the door 2 area, as specified in Airbus Mandatory Service Bulletin A330–92–3070, Revision 02, dated August 19, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 02, dated October 12, 2009: Within 24 months after the effective date of this AD, modify both the left-hand (L/H) and right-hand (R/H) hat-rack connectors, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3070, Revision 02, dated August 19, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 02, dated October 12, 2009; as applicable; except as provided by paragraphs (f)(2) and (f)(3) of this AD.

(2) Modifications done before the effective date of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3070 or A340–92–4073, both dated July 10, 2008, as applicable, are acceptable for compliance with the applicable requirements of paragraph (f)(1) of this AD, provided that within 24 months after the effective date of this AD, the "ADDITIONAL WORK" specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3070, Revision 01, dated January 12, 2009, or Revision 02, dated August 19, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 01, dated January 13, 2009, or Revision 02, dated October 12, 2009; as applicable; is accomplished.

(3) Modifying both the L/H and R/H hat-rack connectors is also acceptable for

compliance with the requirements of paragraph (f)(1) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3070, Revision 01, dated January 12, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 01, dated January 13, 2009.

FAA AD Differences

Note 1: 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: Vladimir Ulyanov, Aerospace Engineer, 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 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 European Aviation Safety Agency Airworthiness Directive 2009–0077, dated April 6, 2009; Airbus Mandatory Service Bulletin A330–92–3070, Revision 02, dated August 19, 2009; and Airbus Mandatory Service Bulletin A340–92–4073, Revision 02, dated October 12, 2009; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A330–92–3070, Revision 02, dated August 19, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 02, dated October 12, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(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 6, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraaft Certification Service.

[FR Doc. 2010–11740 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0489; Directorate Identifier 2009–SW–78–AD; Amendment 39–16294; AD 2010–10–15]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (ECF) Model AS332L1 and AS332L2 Helicopters

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 specified ECF model helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that with certain pilot and copilot seats in the rear high position and seat backrest fully tilted the seat shoulder harness could become jammed between the seat and bulkhead. This condition, if not corrected, could result in the shoulder harness binding and causing the inertial reel to malfunction and no longer retain the flight crew member in the seat in the event of an emergency or hard landing.

DATES: This AD becomes effective on June 7, 2010.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of June 7, 2010.

We must receive comments on this AD by July 20, 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 your comments electronically.
- *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 AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

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

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued AD No. 2009–0227–E, dated October 22, 2009, to correct an unsafe condition for the specified Eurocopter model helicopters.

The MCAI AD states that certain pilot and copilot customized seats that have rails with the rear stop moved aft in the

full backward position interfere with bulkhead X1715. Tests revealed that when an affected seat is in the rear high position and the seat backrest is fully tilted, there is a risk of the shoulder harness jamming between the seat and bulkhead X1715, which may prevent the inertial reel from reeling the shoulder harness in. This condition, if not corrected, could result in the shoulder harness binding and causing the inertial reel to malfunction and no longer retain the flight crew member in the seat in the event of an emergency or hard landing.

You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Related Service Information

ECF has issued one Emergency Alert Service Bulletin (EASB) with two different numbers, both dated October 19, 2009. EASB No. 25.02.20 is for the Model AS332L1 and L2, and No. 25.01.35 is for the non-FAA type certificated Model AS532U2 military helicopters. The EASB specifies relocating the rear stops of the pilot and copilot seats because of potential interference between the seat shoulder harness and bulkhead X1715. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their technical representative, has notified us of the unsafe condition described in the MCAI AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Differences Between This AD and the MCAI AD

We refer to flight hours as hours time-in-service.

Costs of Compliance

We estimate that this AD will affect about 3 helicopters of U.S. registry. We also estimate that it will take about ½ work-hour per helicopter to modify both the seat rails. The average labor rate is $85 per work-hour with negligible cost for parts. Based on these figures, we estimate the cost of this AD on U.S. operators will be $128 for the entire fleet.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short time frame required to modify the seat rails to prevent a seat shoulder harness jamming and resulting in further injury to a crewmember in an emergency or hard landing. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

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. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include "Docket No. FAA–2010–0489; Directorate Identifier 2009–SW–78–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 helicopters 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.

Therefore, 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 an economic 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 adding the following new AD:

2010–10–15 Eurocopter France: Amendment 39–16294. Docket No. FAA–2010–0489; Directorate Identifier 2009–SW–78–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on June 7, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AS332L1 and AS332L2 helicopters, certificated in any category, with the customized "rails with the rear stop moved aft" rail assemblies, part number (P/N) 332P76–9012–02 or P/N 332P76–9012–03, installed, but without modification (MOD) 332V080210.00.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that with certain pilot and copilot seats in the rear high position and seat backrest fully tilted the seat shoulder harness could become jammed between the seat and bulkhead X1715 adversely affecting the strap tension and potentially disabling the proper function of the inertial reel. This condition, if not corrected could result in the shoulder harness no longer retaining the flight crew member in the seat in the event of an emergency or hard landing.

Actions and Compliance

(e) Within 15 hours time-in-service (TIS), modify the pilot and copilot seats by relocating the rail rear stops to the position depicted in Figure 2, "without the 'rail with the rear stop moved aft' customization" or "Post-Mod 332V080210.00." Do the modification by following the Operational Procedure, of the Accomplishment Instructions, paragraph 2.B.1., of Eurocopter Emergency Alert Service Bulletin (EASB) No. 25.02.20, dated October 19, 2009. After modifying the position of the rear stop, identify the modification (MOD) using indelible ink and marking "MOD332V080210.00" on the left rail at the rear stop.

Note: The one Eurocopter EASB contains two different service bulletin numbers (Nos. 25.02.20 and 25.01.35) applicable to two different Eurocopter model helicopters. EASB No. 25.02.20 relates to Eurocopter Model AS332L1 and L2 helicopters. EASB No. 25.01.35 relates to Eurocopter Model AS532U2 military helicopters that are not type certificated in the United States.

(f) After the effective date of this AD, do not install a pilot or copilot left seat rail, P/N 332P76–9012–02 or P/N 332P76–9012–03, on a helicopter unless it has been modified and reidentified by following paragraph (e) of this AD.

Differences Between This AD and the MCAI AD

(g) We refer to flight hours as hours TIS.

Other Information

(h) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(i) The European Aviation Safety Agency MCAI AD No. 2009–0227–E, dated October 22, 2009, contains related information.

Joint Aircraft System/Component (JASC) Code

(j) The JASC Code is 5347: Seat/Cargo Attach Fittings.

Material Incorporated by Reference

(k) You must use the specified portions of Eurocopter Emergency Alert Service Bulletin No. 25.02.20, dated October 19, 2009, to do the actions required.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com*.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd, Fort Worth, TX 76137; or 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/cfr/ibr-locations.html*.

Issued in Fort Worth, Texas, on April 29, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–11420 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0172; Directorate Identifier 2009–NM–189–AD; Amendment 39–16308; AD 2010–11–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes; Model A300 B4–600, B4–600R, F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and A310 Series 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:

In the past, some operators have reported difficulties to pressurise the hydraulic reservoirs, due to leakage of the Crissair reservoir air pressurisation check valves. * * * The leakage of the check valves was caused by an incorrect spring material. The affected Crissair check valves * * * were then replaced with improved check valves P/N [part number] 2S2794–1 * * *.

More recently, similar issues were again reported on aeroplanes with Crissair check valves P/N 2S2794–1 installed. The investigations * * * have shown that a spring, mounted inside the valve, does not meet the Airbus type design specifications.

This situation, if not corrected, can cause hydraulic system functional degradation, possibly resulting in reduced control of the aeroplane when combined with an air duct leak, air conditioning system contamination or, if installed, malfunction of the fire extinguishing system in the Class 'C' cargo compartment.

* * * * *

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

DATES: This AD becomes effective June 25, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 25, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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 February 25, 2010 (75 FR 8551). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In the past, some operators have reported difficulties to pressurise the hydraulic reservoirs, due to leakage of the Crissair reservoir air pressurisation check valves. In some cases, the air conditioning system was contaminated with hydraulic mist. The leakage of the check valves was caused by an incorrect spring material. The affected Crissair check valves Part Number (P/N) 2S2794 were then replaced with improved check valves P/N 2S2794–1 in accordance with Airbus Service Information Letter 29–020.

More recently, similar issues were again reported on aeroplanes with Crissair check

valves P/N 2S2794–1 installed. The investigations carried out on those check valves have shown that a spring, mounted inside the valve, does not meet the Airbus type design specifications.

This situation, if not corrected, can cause hydraulic system functional degradation, possibly resulting in reduced control of the aeroplane when combined with an air duct leak, air conditioning system contamination or, if installed, malfunction of the fire extinguishing system in the Class 'C' cargo compartment.

For the reasons described above, EASA [European Aviation Safety Agency] AD 2008–0166 was issued to require the inspection of the Crissair check valves P/N 2S2794–1, to identify serial numbers (s/n) and the replacement of the affected ones with serviceable units.

Later on, further investigation by the vendor Crissair revealed more suspect check valves P/N 2S2794–1. Based on this, it was concluded that EASA AD 2008–0166 did not adequately address the unsafe condition and also did not correctly identify the Functional Item Numbers (FIN) of the various aeroplane installations of the affected valves. Consequently, EASA AD Cancellation Notice No.: 2008–0166–CN was issued on 29 October 2008 to cancel EASA AD 2008–0166.

An updated list of suspect check valves with P/N 2S2794–1 has now been issued by Crissair Inc., the manufacturer. Consequently, this EASA AD requires the identification of the check valves by s/n and the replacement of the affected ones with serviceable units.

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 received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data 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.

Costs of Compliance

We estimate that this AD will affect 206 products of U.S. registry. We also estimate that it will take about 12 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 $210,120, or $1,020 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, 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 adding the following new AD:

2010–11–03 Airbus: Amendment 39–16308. Docket No. FAA–2010–0172; Directorate Identifier 2009–NM–189–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 25, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, B4–203, B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category, all certified models and all serial numbers on which any Crissair check valve part number 2S2794–1 is installed.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic Power; and 26: Fire Protection.

Reason

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

In the past, some operators have reported difficulties to pressurise the hydraulic reservoirs, due to leakage of the Crissair reservoir air pressurization check valves. In some cases, the air conditioning system was contaminated with hydraulic mist. The leakage of the check valves was caused by an incorrect spring material. The affected Crissair check valves Part Number (P/N) 2S2794 were then replaced with improved check valves P/N 2S2794–1 in accordance with Airbus Service Information Letter 29–020.

More recently, similar issues were again reported on aeroplanes with Crissair check valves P/N 2S2794–1 installed. The investigations carried out on those check valves have shown that a spring, mounted inside the valve, does not meet the Airbus type design specifications.

This situation, if not corrected, can cause hydraulic system functional degradation, possibly resulting in reduced control of the aeroplane when combined with an air duct leak, air conditioning system contamination or, if installed, malfunction of the fire extinguishing system in the Class 'C' cargo compartment.

For the reasons described above, EASA [European Aviation Safety Agency] AD 2008–0166 was issued to require the inspection of the Crissair check valves P/N 2S2794–1, to identify serial numbers (s/n) and the replacement of the affected ones with serviceable units.

Later on, further investigation by the vendor Crissair revealed more suspect check valves P/N 2S2794–1. Based on this, it was concluded that EASA AD 2008–0166 did not adequately address the unsafe condition and also did not correctly identify the Functional Item Numbers (FIN) of the various aeroplane installations of the affected valves. Consequently, EASA AD Cancellation Notice No.: 2008–0166–CN was issued on 29 October 2008 to cancel EASA AD 2008–0166.

An updated list of suspect check valves with P/N 2S2794–1 has now been issued by Crissair Inc., the manufacturer. Consequently, this EASA AD requires the identification of the check valves by s/n and the replacement of the affected ones with serviceable units.

Actions and Compliance

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

(1) At the applicable compliance time specified in Table 1 of this AD: For Crissair check valves, P/N 2S2794–1, identify the serial number using Appendix 1 of the applicable service bulletin identified in Table 2 of this AD, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD. Except as provided by paragraph (f)(2) of this AD, for any valve having a serial number listed in Appendix 1 of the applicable service bulletin identified in Table 2 of this AD, before further flight, install a new or modified check valve in accordance with the applicable service bulletin identified in Table 2 of this AD.

TABLE 1—AFFECTED CHECK VALVE INSTALLATION

Affected check valve installation, identified by FIN (Functional Item Number)	Compliance time
(i) Airplanes having Hydraulic System with FIN 29/1388, FIN 29/2388 and FIN 29/3388.	Within 4 months after the effective date of this AD.
(ii) Cargo Compartment Fire Extinguishing System, equipped with Flow Metering System (A310 and A300–600 airplanes having "post-Airbus modification 06403" only) FIN 26/0203.	Within 4 months after the effective date of this AD.
(iii) Airplanes having Hydraulic System with FIN 29/1378, FIN 29/1382 and FIN 29/1394.	Within 30 months after the effective date of this AD.
(iv) Hydraulic System (A300 airplanes having configuration 01 "pre-Airbus modification 03079" only) FIN 29/1381.	Within 30 months after the effective date of this AD.

(2) Check valves P/N 2S2794–1 marked with an "R" have already been modified in accordance with Crissair Service Bulletin 20070407–29–1 and do not need to be replaced. Check valves with P/N 2S2794 are not affected and do not need to be replaced.

(3) As of the effective date of this AD, no person may install any Crissair check valve, P/N 2S2794–1, on any airplane unless it has a serial number other than those listed in Appendix 1 of the applicable service bulletin identified in Table 2 of this AD, or unless check valve P/N 2S2794–1 is marked with an "R."

TABLE 2—SERVICE INFORMATION

For Airbus Model—	Use Airbus Mandatory Service Bulletin—	Revision—	Dated—
A300 airplanes	A300–29–0124, including Appendices 1, 2, and 3	02	March 10, 2009.
A300–600 airplanes	A300–29–6060, including Appendices 1, 2, and 3	01	March 10, 2009.
A310 airplanes	A310–29–2097, including Appendices 1, 2, and 3	01	March 19, 2009.

(4) Submit an inspection report of the inspection required by paragraph (f)(1) of this AD to Airbus Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 33 33; fax +33 5 61 93 42 51; e-mail: *sb.reporting@airbus.com;* at the applicable time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD. The report must include the information specified on the inspection report sheet provided in the applicable service bulletin identified in Table 2 of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although the MCAI states not to install the part identified in paragraph (f)(3) of this AD after accomplishing the actions specified in paragraph (f)(1) of this AD, this AD prohibits installation of the part as of the effective date of this AD.

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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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 EASA Airworthiness Directive 2009–0171, dated August 5, 2009; and the service bulletins identified in Table 2 of this AD; for related information.

Material Incorporated by Reference

(i) You must use the service information contained in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@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.*

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus Mandatory Service Bulletin A300–29–0124, including Appendices 1, 2, and 3	02	March 10, 2009.
Airbus Mandatory Service Bulletin A300–29–6060, including Appendices 1, 2, and 3	01	March 10, 2009.
Airbus Mandatory Service Bulletin A310–29–2097, including Appendices 1, 2, and 3	01	March 19, 2009.

Issued in Renton, Washington, on May 11, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11757 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0750; Directorate Identifier 2008–NE–21–AD; Amendment 39–16302; AD 2010–10–23]

RIN 2120–AA64

Airworthiness Directives; Dowty Propellers R175/4–30–4/13; R175/4–30–4/13e; R184/4–30–4/50; R193/4–30–4/50; R193/4–30–4/61; R193/4–30–4/64; R193/4–30–4/65; R193/4–30–4/66; R.209/4–40–4.5/2; R212/4–30–4/22; R.245/4–40–4.5/13; R257/4–30–4/60; and R.259/4–40–4.5/17 Model Propellers

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for the Dowty Propellers, propeller models listed above. That AD currently requires, for all Dowty Rotol propellers, visual inspections for seizure and for cadmium plating of the blade pitch change operating links and eyebolt fork assemblies. That AD also requires replacement or heat-treatment of the blade pitch change operating links and eyebolt fork assemblies, if necessary. This AD requires the same actions, but only for certain propeller models. This AD results from the FAA determining that AD 70–16–02 does not apply to all propellers, since current Dowty propellers are differently designed. We are issuing this AD supersedure to specify the affected propeller models, and to prevent seizure or embrittlement and cracking of the blade pitch change operating links and eyebolt fork assemblies, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective June 25, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 25, 2010.

ADDRESSES: You can get the service information identified in this AD from Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN, UK; Telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *terry.fahr@faa.gov;* telephone (781) 238–7155; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 70–16–02, Amendment 39–1503 (37 FR 16535, August 16, 1972), with a proposed AD. The proposed AD applies to certain Dowty Propellers, propeller models. We published the proposed AD in the **Federal Register** on August 29, 2008 (74 FR 50892). That action proposed to require visual inspections before further flight of the blade pitch change operating links and eyebolt fork assemblies and replacement or heat-treatment of them, if necessary, for certain Dowty Propellers, propeller models.

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

Request To Revise the Proposed Applicability

One commenter, a private citizen, states that there were no Dowty Rotol propellers installed on Convair 240, 340, and 440 airplanes. However, the commenter also states that Convair 240, 340, and 440 airplanes modified by supplemental type certificates (STC) SA1054WE and SA1096SW, do have Dowty Rotol propellers installed. The propeller R.245/4–40–4.5 is used on a Convair model 240, redesignated as Convair model 600 on supplemental type certificate (STC) SA1054WE, and the propellers R.245/4–40–4.5 and

R.259/4–40–4.5 are used on Convair models 340 and 440, redesignated Convair model 640 on STC SA1096SW.

We partially agree. We reviewed these STCs, and the aircraft type certificate data sheets A–793 and 6A6, and determined there are no official Convair model designations of 600 or 640 for these airplanes. We agree that Convair airplanes models 240, 340, and 440 if modified by these STCs have Dowty propellers installed and are affected by this proposed AD. We changed the AD applicability to call out the STCs, to remove the reference to Convair 600, and to list the complete part numbers of the affected propellers, instead of the basic part numbers. We also deleted propeller part number R251/4–30–4 from the applicability, as it was inadvertently listed.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

Costs of Compliance

We anticipate that this AD will affect no propellers installed on airplanes of U.S. registry, as the affected propellers should already be in compliance with AD 70–16–02 since it became effective, on August 21, 1972. Based on this information, we estimate the total cost of the AD to U.S. operators to be $0.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 this AD:

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

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

(3) 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 Federal Aviation Administration 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 39–1503 (37 FR 16535, August 16, 1972), and by adding a new airworthiness directive, Amendment 39–16302, to read as follows:

2010–10–23 Dowty Propellers (Formerly Dowty Aerospace; Dowty Rotol Limited; and Dowty Rotol): Amendment 39–16302. Docket No. FAA–2008–0750; Directorate Identifier 2008–NE–21–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 25, 2010.

Affected ADs

(b) This AD supersedes AD 70–16–02, Amendment 39–1503.

Applicability

(c) This AD applies to Dowty Propellers R175/4–30–4/13; R175/4–30–4/13e; R184/4–30–4/50; R193/4–30–4/50; R193/4–30–4/61; R193/4–30–4/64; R193/4–30–4/65; R193/4–30–4/66; R.209/4–40–4.5/2; R212/4–30–4/22; R.245/4–40–4.5/13; R257/4–30–4/60; and R.259/4–40–4.5/17 model propellers. These propellers are installed on, but not limited to, Fairchild F–27, Fairchild-Hiller FH–227, Grumman G–159, Nihon YS–11, and BAe HS 748 Series 2 airplanes, Convair 240 airplanes modified per supplemental type certificate (STC) SA1054WE, and Convair 340 and 440 airplanes modified per STC SA1096SW.

Unsafe Condition

(d) This AD results from the FAA determining that AD 70–16–02 does not apply to all propellers, since current Dowty Rotol propellers are differently designed. We are issuing this AD supersedure to specify the affected propeller models, and to prevent seizure or embrittlement and cracking of the blade pitch change operating links and eyebolt fork assemblies, which could result in reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed before further flight after the effective date of this AD, unless the actions have already been done.

(f) Inspect the blade pitch change operating link and eyebolt fork assembly for:

(1) Seizure (the link and eyebolt are seized if the torque required to move the link is 300 inch pounds or more); and

(2) Cadmium plating on the mating surfaces between the operating link and eyebolt fork and the holes through the eyebolt fork and the operating link.

(g) If the link and eyebolt fork are not seized and have not been cadmium plated, they may remain in service.

(h) If the link and eyebolt fork are not seized but cadmium plating is found in the prohibited areas, remove the plating by means of wet or dry silicon carbide paper, fine or medium grade, and conduct a magnetic crack test. If no cracks are found, the assembly may remain in service until the next propeller overhaul for air carrier airplanes and airplanes under a continuous maintenance program or for 3,300 hours time-in-service after the effective date of this AD for all other airplanes. At the next propeller overhaul for air carrier airplanes and airplanes under a continuous maintenance program, or within 3,300 hours time-in-service after the effective date of this AD for all other airplanes, heat treat the links and eyebolt forks found to have been cadmium plated, to remove embrittlement. Use Dowty Rotol Service Bulletin No. 61–754, dated June 12, 1970 to perform the heat treatment.

(i) If the link and eyebolt fork are seized, remove the link and eyebolt fork from service and replace them with an assembly having a part number approved for that model propeller that has not been cadmium plated in the prohibited areas.

(j) If the link or eyebolt fork are found to be cracked during the inspection in paragraph (h) of this AD, remove the cracked part from service and replace it with a part having a part number approved for that model propeller that has not been cadmium plated.

(k) The inspection required by paragraph (f) of this AD need not be performed and the propeller may remain in service if:

(1) The operator can show that no cadmium plating exists in the prohibited areas of that propeller; or

(2) It is a new propeller that has never been overhauled.

Alternative Methods of Compliance

(l) The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(m) Contact Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *terry.fahr@faa.gov;* telephone (781) 238–7155; fax (781) 238–7170, for more information about this AD.

Material Incorporated by Reference

(n) You must use Dowty Rotol Service Bulletin No. 61–754, dated June 12, 1970 to perform the heat treatment required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN, UK; Telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001 for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts on May 5, 2010.

Peter A. White,

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

[FR Doc. 2010–11764 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0034; Directorate Identifier 2009–NM–120–AD; Amendment 39–16307; AD 2010–11–02]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Model Gulfstream 100 Airplanes, and Model Astra SPX and 1125 Westwind Astra Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing 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:

* * * * *

Incomplete closure of the MED [main entry door] may be followed by in-flight opening of the door. As a result, the MED and the adjacent fuselage structure may be damaged during opening and landing impact. Damage to the left engine by flying debris and objects may also occur.

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

DATES: This AD becomes effective June 25, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 25, 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: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; 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 February 8, 2010 (75 FR 6157), and proposed to supersede AD 2007–03–05, Amendment 39–14916 (72 FR 4414, January 31, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

To increase pilots' awareness to the possibility of incomplete closure of the Main Entry Door (MED) by the following means:

1. Splitting the common caution light *CABIN DOOR* signaling both MED Improper Closure and MED Inflatable Seal Failure into two separate lights: *CABIN DOOR* and *CABIN DOOR SEAL.*

2. Converting the separated *CABIN DOOR* Caution light into a Warning light by changing its color to red.

Note: Aircraft Flight Manuals (AFM'S) refer to these changes as MOD G1–20052.

Incomplete closure of the MED may be followed by in-flight opening of the door. As a result, the MED and the adjacent fuselage structure may be damaged during opening and landing impact. Damage to the left engine by flying debris and objects may also occur.

Required actions include modifying the warning and caution lights panel (WACLP), changing the WACLP and MED wiring, changing the wiring harness connecting the MED to the WACLP, and ensuring the Log of Modification of the AFM includes reference to MOD G1–20052. 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 received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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

Based on the service information, we estimate that this AD will affect about 120 products of U.S. registry.

The actions that are required by AD 2007–03–05 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it will take about 60 additional work-hours per product to comply with the new basic requirements of this AD. Required parts will cost about $600 per product. The average labor rate is $85 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $684,000, or $5,700 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, 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 39–14916 (72 FR 4414, January 31, 2007) and adding the following new AD:

2010–11–02 Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.): Amendment 39–16307. Docket No. FAA–2010–0034; Directorate Identifier 2009–NM–120–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 25, 2010.

Affected ADs

(b) This AD supersedes AD 2007–03–05, Amendment 39–14916.

Applicability

(c) This AD applies to Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.) Model Gulfstream 100 airplanes; and Model Astra SPX and 1125 Westwind Astra airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 31: Instruments.

Reason

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

To increase pilots' awareness to the possibility of incomplete closure of the Main Entry Door (MED) by the following means:

1. Splitting the common caution light *CABIN DOOR* signaling both MED Improper Closure and MED Inflatable Seal Failure into two separate lights: *CABIN DOOR* and *CABIN DOOR SEAL.*
2. Converting the separated *CABIN DOOR* Caution light into a Warning light by changing its color to red.

Note: Aircraft Flight Manuals (AFMs) refer to these changes as MOD G1–20052.

Incomplete closure of the MED may be followed by in-flight opening of the door. As a result, the MED and the adjacent fuselage structure may be damaged during opening and landing impact. Damage to the left engine by flying debris and objects may also occur.

Required actions include modifying the warning and caution lights panel (WACLP), changing the WACLP and MED wiring, changing the wiring harness connecting the MED to the WACLP, and ensuring the Log of Modification of the AFM includes reference to MOD G1–20052.

Restatement of Requirements of AD 2007–03–05, With No Changes

(f) Unless already done, do the following actions. Within 10 days after February 15, 2007 (the effective date of AD 2007–03–05), amend Section IV, Normal Procedures, of the following Gulfstream airplane flight manuals (AFMs): Model 1125 Astra, 25W–1001–1; Model Astra SPX, SPX–1001–1; and Model G100, G100–1001–1; as applicable; to include the following statement. Insertion of copies of this AD at the appropriate places of the AFMs is acceptable.

"1. BEFORE ENGINE START:

(PRE and POST Mod 20052/Gulfstream Service Bulletin 100–31–284):

CABIN DOOR—CLOSED (Physically verify door latch handle pin is fully engaged in the handle lock)

2. BEFORE TAXIING:

Change the CABIN DOOR procedure as follows (POST Mod 20052/Gulfstream Service Bulletin 100–31–284):

Check CABIN DOOR light—OUT

3. BEFORE TAKE–OFF:

Insert between the POSITION lights switch and the THRUST LEVERS procedures:

(PRE Mod 20052/Gulfstream Service Bulletin 100–31–284):

Check CABIN DOOR light—OUT (50% N1 may be required)

(POST Mod 20052/Gulfstream Service Bulletin 100–31–284):

Check CABIN DOOR light—OUT

CABIN DOOR SEAL light—OUT (50% N1 may be required)"

Note 1: Mod 20052 is equivalent to Gulfstream Service Bulletin 100–31–284, dated August 17, 2006.

Note 2: This AD may be accomplished by a holder of a Private Pilot's License.

NEW REQUIREMENTS OF THIS AD:

Actions and Compliance

(g) Unless already done, for all airplanes except airplane serial number 158, do the following actions.

(1) Within 250 flight hours after the effective date of this AD: Modify the WACLP in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

TABLE 1—MODIFICATION SERVICE INFORMATION

Honeywell Service Bulletin—	Dated—
80–0548–31–0001	April 1, 2006.
80–0548–31–0002	March 1, 2006.
80–5090–31–0001	March 1, 2006.

(2) Within 250 flight hours after the effective date of this AD: Change the WACLP and MED wiring in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 100–31–284, dated August 17, 2006.

(3) Within 250 flight hours after the effective date of this AD: Change the wiring harness connecting the MED to the WACLP in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 100–31–284, dated August 17, 2006.

(4) Within 250 flight hours after the effective date of this AD: Verify that the Log of Modification of the relevant airplane flight manual (AFM) includes reference to MOD G1–20052, and, if no reference is found, revise the Log of Modification of the AFM to include reference to the modification.

(5) Doing the modifications specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD terminates the requirements of paragraph (f) of this AD, and after the modifications have been done, the AFM limitation required by paragraph (f) of this AD may be removed from the AFM.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: Paragraph (g)(5) of this AD mandates a terminating action. However, Israeli Airworthiness Directive 31–06–11–05, dated May 27, 2009, does not explicitly mandate a terminating action. This difference has been coordinated with the Civil Aviation Authority of Israel.

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:* Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; 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

(i) Refer to MCAI Israeli Airworthiness Directive 31–06–11–05, dated May 27, 2009, and the applicable service information identified in Table 2 of this AD for related information.

TABLE 2—SERVICE INFORMATION

Service information	Date
Gulfstream Service Bulletin 100–31–284	August 17, 2006.
Honeywell Service Bulletin 80–0548–31–0001	April 1, 2006.
Honeywell Service Bulletin 80–0548–31–0002	March 1, 2006.
Honeywell Service Bulletin 80–5090–31–0001	March 1, 2006.

Material Incorporated by Reference

(j) You must use the service information contained in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 3 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Service information	Date
Gulfstream Service Bulletin 100–31–284	August 17, 2006.
Honeywell Service Bulletin 80–0548–31–0001	April 1, 2006.
Honeywell Service Bulletin 80–0548–31–0002	March 1, 2006.
Honeywell Service Bulletin 80–5090–31–0001	March 1, 2006.

(2) For Gulfstream service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206; telephone 800–810–4853; fax 912–965–3520; e-mail *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm*. For Honeywell service information identified in this AD, contact Honeywell Aerospace, Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, Arizona 85072–2170; telephone 602–365–5535; fax 602–365–5577; Internet *http://www.honeywell.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 7, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11760 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0663; FRL–8824–9]

Silver Nitrate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of silver nitrate (CAS Reg. No. 7761–88–8) when used as an inert ingredient under 40 CFR 180.910 as stabilizer at a maximum of 0.06% by weight in pesticide formulations as post–harvest treatment for potatoes to control sprouting. Wagner Regulatory Associates on behalf of Pimi Agro CleanTech, Ltd. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of silver nitrate.

DATES: This regulation is effective May 21, 2010. Objections and requests for hearings must be received on or before July 20, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0663. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, and any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0663 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before [*date 60 days after date of publication in the* **Federal Register**]. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0663 by one following methods:

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

II. Petition for Exemption

In the **Federal Register** of October 7, 2009 (74 FR 5159) (FRL–8792–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 9E7584) by Wagner Regulatory Associates on behalf of Pimi Agro CleanTech, Ltd., P.O.Box. 117, Hutzot Alonim 30049, Israel. The petition requested that 40 CFR 180.910 be amended establishing an exemption from the requirement of a tolerance for residues of silver nitrate (CAS Reg. No. 7761–88–8) when used as an inert ingredient stabilizer at 0.06% by weight in pesticide formulations applied to

potatoes as a post-harvest treatment to control sprouting. That notice referenced a summary of the petition prepared by Wagner Regulatory Associates on behalf of Pimi Agro CleanTech, the petitioner, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply no toxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by silver nitrate are discussed in this unit.

The following provides a brief summary of the risk assessment and conclusions for the Agency's review of silver nitrate. The Agency's full decision document for this action is available in the Agency's electronic docket (regulations.gov) under the docket number EPA–HQ–OPP–2009–0663.

Silver nitrate is a water soluble inorganic salt that readily dissociates into the silver cation and the nitrate/nitrite anion. Nitrate and nitrite are naturally occurring inorganic ions which are part of the nitrogen cycle. Nitrate is a natural constituent of soil and vegetation. Nitrate is also a normal metabolite in mammals. Nitrate in soil, ground water and surface water are derived mainly from mineralization of soil organic matter as well as from application of mineral fertilizers.

The EPA IRIS lists an oral RfD for chronic noncarcinogenic health effects for nitrate (as nitrate nitrogen) based on early clinical signs of methemoglobinemia in excess of 10% (0-3 months old infant's formula).

Silver ions and preparations containing silver in an ionic state have been used for over a century for medicinal and bactericidal purposes. Because of its bactericidal properties, silver has been used as a topical treatment for burns, as a treatment for venereal diseases, as an ingredient in cosmetic formulation, in the sanitation of swimming pools and hot tubs/spas, and cleansing of hard surfaces in various food handling. Silver has also been used in dentistry (as amalgams and as an ingredient in mouth washes), in acupuncture, jewelry making, and photography. Silver can be found in electroplating as well as in paints and in water purification systems.

The toxicity of silver is well understood based on epidemiological data from humans, toxicology data in animals, and documented information on the metabolism of silver in mammalian species. These studies show that the effect of concern for silver is argyria, a bluish discoloration of the skin. Argyria, while a permanent condition, is a cosmetic condition. The function of the skin as an organ is not compromised and the resulting discoloration is not associated with systemic toxicity. Information regarding the toxicity of silver is discussed in detail in the recent rulemaking establishing an exemption from tolerance for silver used as a surface sanitizing solution in the **Federal Register** published on June 10, 2009 (74 FR 27447; FRL–8412–1).

B. Regulatory Levels

The EPA's IRIS lists an oral RfD for chronic noncarcinogenic health effects for nitrate (as nitrate nitrogen) of 1.6 miligrams/kilogram/day (mg/kg/day). This RfD is derived from human epidemiological surveys using a no observed adverse effect level (NOAEL) of 10 mg nitrate-nitrogen/L (equivalent to 1.6 mg/kg/day) and lowest observable adverse effect level (LOAEL) of 11-20 mg nitrate-nitrogen/L (equivalent to 1.8-3.2 mg/kg/day) based on early clinical signs of methemoglobinemia in excess of 10% (0-3 months old infant's formula).

Safe exposure levels for silver have been established by several regulatory Agencies including FDA, OSHA and other offices within EPA based on the common endpoint argyria and using the same human studies. Argyria occurs only after chronic exposure. Both the

Secondary Maximum Contamination Level (SMCL) reported by the EPA's Office of Water and the oral RfD reported under the EPA's IRIS were determined based on a human biomonitoring study. For the oral exposure route, the Agency is relying on the drinking water SMCL of 0.1 mg/L (0.003 mg/kg/day) based on skin discoloration and graying of the whites of eyes (argyria) and using a safety factor of 3X. The Agency applied an additional 3x uncertainty factor to further address the lack of a NOAEL in the study on which this assessment and all regulatory advisories are set. Thus, a composite database factor of 10X is being applied yielding a chronic RfD of 0.001 mg/kg/day. This composite factor of 10X should be sufficient for providing protection from the non-toxic effects which may result from chronic oral exposure to silver.

Chronic RfD = 0.003 mg/kg/day ÷ 3 = 0.001 mg/kg/day

A full discussion of the derivation of the RfD is contained in the previously-mentioned tolerance exemption action. (June 10, 2009).

The Agency has concluded that the silver RfD of 0.001 mg/kg/day would be protective of both the toxic effects of silver and nitrate because the silver SMCL is nearly 1,000X below the RfD calculated for nitrate (1.6 mg/kg/day). Therefore, given that silver and nitrate exposure would be roughly equivalent, a separate human health risk assessment for nitrate is not necessary.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to silver nitrate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from silver nitrate in food as follows:

Residue analysis of whole tuber washed potato samples treated with silver nitrate showed 0.0085 ppm (equivalent to 0.0085 mg/kg) of silver.

Silver nitrate dietary exposure assessment was conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), Version 2.00. No drinking water exposure assessment was included in the DEEM run since no outdoor or potable human drinking water system uses for this proposed use of silver nitrate. The residues value of 0.0085 ppm (equivalent to 0.0085 mg/kg/day) of silver nitrate and an empirical processing factor of 6.5 for dry potatoes were used in this assessment. However, default processing factors were used for potato, tuber with or without peel. The use of the default processing factors for potato, tuber overestimates exposure to these commodities.

Recently, EPA assessed chronic dietary exposure from the use of silver as a food contact sanitizer. (June 10, 2009). The dietary assessment was only completed for chronic routes end point of concern because the end point of concern that has been identified is based on argyria, one that occurs only after chronic exposure. For dietary exposures from this product being used on countertops, the Incidental Dietary Residential Exposure Assessment Model, (IDREAM™) incorporates consumption data from United State Department of Agriculture (USDA) Continuing Surveys of Food Intakes by Individuals (CSFII), 1994–1996 and 1998. The 1994–1996, 98 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days.

2. *Dietary exposure from drinking water* There are no outdoor or potable human drinking water system uses for this proposed use of silver. In addition, the uses identified as indoor hard surface applications will result in minimal, if any, runoff of silver into the surface water. The use of silver as a food contact surface sanitizer will result in minimal, if any, runoff of silver into the surface water. This use will result in an insignificant contribution to drinking water exposures. In addition to sanitization, silver is registered as an active ingredient in water filters. The bacteriostatic water filters are impregnated with silver and may result in residues in the drinking water supply. However, the levels of available residues resulting from impregnated water filters are much less when in comparison to the amount of residues that will be available for intake when silver-containing liquid concentrates are used. As a result, any drinking water exposures from the new use of silver are assumed to be negligible. Additionally, any drinking water risks from impregnated filters are assumed to be represented by the dietary risks resulting from hard surface sanitization. The Agency believes that an assessment of any potential risks resulting from silver in drinking water is not warranted at this time.

Therefore, based on the proposed uses of silver, the Agency believes that risks resulting from silver in drinking water will be negligible and as assessment is not warranted at this time.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

The residential exposure assessment considers all potential non-occupational pesticide exposure, other than exposure due to residues in food or in drinking water. Exposures may occur during and after application on hard surfaces (e.g., floors). Each route of exposure (incidental oral, dermal, inhalation) is considered where appropriate. The risks to handlers are quantitatively assessed based on the nature of the chemical. There are no adverse toxicological consequences (systemic or irritation) resulting from contact with silver other than skin discoloration. Residential exposures are short-term (<30 days) and intermediate-term (1-6 months) in nature. As supported in the toxicological discussion, however, silver ion produces only cosmetic effects and only as a result of chronic exposures. In addition, incidental ingestion (hand to mouth behavior of a child on a treated floor) as well as dermal exposures resulting from a child contacting a freshly cleaned floor is considered short-term in duration.

Based on the fact that silver will exist in the ionic form, which does not volatilize, any post application inhalation exposures to vapors are expected to be negligible. Essentially, there are no toxicological consequences (systematic or irritation) resulting from contact with silver other than discoloration.

Other non-pesticidal industrial uses of silver include, but are not limited to, photography, cosmetics, sunscreens, manufacture of inks and dyes, mirror production, and in jewelry. All these uses may result in exposures via the dermal route, which over a chronic duration, may cause skin discoloration. However, dermal exposures resulting from these uses are not appropriate to include in this aggregate exposure assessment. Systemic uptake and distribution of silver does not occur via the dermal route. The specific uses of silver that were considered for this aggregate assessment include the cleansing of hard surfaces in various food handling, institutional, medical and residential premises.

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

substances that have a common mechanism of toxicity."

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity* There is extensive data and analysis on silver's toxicity in the historical data/literature and regulatory advisories established by other Federal Agencies, which do not indicate an increased susceptibility of children to the toxic effects of silver. A National Toxicology Program (NTP) developmental toxicity study concluded that the NOAEL recorded for developmental toxicity in rats receiving gavages doses of silver acetate was greater than 100 mg/kg/day when the test material was administered on gestation day 6 through 19. No increase in susceptibility was apparent in this study. Furthermore, silver nitrate has been used for decades to treat neonatal conjunctivitis. Finally, there is no reason to believe that the effects that are observed following the administration of silver would warrant additional safety factors for children. The skin is the target organ and deposition of silver should not be age dependent. Moreover, because EPA believes that the available biomonitoring studies adequately characterize variability in human sensitivity, EPA is not applying an intra-species uncertainty factor in deriving the chronic RfD for silver.

3. *Conclusion*. Although EPA is not applying an inter-species uncertainty factor (because of reliance on human data) or an intra-species uncertainty factor (because human sensitivity has been adequately characterized), EPA is retaining the 10X FQPA safety factor in assessing oral risk to address the fact that the dose used to determine the chronic RfD showed effects from silver (argyria). In making its determination regarding the appropriate safety factors for evaluating the risk of silver, EPA took into account that argyria is not a toxic effect, there is no evidence of increased sensitivity in the young from exposure to silver, and the exposure assessment for silver is very conservative.

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk*. A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and from the use of silver as a food contact sanitizer. Using the exposure assumptions described in this unit for chronic exposure and the use limitations of not more than 0.06% by weight in pesticide formulations, the chronic dietary exposure from food to silver nitrate is 20% of the cPAD for the U.S. population and 63.8.6% of the cPAD for children 1-2 years old, the most highly exposed population subgroup.

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

Because no short-term adverse effect was identified, silver nitrate is not expected to pose a short-term risk.

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

Because no intermediate-term adverse effect was identified, silver nitrate is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population*. The Agency has not identified any concerns for carcinogenicity relating to silver nitrate.

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

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residue of silver nitrate in or on any food commodities. EPA is establishing a limitation on the amount of silver nitrate that may be used in pesticide formulations. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. EPA will not register any pesticide for sale or distribution that contains greater than 0.06% of silver nitrate by weight in the pesticide formulation.

B. International Residue Limits

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

Option 1: If there is NO relevant international standard, use this:

The Agency is not aware of any country requiring a tolerance for silver nitrate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180. 910 for silver nitrate 7761–88–8) when used as an inert -ingredient (stabilizer at no more than 0.06% by weight) in pesticide formulations applied to potatoes as a post-harvest treatment to control sprouting.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

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

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

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: May 12, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section §180.910, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.910 Inert ingredients used pre-harvest and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	* *	*
Silver Nitrate (Cas Reg. No. 7761–88–8)	For use on potatoes as post-harvest treatment to control sprouting at no more than 0.06% by weight in pesticide formulations	stabilizer
* *	* *	*

[FR Doc. 2010–12116 Filed 5–20–10; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8131]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

listed in the third column of the following tables.

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region I				
Massachusetts:				
Acton, Town of, Middlesex County	250176	March 24, 1972, Emerg; June 15, 1978, Reg; June 4, 2010, Susp.	June 4, 2010	June 4, 2010.
Arlington, Town of, Middlesex County ..	250177	January 16, 1974, Emerg; July 5, 1982, Reg; June 4, 2010, Susp.	.....*do	Do.
Ashby, Town of, Middlesex County	250178	January 31, 1996, Emerg; August 1, 1996, Reg; June 4, 2010, Susp.	.....do	Do.
Ashland, Town of, Middlesex County	250179	April 24, 1975, Emerg; July 16, 1981, Reg; June 4, 2010, Susp.	.....do	Do.
Ayer, Town of, Middlesex County	250180	November 7, 1974, Emerg; July 19, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Bedford, Town of, Middlesex County	255209	April 2, 1971, Emerg; September 7, 1973, Reg; June 4, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Belmont, Town of, Middlesex County	250182	September 6, 1974, Emerg; June 15, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Billerica, Town of, Middlesex County	250183	August 18, 1972, Emerg; November 5, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Boxborough, Town of, Middlesex County.	250184	April 11, 1975, Emerg; September 15, 1978, Reg; June 4, 2010, Susp.	.....do	Do.
Burlington, Town of, Middlesex County	250185	January 2, 1976, Emerg; July 5, 1984, Reg; June 4, 2010, Susp.	.....do	Do.
Cambridge, City of, Middlesex County	250186	July 24, 1975, Emerg; July 5, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Carlisle, Town of, Middlesex County	250187	January 13, 1976, Emerg; October 15, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Chelmsford, Town of, Middlesex County	250188	December 6, 1973, Emerg; June 4, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Concord, Town of, Middlesex County	250189	June 9, 1972, Emerg; June 15, 1979, Reg; June 4, 2010, Susp.	.....do	Do.
Dracut, Town of, Middlesex County	250190	May 6, 1974, Emerg; July 2, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Dunstable, Town of, Middlesex County	250191	December 8, 1986, Emerg; December 8, 1986, Reg; June 4, 2010, Susp.	.....do	Do.
Everett, City of, Middlesex County	250192	June 30, 1975, Emerg; June 3, 1986, Reg; June 4, 2010, Susp.	.....do	Do.
Framingham, Town of, Middlesex County.	250193	August 2, 1974, Emerg; February 3, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Groton, Town of, Middlesex County	250194	October 30, 1975, Emerg; July 5, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Holliston, Town of, Middlesex County	250195	December 5, 1975, Emerg; September 30, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Hopkinton, Town of, Middlesex County	250196	December 3, 1975, Emerg; July 5, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Hudson, Town of, Middlesex County	250197	August 8, 1975, Emerg; December 15, 1979, Reg; June 4, 2010, Susp.	.....do	Do.
Lexington, Town of, Middlesex County	250198	July 31, 1975, Emerg; June 1, 1978, Reg; June 4, 2010, Susp.	.....do	Do.
Lincoln, Town of, Middlesex County	250199	December 24, 1975, Emerg; June 1, 1978, Reg; June 4, 2010, Susp.	.....do	Do.
Littleton, Town of, Middlesex County	250200	July 9, 1975, Emerg; June 15, 1983, Reg; June 4, 2010, Susp.	.....do	Do.
Lowell, City of, Middlesex County	250201	January 14, 1972, Emerg; April 16, 1979, Reg; June 4, 2010, Susp.	.....do	Do.
Malden, City of, Middlesex County	250202	July 25, 1975, Emerg; May 19, 1987, Reg; June 4, 2010, Susp.	.....do	Do.
Marlborough, City of, Middlesex County	250203	July 25, 1975, Emerg; January 6, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Maynard, Town of, Middlesex County	250204	January 16, 1976, Emerg; June 15, 1979, Reg; June 4, 2010, Susp.	.....do	Do.
Medford, City of, Middlesex County	250205	May 20, 1975, Emerg; June 3, 1986, Reg; June 4, 2010, Susp.	.....do	Do.
Melrose, City of, Middlesex County	250206	June 9, 1975, Emerg; August 5, 1986, Reg; June 4, 2010, Susp.	.....do	Do.
Natick, Town of, Middlesex County	250207	March 26, 1975, Emerg; February 1, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Newton, City of, Middlesex County	250208	February 25, 1972, Emerg; June 1, 1978, Reg; June 4, 2010, Susp.	.....do	Do.
North Reading, Town of, Middlesex County.	250209	March 17, 1972, Emerg; April 3, 1978, Reg; June 4, 2010, Susp.	.....do	Do.
Pepperell, Town of, Middlesex County	250210	January 29, 1975, Emerg; July 2, 1981, Reg; June 4, 2010, Susp.	.....do	Do.
Reading, Town of, Middlesex County	250211	July 11, 1975, Emerg; July 2, 1981, Reg; June 4, 2010, Susp.	.....do	Do.
Sherborn, Town of, Middlesex County	250212	June 13, 1978, Emerg; June 18, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Shirley, Town of, Middlesex County	250213	July 22, 1975, Emerg; July 5, 1983, Reg; June 4, 2010, Susp.	.....do	Do.
Somerville, City of, Middlesex County	250214	February 4, 1974, Emerg; July 17, 1986, Reg; June 4, 2010, Susp.	.....do	Do.
Stoneham, Town of, Middlesex County	250215	October 3, 1975, Emerg; July 3, 1986, Reg; June 4, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Stow, Town of, Middlesex County	250216	October 1, 1975, Emerg; August 1, 1979, Reg; June 4, 2010, Susp.	.....do	Do.
Sudbury, Town of, Middlesex County	250217	August 1, 1975, Emerg; June 1, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Tewksbury, Town of, Middlesex County	250218	December 10, 1971, Emerg; July 18, 1977, Reg; June 4, 2010, Susp.	.....do	Do.
Townsend, Town of, Middlesex County	250219	October 10, 1975, Emerg; August 2, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Tyngsborough, Town of, Middlesex County.	250220	June 18, 1975, Emerg; September 2, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Wakefield, Town of, Middlesex County	250221	March 26, 1974, Emerg; October 17, 1978, Reg; June 4, 2010, Susp.	.....do	Do.
Waltham, City of, Middlesex County	250222	July 1, 1975, Emerg; December 18, 1979, Reg; June 4, 2010, Susp.	.....do	Do.
Watertown, Town of, Middlesex County	250223	December 5, 1974, Emerg; September 30, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Wayland, City of, Middlesex County	250224	March 21, 1975, Emerg; June 1, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Westford, Town of, Middlesex County	250225	October 3, 1975, Emerg; June 15, 1983, Reg; June 4, 2010, Susp.	.....do	Do.
Weston, Town of, Middlesex County	250226	July 30, 1975, Emerg; July 2, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Wilmington, Town of, Middlesex County	250227	July 1, 1974, Emerg; June 15, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Winchester, Town of, Middlesex County	250228	August 11, 1975, Emerg; June 18, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Woburn, City of, Middlesex County	250229	June 26, 1975, Emerg; July 2, 1980, Reg; June 4, 2010, Susp.	.....do	Do.
Region IV				
Alabama:				
Berry, Town of, Fayette County	010255	July 9, 1976, Emerg; June 3, 1986, Reg; June 4, 2010, Susp.	.....do	Do.
Fayette, City of, Fayette County	010084	July 17, 1974, Emerg; March 1, 1984, Reg; June 4, 2010, Susp.	.....do	Do.
Fayette County, Unincorporated Areas	010219	June 17, 1976, Emerg; September 18, 1985, Reg; June 4, 2010, Susp.	.....do	Do.
Glen Allen, Town of, Fayette County	010256	August 25, 1975, Emerg; September 18, 1985, Reg; June 4, 2010, Susp.	.....do	Do.
Florida:				
Hamilton County, Unincorporated Areas	120101	February 12, 1975, Emerg; June 4, 1987, Reg; June 4, 2010, Susp.	.....do	Do.
Jasper, City of, Hamilton County	120587	N/A, Emerg; July 27, 2006, Reg; June 4, 2010, Susp.	.....do	Do.
White Springs, Town of, Hamilton County.	120102	November 5, 1975, Emerg; June 4, 1987, Reg; June 4, 2010, Susp.	.....do	Do.
Tennessee:				
Dunlap, City of, Sequatchie County	470270	September 29, 1975, Emerg; March 4, 1988, Reg; June 4, 2010, Susp.	.....do	Do.
Lake County, Unincorporated Areas	470334	April 22, 1975, Emerg; March 16, 1981, Reg; June 4, 2010, Susp.	.....do	Do.
Region V				
Michigan:				
Centreville, Village of, St. Joseph County.	260509	April 5, 1979, Emerg; September 30, 1988, Reg; June 4, 2010, Susp.	.....do	Do.
Colon, Township of, St. Joseph County	260510	March 9, 1977, Emerg; September 16, 1988, Reg; June 4, 2010, Susp.	.....do	Do.
Colon, Village of, St. Joseph County	260511	March 9, 1977, Emerg; March 2, 1979, Reg; June 4, 2010, Susp.	.....do	Do.
Constantine, Village of, St. Joseph County.	260512	September 23, 1976, Emerg; August 19, 1986, Reg; June 4, 2010, Susp.	.....do	Do.
Fabius, Township of, St. Joseph County	260781	November 13, 1986, Emerg; September 30, 1988, Reg; June 4, 2010, Susp.	.....do	Do.
Lockport, Township of, St. Joseph County.	260715	August 30, 1982, Emerg; February 17, 1989, Reg; June 4, 2010, Susp.	.....do	Do.
Mendon, Township of, St. Joseph County.	260513	May 28, 1982, Emerg; July 2, 1987, Reg; June 4, 2010, Susp.	.....do	Do.
Mendon, Village of, St. Joseph County	261136	July 6, 2007, Emerg; June 4, 2010, Reg; June 4, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Nottawa, Township of, St. Joseph County.	260514	January 24, 1978, Emerg; March 2, 1989, Reg; June 4, 2010, Susp.	.....do	Do.
Park, Township of, St. Joseph County ..	261122	June 30, 2009, Emerg; June 4, 2010, Reg; June 4, 2010, Susp.	.....do	Do.
Three Rivers, City of, St. Joseph County.	260206	April 28, 1975, Emerg; December 15, 1990, Reg; June 4, 2010, Susp.	.....do	Do.
White Pigeon, Village of, St. Joseph County.	261138	May 21, 2009, Emerg; June 4, 2010, Reg; June 4, 2010, Susp.	.....do	Do.
Minnesota:				
Arden Hills, City of, Ramsey County	270375	January 21, 1975, Emerg; July 2, 1981, Reg; June 4, 2010, Susp.	.....do	Do.
Little Canada, City of, Ramsey County	270377	May 24, 1977, Emerg; November 3, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Maplewood, City of, Ramsey County	270378	April 23, 1974, Emerg; August 5, 1986, Reg; June 4, 2010, Susp.	.....do	Do.
Mounds View, City of, Ramsey County	270379	July 23, 1975, Emerg; March 2, 1983, Reg; June 4, 2010, Susp.	.....do	Do.
New Brighton, City of, Ramsey County	270380	April 5, 1974, Emerg; September 1, 1978, Reg; June 4, 2010, Susp.	.....do	Do.
North St. Paul, City of, Ramsey County	270382	May 9, 1974, Emerg; September 15, 1978, Reg; June 4, 2010, Susp.	.....do	Do.
Roseville, City of, Ramsey County	270599	February 9, 1976, Emerg; March 30, 1981, Reg; June 4, 2010, Susp.	.....do	Do.
Shoreview, City of, Ramsey County	270384	May 2, 1975, Emerg; April 1, 1981, Reg; June 4, 2010, Susp.	.....do	Do.
St. Paul, City of, Ramsey County	275248	April 2, 1971, Emerg; February 9, 1973, Reg; June 4, 2010, Susp.	.....do	Do.
Vadnais Heights, City of, Ramsey County.	270385	July 3, 1974, Emerg; June 30, 1976, Reg; June 4, 2010, Susp.	.....do	Do.
White Bear, Township of, Ramsey County.	270688	March 9, 1977, Emerg; September 18, 1985, Reg; June 4, 2010, Susp.	.....do	Do.
White Bear Lake, City of, Ramsey and Washington Counties.	270386	April 28, 1975, Emerg; September 4, 1987, Reg; June 4, 2010, Susp.	.....do	Do.
Ohio:				
Carroll County, Unincorporated Areas ..	390763	May 11, 1990, Emerg; September 28, 1990, Reg; June 4, 2010, Susp.	.....do	Do.
Delroy, Village of, Carroll County	390049	March 11, 1977, Emerg; August 19, 1987, Reg; June 4, 2010, Susp.	.....do	Do.
Magnolia, Village of, Carroll and Stark Counties.	390051	February 2, 1976, Emerg; September 1, 1986, Reg; June 4, 2010, Susp.	.....do	Do.
Malvern, Village of, Carroll County	390052	May 14, 1975, Emerg; July 3, 1995, Reg; June 4, 2010, Susp.	.....do	Do.
Region VI				
New Mexico:				
Artesia, City of, Eddy County	350016	April 4, 1975, Emerg; February 4, 1981, Reg; June 4, 2010, Susp.	.....do	Do.
Carlsbad, City of, Eddy County	350017	July 21, 1972, Emerg; March 15, 1978, Reg; June 4, 2010, Susp.	.....do	Do.
Eddy County, Unincorporated Areas	350120	October 22, 1975, Emerg; April 22, 2004, Reg; June 4, 2010, Susp.	Do	Do.
Texas:				
Amarillo, City of, Potter and Randall Counties.	480529	March 30, 1973, Emerg; July 19, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Canyon, City of, Randall County	480533	August 29, 1974, Emerg; September 20, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Lake Tanglewood, Village of, Randall County.	481259	July 21, 1975, Emerg; September 30, 1982, Reg; June 4, 2010, Susp.	.....do	Do.
Palisades, Village of, Randall County ...	481666	N/A, Emerg; June 12, 1995, Reg; June 4, 2010, Susp.	.....do	Do.
Timbercreek Canyon, Village of, Randall County.	485518	January 26, 1984, Emerg; January 26, 1984, Reg; June 4, 2010, Susp.	.....do	Do.
Potter County, Unincorporated Areas ...	481241	February 25, 2004, Emerg; June 4, 2010, Reg; June 4, 2010, Susp.	.....do	Do.
Randall County, Unincorporated Areas	480532	June 13, 1978, Emerg; September 30, 1982, Reg; June 4, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region X				
Alaska: Hoonah, City of, Skagway-Hoonah-Angoon Census Area.	020049	June 14, 1976, Emerg; April 2, 1979, Reg; June 4, 2010, Susp.	.....do	Do.

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

Dated: May 11, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2010–12203 Filed 5–20–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Washington, District of Columbia Docket No.: FEMA–B–7737			
Anacostia River	Approximately at Anacostia Railroad Bridge	+13	District of Columbia.
	At approximately 200 feet upstream of New York Avenue	+17	
Barnaby Run	Approximately at the confluence with Oxon Run	+21	District of Columbia.
	At approximately 1,200 feet upstream of South Capital and Southern Avenue.	+53	
Broad Branch	At approximately 2,560 feet upstream of Ridge Road	+102	District of Columbia.
	At approximately 760 feet upstream of 27th Street	+187	
Creek Along Normanstone Drive.	At approximately 230 feet downstream of Rock Creek Drive.	+40	District of Columbia.
	At approximately 190 feet upstream of Normanstone Drive	+150	
East Creek A	At approximately 2,250 feet downstream of Dalecarlia Parkway.	+165	District of Columbia.
	At approximately 675 feet downstream of Dalecarlia Parkway.	+169	
East Creek B	Approximately at the Glenbrook Road	+240	District of Columbia.
	At approximately 760 feet upstream of Driveway Bridge #4.	+308	
Fenwick Branch	Approximately at the confluence with Rock Creek	+176	District of Columbia.
	At approximately 3,620 feet upstream of the confluence with Tributary of Fenwick Branch.	+232	
Fort Dupont Creek	Approximately 500 feet downstream of Minnesota Avenue Bridge.	+23	District of Columbia.
	At approximately 40 feet downstream of Minnesota Avenue Bridge.	+29	
Melvin Hazen Branch	Approximately 1,000 feet upstream from Connecticut Avenue NW.	+208	District of Columbia.
	At approximately 125 feet downstream of Reno Road	+244	
Oxon Run	At approximately 320 feet upstream of the confluence with Barnaby Run.	+23	District of Columbia.
	At approximately 6,160 feet upstream of Wheeler Road	+103	
Pinehurst Run	Approximately at the confluence with Rock Creek	+165	District of Columbia.
	At approximately 3,100 feet upstream of Oregon Avenue	+255	
Pope Branch	At approximately 80 feet upstream of Minnesota Avenue	+45	District of Columbia.
	Approximately 4,630 feet upstream of Minnesota Avenue	+159	
Potomac River	At approximately 500 feet downstream of Route 95	+9	District of Columbia.
	At approximately 2,200 feet upstream of Chain Bridge Road.	+41	
Rock Creek	Approximately at the confluence with Potomac River	+16	District of Columbia.
	Approximately at the confluence with Fenwick Branch	+176	
Tributary to Fenwick Branch	Approximately at the confluence with Fenwick Creek	+191	District of Columbia.
	At approximately 2,500 feet upstream of the confluence with Fenwick Branch.	+231	
Watts Branch	Approximately at the confluence with Anacostia River	+15	District of Columbia.
	Approximately at Southern Avenue	+96	

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

ADDRESSES

District of Columbia

Maps are available for inspection at the Department of the Environment, Watershed Protection Division, 1200 1st Street, Northeast, Washington, DC 20002.

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

Dated: May 11, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–12199 Filed 5–20–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 391

[Docket No. FMCSA–1997–2210]

RIN 2126–AB24

Medical Certification Requirements as Part of the Commercial Driver's License (CDL); Technical, Organizational, and Conforming Amendments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; Technical amendments and response to petitions for reconsideration.

SUMMARY: The FMCSA amends its regulations implementing section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The purpose of this rule is both to make amendments responding to petitions for reconsideration and to make technical corrections to a FMCSA regulation.

DATES: The amendments in this final rule become effective May 21, 2010.

ADDRESSES: *Public Access to the Docket:* You may view, print, and download this final rule and all related documents and background material on-line at *http://www.regulations.gov,* using the Docket ID Number FMCSA–1997–2210. These documents can also be examined and copied for a fee at the U.S. Department of Transportation, Docket Operations, West Building-Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on today's final rule, please contact: Ms. Ava Herman, Office of Policy, Plans, and Regulations (MC–PRR), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–7023.

SUPPLEMENTARY INFORMATION:

Legal Basis

Medical Certification Requirements as Part of the CDL

The legal basis of the 2008 final rule is also applicable to this rule. *See* 73 FR 73096–73097, December 1, 2008.

Background

The FMCSA determined that several technical errors were made in the December 1, 2008, Medical Certification Requirements final rule (73 FR 73096). The FMCSA also received two petitions for reconsideration of the final rule that are discussed further in today's final rule.

1. The December 1, 2008, final rule had an unintentional error in § 383.71(a)(ii), omitting the language "(C), or (D)" after "(A) or (B)". Today's final rule corrects this amendatory language error.

2. The December 1, 2008, final rule unintentionally replaced § 383.71(a) with the new text of § 383.71(a)(1); the Agency's intent was only to amend the language of § 383.71(a)(1). However, because of an amendatory language error, § 383.71(a)(2) through § 383.71(a)(9) were removed. The preambles of the NPRM and the final rule made no mention of an intent to change these sections, and revised § 383.71(a)(1), as adopted by the 2008 final rule, itself refers to the requirements of § 383.71(a)(2) through (9). Today's final rule therefore restores the text of § 383.71(a)(2) through (9).

3. The December 1, 2008, final rule included a new requirement in 49 CFR 383.71(h) for CDL holders to submit documents and information to State driver licensing agencies. The penalties listed in 49 CFR 383.73(g) for falsifying information and documents submitted in accordance with the requirements of § 383.71(h) are applicable. However, the provisions of § 383.73(g) needed to be clarified to reflect the application to the requirements in § 383.71(h). The provisions of § 383.73(g) have been clarified in response to the petition for reconsideration of December 30, 2008, from Advocates for Highways and Auto Safety (Advocates), as explained on pages 3 and 4 of the decision denying the petition dated May 12, 2010 and included in the docket.

4. In the December 1, 2008, final rule, § 383.73(j)(1)(iii) references business days for the specified time period, rather than calendar days. The preamble of the December 1, 2008, final rule also incorrectly references business days instead of calendar days, even though the other provisions of § 383.73(j)(2) and § 383.73(j)(3) correctly specify 10 calendar days. The language of § 383.73(j)(1)(iii) has been clarified in today's final rule. This is explained in footnote three on page seven of the decision denying the petition for reconsideration of December 30, 2008 from Advocates dated May 12, 2010 and included in the docket.

5. The December 1, 2008, final rule included an inconsistency in the language inserted into 49 CFR 383.73 (j). This language used the term "medical examiner's license or certificate number" to refer to the number on a medical examiner's license to practice in § 383.73(j)(iii)(D). However, in 49 CFR 383.73(j)(iii), (j)(iii)(C), and (j)(iii)(J), "medical examiner's certificate" is used to refer to the certificate a driver is issued when a medical examiner qualifies him or her to drive. This inconsistency has been clarified in today's final rule so that "medical examiner's certificate" clearly refers to the document a medical examiner issues a driver to qualify him or her to drive. In today's final rule 49 CFR 383.73(j)(iii)(D) is clarified to refer to the "medical examiner's license" to practice, issued to the medical examiner by the State in which he or she practices.

6. The FMCSA incorporates a change in several provisions of the final rule, as requested by a petition for reconsideration from the Indiana Department of Revenue, Motor Carrier Services Division, filed on December 29, 2008. The petition asked that FMCSA reconsider requirement for States to mail receipts to drivers as proof that a medical certification had been submitted to the State driver licensing agency. The FMCSA sent a response granting this petition on October 2, 2009. Through today's final rule, FMCSA removes the requirement for States to provide receipts to drivers, and to allow drivers and employers to utilize medical certificates as evidence that a CDL holder is medically certified for 15 calendar days from the date of issuance of the certificate. Therefore, several changes in the final rule text are necessary to implement this procedure. The changes are in 49 CFR 383.73(a)(5), 391.23(m)(2)(i)(B), 391.41(a)(2), and 391.51(b)(7)(ii).

7. The preamble to the December 1, 2008, final rule clearly states that the medical variance restriction code "V" must appear on both the CDL and the CDLIS driver record. Accordingly, FMCSA revised 49 CFR 383.95(b) to require this information to be placed on the CDLIS driver record, but inadvertently omitted a revision to 49 CFR 383.153 to require this information to be displayed on the commercial driver's license document. This rule

adds the conforming amendment to § 383.153(e).

Agency's Assessment and Decision

The Agency decided to issue these amendments because the changes and updates are necessary to correct amendatory language errors and to respond to issues raised in two petitions for reconsideration.

Rulemaking Analyses and Notices

Administrative Procedure Act

If an agency determines that the prior notice and opportunity for public comment on a rule normally required by the Administrative Procedure Act are impracticable, unnecessary, or contrary to the public interest (the so-called "good cause" finding), it may publish the rule without providing such notice and opportunity for comment. (*See* 5 U.S.C. 553(b).) The amendments made by this final rule make changes to correct inadvertent errors and to respond to petitions for reconsideration. For these reasons, FMCSA finds good cause that notice and public comment are unnecessary. Further, the Agency finds good cause under 5 U.S.C. 553(d)(3) to make the amendments effective upon publication.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of the Department of Transportation regulatory policies and procedures. The Office of Management and Budget (OMB) did not review this document. We expect the final rule will have minimal costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. The rule makes several changes to correct inadvertent errors. FMCSA therefore certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120 million or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FMCSA analyzed this action under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. We determined that this rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

The FMCSA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. Although the 2008 final rule had Federalism implications, FMCSA determined that it did not create 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. This rulemaking does not change that determination in any way.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that no new information collection requirements are associated with the technical amendments to this final rule.

National Environmental Policy Act

The FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action does not have any significant impact on the environment. In addition, the actions in this final rule are categorically excluded from further analysis and documentation as per paragraph 6.b of Appendix 2 of FMCSA's Order 5610.1. The FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since the action results in no increase in emissions.

Executive Order 13211 (Energy Effects)

The FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a "significant energy action" under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Highway safety, Motor carriers.

49 CFR Part 391

Motor carriers, Reporting and recordkeeping requirements, Safety.

■ In consideration of the foregoing, FMCSA amends Parts 383 and 391 of Title 49, Code of Federal Regulations, as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 397; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

■ 2. In § 383.71, revise paragraph (a) to read as follows:

§ 383.71 Driver application and certification procedures.

(a) *Initial Commercial Driver's License.* Prior to obtaining a CDL, a person must meet the following requirements:

(1)(i) *Initial Commercial Driver's License applications submitted prior to*

January 30, 2012. Any person applying for a CDL prior to January 30, 2012, must meet the requirements set forth in paragraphs (a)(2) through (a)(9) of this section, and make the following applicable certification in paragraph (a)(1)(i)(A) or (B) of this section:

(A) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR part 391, must certify that he/she meets the qualification requirements contained in part 391 of this title; or

(B) A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(ii) *Initial Commercial Driver's License applications submitted on or after January 30, 2012.* Any person applying for a CDL on or after January 30, 2012, must meet the requirements set forth in paragraphs (a)(2) through (a)(9), and (h) of this section, and make one of the following applicable certifications in paragraph (a)(ii)(A), (B), (C), or (D) of this section:

(A) *Non-excepted interstate.* A person must certify that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR part 391, and is required to obtain a medical examiner's certificate by § 391.45 of this chapter;

(B) *Excepted interstate.* A person must certify that he or she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68 or 398.3 from all or parts of the qualification requirements of 49 CFR part 391, and is, therefore, not required to obtain a medical examiner's certificate by 49 CFR 391.45 of this chapter;

(C) *Non-excepted intrastate.* A person must certify that he or she operates only in intrastate commerce and, therefore, is subject to State driver qualification requirements; or

(D) *Excepted intrastate.* A person must certify that he or she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the State driver qualification requirements.

(2) Pass a knowledge test in accordance with the standards contained in Subparts G and H of this part for the type of motor vehicle the person operates or expects to operate;

(3) Pass a driving or skills test in accordance with the standards contained in Subparts G and H of this part taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party;

(4) Certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate;

(5) Provide to the State of issuance the information required to be included on the CDL as specified in subpart J of this part;

(6) Certify that he/she is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction;

(7) Surrender the applicant's non-CDL driver's licenses to the State; and

(8) Provide the names of all States where the applicant was previously licensed to drive any type of motor vehicle during the previous 10 years.

(9) If applying for a hazardous materials endorsement, comply with Transportation Security Administration requirements codified in 49 CFR Part 1572, and provide proof of citizenship or immigration status as specified in Table 1 to this section. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his or her Bureau of Citizenship and Immigration Services (BCIS) Alien registration number.

TABLE 1 TO § 383.71—LIST OF ACCEPTABLE PROOFS OF CITIZENSHIP OR IMMIGRATION

Status	Proof of status
U.S. Citizen	• U.S. Passport. • Certificate of birth that bears an official seal and was issued by a State, county, municipal authority, or outlying possession of the United States. • Certification of Birth Abroad issued by the U.S. Department of State (Form FS–545 or DS 1350). • Certificate of Naturalization (Form N–550 or N–570). • Certificate of U.S. Citizenship (Form N–560 or N–561).
Lawful Permanent Resident	• Permanent Resident Card, Alien Registration Receipt Card (Form I–551). • Temporary I–551 stamp in foreign passport. • Temporary I–551 stamp on Form I–94, Arrival/Departure Record, with photograph of the bearer. • Reentry Permit (Form I–327).

* * * * *

■ 3. Revise § 383.73(a)(5), (g), (j)(1)(iii) introductory text, and (j)(1)(iii)(D) to read as follows:

§ 383.73 State procedures.

(a) * * *

(5) Beginning January 30, 2012, for drivers who certified their type of driving according to § 383.71(a)(1)(ii)(A) (non-excepted interstate) and, if the driver submits a current medical examiner's certificate, date-stamp the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (j) of this section.

* * * * *

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant falsified information contained in subpart J of this part, in any of the certifications required in § 383.71(a) or (g), or in any of the documents required to be submitted by § 383.71(h), the State shall at a minimum suspend, cancel, or revoke the person's CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

* * * * *

(j) * * *

(1) * * *

(iii) Post the information from the medical examiner's certificate within 10 calendar days to the CDLIS driver record, including:

* * * * *

(D) Medical Examiner's license number and the State that issued it;

* * * * *

■ 4. Amend § 383.153 by adding paragraph (e) to read as follows:

§ 383.153 Information on the document and application

* * * * *

(e) If the State has been notified that the applicant has been issued a medical variance as specified in § 383.95(b), the restriction code "V" must be indicated on the license.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 5. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

■ 6. Amend § 391.23:

■ By removing "or" at the end of paragraph (m)(2)(i)(A) and adding "and" in its place; and

■ By revising paragraph (m)(2)(i)(B) to read as follows:

§ 391.23 Investigations and inquiries.

* * * * *

(m) * * *

(2) * * *

(i) * * *

(B) *Exception.* If the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(a)(5) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

* * * * *

■ 7. Revise § 391.41(a)(2) to read as follows:

§ 391.41 Physical qualifications for drivers.

(a) * * *

(2) *CDL exception.* (i) Beginning January 30, 2012, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy. If there is no medical certification information on that driver's CDLIS motor vehicle record defined at 49 CFR 384.105, a current medical examiner's certificate issued prior to January 30, 2012, will be accepted until January 30, 2014. After January 30, 2014, a driver may use a copy of the current medical examiner's certificate that was submitted to the State for up to 15 days after the date it was issued as proof of medical certification.

(ii) A CDL holder required by § 383.71(h) to obtain a medical examiner's certificate, who obtained such by virtue of having obtained a medical variance from FMCSA, must continue to have in his or her possession the original or copy of that medical variance documentation at all times when on-duty.

* * * * *

■ 8. Revise § 391.51(b)(7)(ii) to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(7) * * *

(ii) *Exception.* For CDL holders, beginning January 30, 2012, if the CDLIS motor vehicle record contains medical certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at § 384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2014, a non-excepted, interstate CDL holder without medical certification status information on the CDLIS motor vehicle record is designated "not-certified" to operate a CMV in interstate commerce. After January 30, 2014, a motor carrier may use a copy of the driver's current medical examiner's certificate that was submitted to the State for up to 15 days from the date it was issued as proof of medical certification.

* * * * *

Issued on: May 17, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–12189 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XW55

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 Pacific cod total allowable catch allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 19, 2010, through 2400 hrs, A.l.t., December 31, 2010.

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

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

The 2010 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI is 4,598 metric tons, as established by the final 2010 and 2011 harvest specification for groundfish in the BSAI (75 FR 11788, March 12, 2010) and subsequent reallocations on March 17, 2010 (75 FR 13444, March 22, 2010) and April 12, 2010 (75 FR 19562).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2010 Pacific cod directed fishing allowance allocated to catcher vessels less than 60

feet LOA using hook-and-line or pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 17, 2010.

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

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

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

Dated: May 18, 2010.

James P. Burgess,

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

[FR Doc. 2010–12274 Filed 5–18–10; 4:15 PM]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 98
Friday, May 21, 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–2010–0522; Directorate Identifier 2010–CE–022–AD]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Rotax Aircraft Engines 912 A Series Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed 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: This Airworthiness Directive (AD) results from reports of cracks in the engine crankcase. Austro Control GmbH (ACG) addressed the problem by issuing AD No 107R3 which was superseded by ACG AD A–2004–01.

The present AD supersedes the ACG AD A–2004–01. On one hand, introduction by Rotax of an optimized crankcase assembly has permitted to reduce applicability of the new AD, when based on engines' serial numbers (s/n). On the other hand, applicability is extended for some engines that may have been fitted with certain crankcase s/n, supplied as spare parts.

In addition, accomplishment instructions given through the relevant Service Bulletins (SB) have been detailed to better locate engine's areas that are to be scrutinised.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 6, 2010.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; e-mail: *sarjapur.nagarajan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0522; Directorate Identifier 2010–CE–022–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2007–0025, dated February 1, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive (AD) results from reports of cracks in the engine crankcase. Austro Control GmbH (ACG) addressed the problem by issuing AD No 107R3 which was superseded by ACG AD A–2004–01.
>
> The present AD supersedes the ACG AD A–2004–01. On one hand, introduction by Rotax of an optimized crankcase assembly has permitted to reduce applicability of the new AD, when based on engines' serial numbers (s/n). On the other hand, applicability is extended for some engines that may have been fitted with certain crankcase s/n, supplied as spare parts.
>
> In addition, accomplishment instructions given through the relevant Service Bulletins (SB) have been detailed to better locate engine's areas that are to be scrutinised.
>
> The aim of this AD is to ensure that the requested engine power is available at any time to prevent a sudden loss of power that could lead to a hazardous situation in a low altitude phase of flight.

The MCAI requires inspecting certain crankcases for cracks and replacing the crankcase if cracks are found.

The MCAI applies to all versions of Bombardier-Rotax GmbH 912 A, 912 F, and 912 S series engines. Versions of the 912 F series and 912 S series engines are type certificated in the United States. However, the Model 912 A series engine installed in various aircraft does not have an engine type certificate; instead, the engine is part of the aircraft type design. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Rotax Aircraft Engines has issued Service Bulletin SB–912–029 R3, dated July 11, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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 proposed 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 proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 60 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $15,300, or $255 per product.

In addition, we estimate that any necessary follow-on actions would take about 20 work-hours and require parts costing $6,500, for a cost of $8,200 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Various Aircraft: Docket No. FAA–2010–0522; Directorate Identifier 2010–CE–022–AD.

Comments Due Date

(a) We must receive comments by July 6, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all serial numbers (S/N) of the following aircraft, equipped with a Rotax Aircraft Engines 912 A series engine with a crankcase assembly S/N up to and including S/N 27811, certificated in any category:

Type certificate holder	Aircraft model	Engine model
Aeromot-Industrial Mecanico Metalurgica tda.	AMT–200	912 A2
Diamond Aircraft Industries	HK 36 R "SUPER DIMONA"	912 A
Diamond Aircraft Industries GmbH	HK 36 TS	912 A3
	HK 36 TC	912 A3
Diamond Aircraft Industries Inc.	DA20–A1	912 A3
HOAC–Austria	DV 20 KATANA	912 A3
Iniziative Industriali Italiane S.p.A.	Sky Arrow 650 TC	912 A2
SCHEIBE-Flugzeugbau GmbH	SF 25C	912 A2 or 912 A3

Subject

(d) Air Transport Association of America (ATA) Code 72: Engine.

Reason

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

This Airworthiness Directive (AD) results from reports of cracks in the engine crankcase. Austro Control GmbH (ACG) addressed the problem by issuing AD No. 107R3 which was superseded by ACG AD A–2004–01.

The present AD supersedes the ACG AD A–2004–01. On one hand, introduction by Rotax of an optimized crankcase assembly has permitted to reduce applicability of the

new AD, when based on engines' serial numbers (s/n). On the other hand, applicability is extended for some engines that may have been fitted with certain crankcase s/n, supplied as spare parts.

In addition, accomplishment instructions given through the relevant Service Bulletins (SB) have been detailed to better locate engine's areas that are to be scrutinised.

The aim of this AD is to ensure that the requested engine power is available at any time to prevent a sudden loss of power that could lead to a hazardous situation in a low altitude phase of flight.

The MCAI requires inspecting certain crankcases for cracks and replacing the crankcase if cracks are found.

Actions and Compliance

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

(1) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect the engine crankcase for cracks following Rotax Aircraft Engines Service Bulletin SB–912–029 R3, dated July 11, 2006. Repetitively thereafter do the inspection at each 100-hour, annual, or progressive inspection or within 110 hours TIS since last inspection, whichever occurs first.

(2) If cracks in the engine crankcase are found during any inspection required by paragraph (f)(1) of this AD, before further flight, replace the crankcase following Rotax Aircraft Engines Service Bulletin SB–912–029 R3, dated July 11, 2006.

(3) Installing a crankcase that has a S/N 27812 or subsequent terminates the inspection requirements of paragraph (f)(1) of this AD.

FAA AD Differences

Note: 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, Standards Office, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; e-mail: *sarjapur.nagarajan@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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.

Special Flight Permit

(h) We are limiting the special flight permits for this AD by the following conditions if the crankcase is cracked or there is evidence of oil leakage from the crankcase:

(1) Perform a leak check as follows:

(i) Clean the crankcase surface to remove any oil.

(ii) Warm up the engine to a minimum oil temperature of 50 degrees C (120 degrees F). Information about warming up the engine can be found in the applicable line maintenance manual.

(iii) Accelerate the engine to full throttle and stabilize at full throttle speed for a time period of 5 to 10 seconds. Information about performing a full throttle run can be found in the applicable line maintenance manual.

(iv) Shutdown after running the engine at idle only long enough to prevent vapor locks in the cooling system and fuel system.

(v) Inspect the crankcase for evidence of oil leakage. Oil wetting is permitted, but oil leakage of more than one drip in 3 minutes after engine shutdown is not allowed.

(2) Check the crankcase mean pressure to confirm that it is 1.46 pounds-per-square inch gage (psig) (0.1 bar) or higher when checked at takeoff power to ensure proper return of oil from the crankcase to the oil tank. Information about checking crankcase mean pressure is available in the Lubrication System section of the applicable engine installation manual.

(3) A ferry flight is not allowed if oil leakage exceeds one drip in 3 minutes or if crankcase mean pressure is below 1.46 psig.

Related Information

(i) Refer to MCAI EASA AD No.: 2007–0025, dated February 1, 2007; and Rotax Aircraft Engines Service Bulletin SB–912–029 R3, dated July 11, 2006, for related information. Contact BRP–Powertrain GMBH & Co KG, Welser Strasse 32, A–4623 Gunskirchen, Austria; phone: (+43) (0) 7246 601–0; fax: (+43) (0) 7246 6370; Internet: *http://www.rotax.com,* for a copy of this service information.

Issued in Kansas City, Missouri, on May 14, 2010.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–12298 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0523; Directorate Identifier 2010–CE–018–AD]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate No. A00010WI Previously Held by Raytheon Aircraft Company) Model 390 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Model 390 airplanes. This proposed AD would require inspecting for installation of certain serial number (S/N) starter generators and replacing the starter generator if one with an affected serial number is found. This proposed AD results from reports that starter generators with deficient armature insulating materials may have been installed on certain airplanes. We are proposing this AD to detect and replace starter generators with defective armature insulating materials. This condition could result in the loss of operation of one or both starter generators with consequent loss of all non-battery electrical power.

DATES: We must receive comments on this proposed AD by July 6, 2010.

ADDRESSES: Use one of the following addresses to comment 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.

For service information identified in this proposed AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; telephone: (316) 676–5034; fax: (316) 676–6614; Internet: *https://*

www.hawkerbeechcraft.com/service_support/pubs/.

FOR FURTHER INFORMATION CONTACT:

Kevin Schwemmer, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4174; fax: (316) 946–4107; e-mail: *kevin.schwemmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA–2010–0523; Directorate Identifier 2010–CE–018–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 we receive concerning this proposed AD.

Discussion

We have received reports that certain serial number starter generators with deficient armature insulating materials may have been installed on Hawker Beechcraft Corporation Model 390 airplanes. Starter generators with deficient armature fabrication may result in loss of operation of one or both starter generators in flight.

This condition could result in the loss of operation of one or both starter generators with consequent loss of all non-battery electrical power.

Relevant Service Information

We have reviewed Hawker Beechcraft Mandatory Service Bulletin SB 24–3963, issued May 2009, and AMETEK Advanced Industries, Inc. Mandatory Service Bulletin—Number: 2009–0414, dated April 2009.

The service information describes procedures for:

- Inspection for starter generators with serial numbers that may have the deficient armature materials; and
- Removal and replacement of starter generators with the affected serial numbers.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require an inspection for suspect starter generators and their replacement if found.

Costs of Compliance

We estimate that this proposed AD would affect 213 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
.5 work-hour × $85 per hour = $42.50	Not applicable	$42.50	$9,052.50

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
10 work-hours (5 work-hours per side) × $85 per hour = $850	$4,069 per side = $8,138	$8,988

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5527) is located at the street address stated 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, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Hawker Beechcraft Corporation (Type Certificate No. A00010WI Previously Held By Raytheon Aircraft Company): Docket No. FAA–2010–0523; Directorate Identifier 2010–CE–018–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by July 6, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 390 airplanes, serial numbers RB–4 through RB–257, RB–259 through RB–265, RB–268, and RB–269, that are certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 24: Electric Power.

Unsafe Condition

(e) This AD results from reports that starter generators with deficient armature insulating materials may have been installed on certain airplanes. We are issuing this AD to detect and replace starter generators with deficient armature insulating materials. This condition could result in the loss of operation of one or both starter generators with consequent loss of all non-battery electrical power.

Compliance

(f) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect both starter generators for a starter generator with an affected serial number.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 24–3963, dated May 2009; and AMETEK Advanced Industries, Inc. Mandatory Service Bulletin—Number: 2009–0414, dated April 2009.
(2) If only one suspect starter generator with an affected serial number is found on the airplane during the inspection required in paragraph (f)(1) of this AD, replace the starter generator.	Replace the starter generator at whichever of the following times occurs first after the inspection where the affected starter generator is found: (i) Within the next 200 hours TIS; (ii) The next scheduled inspection; or (iii) Within the next 6 months.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 24–3963, dated May 2009; and AMETEK Advanced Industries, Inc. Mandatory Service Bulletin—Number: 2009–0414, dated April 2009.
(3) If two starter generators with an affected serial number are found during the inspection required in paragraph (f)(1) of this AD, replace both starter generators.	Replace one starter generator within the next 25 hours TIS after the inspection where the affected starter generator was found. Replace the second starter generator at whichever of the following times occurs first after the inspection where the affected starter generator is found: (A) Within the next 200 hours TIS; (B) The next scheduled inspection; or (C) Within the next 6 months.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 24–3963, dated May 2009; and AMETEK Advanced Industries, Inc. Mandatory Service Bulletin—Number: 2009–0414, dated April 2009.
(4) Use the form (Figure 1 of this AD) to report the results of the inspections required in paragraph (f)(1) of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and assigned OMB Control Number 2120-0056.	Within 10 days after the inspection required in paragraph (f)(1) of this AD.	Send the report to the FAA at the address specified in paragraph (g) of this AD.

FAA–2010–0523 Inspection Report (If the inspection required in paragraph (f)(1) of this AD was done before the effective date of this AD, this report does not need to be completed and returned to the Wichita ACO)		
Airplane Model		
Airplane Serial Number		
Airplane Tachometer Hours at Time of Inspection		
Right Hand Starter Generator serial number		
Left Hand Starter Generator serial number		
Does the RH Starter Generator fall within the suspect lot?	No	If yes, replace and document replacement starter generator serial number.
Does the LH Starter Generator fall within the suspect lot?	No	If yes, replace and document replacement starter generator serial number.
If both Starter Generators serial numbers fell within the suspect lot, was only one Starter Generator replaced?	No	If yes, describe and document which starter generator needs to be replaced.
Were any other discrepancies noticed during the inspection?		
Send report to: Kevin Schwemmer, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, KS 67209. *fax:* (316) 946-4107. *e-mail: kevin.schwemmer@faa.gov.*		

Figure 1

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kevin Schwemmer, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4174; fax: (316) 946–4107; e-mail: *kevin.schwemmer@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(h) To get copies of the service information referenced in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; telephone: (316) 676–5034; fax: (316) 676–6614; Internet: *https://www.hawkerbeechcraft.com/service_support/pubs/.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on May 14, 2010.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–12300 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0430; FRL–9154–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) and particulate matter (PM) emissions primarily from indirect sources associated with new development projects as well as NO_X and PM emissions from certain transportation and transit projects. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *July 6, 2010.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0430, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or Deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard

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

FOR FURTHER INFORMATION CONTACT: Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

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

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I. The State's Submittal

A. What rule did the state submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	9510	Indirect Source Review (ISR)	12/15/05	12/29/06

On June 29, 2007, the submittal for SJVUAPCD Rule 9510 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 9510 in the SIP.

C. What is the purpose of the submitted rule?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control NO_X and PM emissions.

Rule 9510 establishes limitations on NO_X and PM. Development projects indirectly result in new emissions from mobile, stationary, and area sources, including those from new vehicle trips, fuel combustion from stationary and area sources, use of consumer products, landscaping maintenance, and construction activities. The purpose of Rule 9510 is to achieve emission reductions from new development projects, as well as transportation and transit projects where construction exhaust emissions are equal to or greater than 2 tons of NO_X or 2 tons of PM_{10}.

Rule 9510 requires applicants of new development projects to reduce construction equipment emissions and operational emissions by a specified percentage. The reductions can be achieved through any number of on-site measures implemented by the applicant or by paying a fee to SJVUAPCD for all emissions in excess of the requirements. SJVUAPCD would utilize the fees to fund off-site projects to reduce NO_X and PM emissions.

Rule 9510 requires the submittal and approval of an application which identifies, through the use of a computer model, the projected air impacts of the development project and on-site mitigation measures, and the amount of fees to be paid. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

The CAA (*see* section 110(a)(2)(E)) requires the State and responsible local agencies (*e.g.,* SJVUAPCD) to have adequate personnel, funding, and authority to carry out the SIP, including Rule 9510.

SIP rules must be enforceable (*see* section 110(a) of the Act) and must not relax existing requirements (*see* sections 110(l) and 193 of the Act). Guidance and policy documents that we use to evaluate enforceability consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. "Improving Air Quality with Economic Incentive Programs," EPA–452/R–01–001, January 2001.

B. Does the rule meet the evaluation criteria?

EPA believes that California and SJVUAPCD have demonstrated that they have adequate personnel, funding, and authority to carry out the overall SIP. EPA is aware of ongoing legal challenge by the National Association of Home Builders (NAHB) to SJVUAPCD's legal authority to implement Rule 9510. (*See National Association of Home Builders* v. *San Joaquin Valley Unified Air Pollution Control District,* No. 08–17309 (9th Circuit)). In that case, NAHB asserts that the SJVUAPCD, through Rule 9510, is attempting to establish and enforce an emissions standard for new nonroad engines without first having received a waiver as required by CAA section 209, 42 U.S.C. 7543. Based on the information before EPA for Rule 9510, we believe that the SJVUAPCD has the authority to adopt and implement Rule 9510 without such a waiver. The TSD has more information on this issue.

We believe this rule is consistent with the relevant requirements, policy and guidance regarding SIP relaxations since this rule does not replace any SIP rule. However, we believe this rule is not consistent with the relevant requirements, policy and guidance on enforceability. The TSD has more information on this issue.

C. What action is EPA Proposing and why?

While Rule 9510 does not meet the evaluation criteria for enforceability, EPA is proposing to fully approve the

rule because it is directionally sound and would generally strengthen the SIP. Rule 9510 is an important effort by SJVUAPCD to reduce NO_X and PM emissions from a sector that has not been generally regulated and could also result in significant co-benefits by reducing emissions of green house gases. For these reasons, EPA recommends full SIP approval, but in light of the deficiencies also recommends that the projected emission reductions from the rule should not be credited in any attainment and rate of progress/reasonable further progress demonstrations. The TSD has more information on this recommendation.

D. EPA Recommendations to Address Deficiencies

EPA recommendations on how to address the enforceability deficiencies are described in the TSD.

E. Public Comment and Final Action

EPA is proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 45 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 10, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–12281 Filed 5–20–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1095]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before August 19, 2010.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1095, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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

Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Muhlenberg County, Kentucky, and Incorporated Areas				
Brier Creek (Backwater effects from Green River).	From the confluence with the Pond River to approximately 1,390 feet downstream of Phillips Town Road.	None	+389	Unincorporated Areas of Muhlenberg County.
Caney Creek	Approximately 0.5 mile upstream of North Main Street	None	+413	City of Greenville, Unincorporated Areas of Muhlenberg County.
	At the confluence with Caney Creek Tributary 27	None	+423	
Caney Creek Tributary 27.1 (Backwater effects from Caney Creek).	From the confluence with Caney Creek to approximately 0.7 mile upstream of the confluence with Caney Creek.	None	+424	City of Greenville, Unincorporated Areas of Muhlenberg County.
Caney Creek Tributary 31 (Backwater effects from Caney Creek).	From the confluence with Caney Creek to approximately 0.6 mile upstream of the confluence with Caney Creek.	None	+413	Unincorporated Areas of Muhlenberg County.
Canfield Branch (Backwater effects from Green River).	From the confluence with the Mud River to approximately 340 feet upstream of Forest Oak Church Road.	None	+404	Unincorporated Areas of Muhlenberg County.
Cypress Creek (Backwater effects from Green River).	From approximately 0.6 mile downstream of KY–175 to approximately 0.7 mile upstream of KY–81.	None	+393	Unincorporated Areas of Muhlenberg County.
Cypress Creek Tributary 1 (Backwater effects from Green River).	From the confluence with Cypress Creek to approximately 0.8 mile upstream of Coffman Schoolhouse Road.	None	+393	Unincorporated Areas of Muhlenberg County.
Green River	Approximately 2.6 miles upstream of CSX Railroad	+394	+393	Unincorporated Areas of Muhlenberg County.
	At the confluence with the Mud River	+403	+404	
Irwin Creek (Backwater effects from Green River).	From the confluence with Isaacs Creek to approximately 2,000 feet upstream of the confluence with Isaacs Creek.	None	+389	Unincorporated Areas of Muhlenberg County.
Isaacs Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 1,035 feet upstream of the confluence with Irwin Creek.	None	+389	Unincorporated Areas of Muhlenberg County.
Jacobs Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 2.0 miles upstream of Riverside Road.	None	+402	Unincorporated Areas of Muhlenberg County.
Jacobs Creek Tributary 7 (Backwater effects from Green River).	From the confluence with Jacobs Creek to approximately 370 feet upstream of Riverside Road.	None	+402	Unincorporated Areas of Muhlenberg County.
Little Cypress Creek	Approximately 190 feet upstream of West Whitmer Street.	None	+405	City of Central City, Unincorporated Areas of Muhlenberg County.
	Just upstream of Front Street	None	+408	
Little Cypress Creek Tributary 16 (Backwater effects from Little Cypress Creek).	From the confluence with Little Cypress Creek to approximately 2,507 feet upstream of the confluence with Little Cypress Creek.	None	+405	City of Central City, Unincorporated Areas of Muhlenberg County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Little Cypress Creek Tributary 8 (Backwater effects from Little Cypress Creek).	From the confluence with Little Cypress Creek to approximately 1,100 feet upstream of the confluence with Little Cypress Creek.	None	+422	Unincorporated Areas of Muhlenberg County.
Log Creek (Backwater effects from Green River).	From the confluence with the Pond River to approximately 3,900 feet upstream of Millport Sacramento Road.	None	+389	Unincorporated Areas of Muhlenberg County.
Mud River (Backwater effects from Green River).	From the confluence with the Green River to approximately 535 feet upstream of the confluence with Canfield Branch.	None	+404	Unincorporated Areas of Muhlenberg County.
Muddy Fork (Backwater effects from Green River).	From the confluence with Cypress Creek to approximately 0.8 mile upstream of the confluence with Cypress Creek.	None	+393	Unincorporated Areas of Muhlenberg County.
Nelson Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 0.4 mile upstream of Green River Haul Road.	None	+398	Unincorporated Areas of Muhlenberg County.
Opossum Run (Backwater effects from Sandlick Creek).	From the confluence with Sandlick Creek to approximately 1,175 feet upstream of Opossum Lane.	None	+430	Unincorporated Areas of Muhlenberg County.
Plum Creek (Backwater effects from Green River).	From the confluence with Pond Creek to approximately 300 feet downstream of the confluence with Plum Creek Tributary 4.	None	+401	City of Drakesboro, Unincorporated Areas of Muhlenberg County.
Plum Creek Tributary 5 (Backwater effects from Green River).	From the confluence with Plum Creek to approximately 0.65 mile upstream of the confluence with Plum Creek.	None	+401	Unincorporated Areas of Muhlenberg County.
Pond Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 1,280 feet upstream of I–431.	None	+401	Unincorporated Areas of Muhlenberg County.
Pond Creek (Backwater effects from Sandlick Creek).	From the confluence with Sandlick Creek to just downstream of Johnson Road.	+422	+421	Unincorporated Areas of Muhlenberg County.
Pond Creek Tributary 29 (Backwater effects from Green River).	From the confluence with Pond Creek to approximately 1,000 feet upstream of KY–2107.	None	+401	Unincorporated Areas of Muhlenberg County.
Pond Creek Tributary 30 (Backwater effects from Green River).	From the confluence with Pond Creek to approximately 1.4 mile upstream of the confluence with Pond Creek.	None	+401	Unincorporated Areas of Muhlenberg County.
Pond River (Backwater effects from Green River).	From the confluence with the Green River to approximately 1.0 mile upstream of KY–70.	None	+389	Unincorporated Areas of Muhlenberg County.
Sandlick Creek Tributary 2 (Backwater effects from Sandlick Creek).	From the confluence with Sandlick Creek to approximately 1,600 feet upstream of the confluence with Sandlick Creek.	None	+449	Unincorporated Areas of Muhlenberg County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Central City

Maps are available for inspection at City Hall, 214 North 1st Street, Central City, KY 42330.

City of Drakesboro

Maps are available for inspection at City Hall, 212 West Mose Rager Boulevard, Drakesboro, KY 42337.

City of Greenville

Maps are available for inspection at City Hall, 118 Court Street, Greenville, KY 42345.

Ohio County, Kentucky, and Incorporated Areas

Adams Fork Tributary 22 (Backwater effects from Rough River).	From the confluence with Adams Fork to approximately 785 feet upstream of Cross Hill Road.	None	+417	Unincorporated Areas of Ohio County.
Bartnett Creek (Backwater effects from Green River).	From the confluence with the Rough River to approximately 0.7 mile upstream of the confluence with North Fork Bartnett Creek.	None	+392	Unincorporated Areas of Ohio County.
Bull Run (Backwater effects from Green River).	From the confluence with Thoroughfare Stream to approximately 0.61 mile downstream of Cool Springs Road.	None	+405	Unincorporated Areas of Ohio County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Caney Creek (Backwater effects from Rough River).	From the confluence with the Rough River to approximately 1,700 feet downstream of KY–878.	None	+425	Unincorporated Areas of Ohio County.
East Fork Williams Creek (Backwater effects from Green River).	From the confluence with Williams Creek to approximately 0.94 mile upstream of the confluence with Williams Creek.	None	+399	Unincorporated Areas of Ohio County.
Green River	At Western Kentucky Parkway	+400	+401	Town of Rockport, Unincorporated Areas of Ohio County.
	Approximately 3.2 miles upstream of the confluence with Green River Tributary 5.	+414	+412	
Huff Creek (Backwater effects from Rough River).	From the confluence with the Rough River to approximately 0.9 mile upstream of Abandoned Illinois Central Railroad.	None	+425	Unincorporated Areas of Ohio County.
Huff Creek Tributary 5 (Backwater effects from Rough River).	From the confluence with Huff Creek to approximately 1,380 feet upstream of the confluence with Huff Creek.	None	+425	Unincorporated Areas of Ohio County.
Lewis Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 1,015 feet downstream of KY–1245.	None	+400	Unincorporated Areas of Ohio County.
Mill Creek 1 (Backwater effects from Rough River).	From the confluence with the Rough River to approximately 700 feet upstream of KY–69.	None	+399	Unincorporated Areas of Ohio County.
Morrison Run (Backwater effects from Rough River).	From the confluence with the Rough River to approximately 140 feet upstream of Utley Drive.	None	+399	Unincorporated Areas of Ohio County.
Muddy Creek (Backwater effects from Green River).	From the confluence with the Rough River to approximately 460 feet upstream of North Main Street.	None	+394	Unincorporated Areas of Ohio County.
No Creek (Backwater effects from Green River).	From the confluence with the Rough River to approximately 1,815 feet upstream of KY–136.	None	+392	Unincorporated Areas of Ohio County.
North Fork Bartnett Creek (Backwater effects from Green River).	From the confluence with Bartnett Creek to approximately 0.65 foot upstream of the confluence with Bartnett Creek.	None	+392	City of Hartford, Unincorporated Areas of Ohio County.
North Fork Muddy Creek (Backwater effects from Green River).	From the confluence with Muddy Creek to approximately 1.7 mile upstream of the confluence with Muddy Creek.	None	+394	City of Hartford, Unincorporated Areas of Ohio County.
Pond Run 1 (Backwater effects from Green River).	From the confluence with the Green River to just upstream of Ken Mine Road.	None	+402	Unincorporated Areas of Ohio County.
Pond Run (Backwater effects from Rough River).	From the confluence with the Rough River to approximately 1.4 mile upstream of the confluence with the Rough River.	None	+440	Unincorporated Areas of Ohio County.
Render Creek (Backwater effects from Green River).	From the confluence with Lewis Creek to approximately 0.8 mile upstream of the confluence with Lewis Creek.	None	+400	Unincorporated Areas of Ohio County.
Slaty Creek (Backwater effects from Green River).	From the confluence with Thoroughfare Stream to approximately 2,520 feet downstream of Barnes Road.	None	+411	Unincorporated Areas of Ohio County.
Slovers Creek (Backwater effects from Rough River).	From the confluence with the Rough River to approximately 666 feet downstream of KY–1414.	None	+408	Unincorporated Areas of Ohio County.
Slovers Creek Tributary 4 (Backwater effects from Rough River).	From the confluence with Slovers Creek to approximately 0.7 mile upstream of the confluence with Slovers Creek.	None	+409	Unincorporated Areas of Ohio County.
Southards Creek (Backwater effects from Green River).	From the confluence with Lewis Creek to approximately 2,150 feet upstream of U.S. Route 62.	None	+400	Unincorporated Areas of Ohio County.
Spur Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 3.5 miles upstream of the confluence with the Green River.	None	+403	Unincorporated Areas of Ohio County.
Thoroughfare Stream Tributary 2 (Backwater effects from Green River).	From the confluence with Thoroughfare Stream to approximately 402 feet downstream of Schultztown Road.	None	+405	Unincorporated Areas of Ohio County.
Walton Creek (Backwater effects from Green River).	From the confluence with the Rough River to approximately 1.7 mile upstream of the confluence with the Rough River.	None	+392	Unincorporated Areas of Ohio County.
West Fork Lewis Creek (Backwater effects from Green River).	From the confluence with Lewis Creek to approximately 900 feet downstream of Rockport Ceralvo Road.	None	+400	Unincorporated Areas of Ohio County.
West Fork Lewis Creek Tributary 5 (Backwater effects from Green River).	From the confluence with West Fork Lewis Creek to approximately 1,660 feet upstream of KY–85.	None	+3400	Unincorporated Areas of Ohio County.
Williams Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 1,170 feet upstream of KY–69.	None	+399	Unincorporated Areas of Ohio County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Wolfpen Run (Backwater effects from Rough River).	From the confluence with the Rough River to approximately 1.3 mile upstream of the confluence with the Rough River.	None	+413	Unincorporated Areas of Ohio County.

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+ North American Vertical Datum.
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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Hartford

Maps are available for inspection at City Hall, 116 East Washington Street, Hartford, KY 42347.

Town of Rockport

Maps are available for inspection at the Town Hall, 9133 West U.S. Route 62, Rockport, KY 42369.

Unincorporated Areas of Ohio County

Maps are available for inspection at the Ohio County Courthouse, 301 South Main Street, Hartford, KY 42347.

Shiawassee County, Michigan (All Jurisdictions)

Holly Drain	Approximately 1,470 feet upstream of Maple Street	None	+764	Village of Vernon.
	Approximately 1,500 feet upstream of Maple Street	None	+764	
Shiawassee River	Approximately 5,780 feet upstream of North Shiawassee Street.	None	+741	Charter Township of Caledonia, Township of Vernon, Village of Vernon.
	Approximately 520 feet upstream of Washington Avenue.	None	+762	

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Charter Township of Caledonia

Maps are available for inspection at the Caledonia Township Hall, 135 North State Street, Owosso, MI 48867.

Township of Vernon

Maps are available for inspection at the Vernon Township Hall, 6801 South Durand Road, Durand, MI 48429.

Village of Vernon

Maps are available for inspection at the Vernon Village Hall, 120 Main Street, Vernon, MI 48476.

Hancock County, Ohio, and Incorporated Areas

Blanchard River	Approximately 1,300 feet upstream of County Highway 140.	+773	+772	Unincorporated Areas of Hancock County.
	Approximately 2,000 feet downstream of Township Road 241.	+785	+786	
Eagle Creek	Approximately 0.53 mile downstream of Township Road 204.	+785	+783	Unincorporated Areas of Hancock County.
	Approximately 1,100 feet downstream of Township Road 49.	+798	+797	
Lye Creek	Approximately 0.61 mile downstream of County Highway 180.	+780	+779	Unincorporated Areas of Hancock County.
	Just downstream of County Highway 180	+784	+781	

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

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

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** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Hancock County

Maps are available for inspection at 300 South Main Street, Findlay, OH 45840.

Manitowoc County, Wisconsin, and Incorporated Areas				
Centerville Creek	Approximately 0.25 mile downstream of the bridge at West Washington Avenue.	None	+682	Village of Cleveland.
	Approximately 380 feet downstream of the bridge at West Washington Avenue.	None	+688	
Little Manitowoc River	Approximately 0.47 mile downstream of the bridge at Goodwin Road.	None	+626	City of Manitowoc.
	At the bridge at Goodwin Road	None	+643	
Sheboygan River	At the bridge at State Highway 67/32	None	+882	City of Kiel.
	Approximately 0.25 mile upstream of the bridge at State Highway 67/32.	None	+884	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Kiel

Maps are available for inspection at 621 6th Street, Kiel, WI 53042.

City of Manitowoc

Maps are available for inspection at 900 Quay Street, Manitowoc, WI 54220.

Village of Cleveland

Maps are available for inspection at 1150 West Washington Street, Cleveland, WI 53015.

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

Dated: May 11, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–12204 Filed 5–20–10; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 520 and 532

[Docket No. 10–03]

NVOCC Negotiated Rate Arrangements; Notice of Public Meeting Schedule

AGENCY: Federal Maritime Commission.

ACTION: Proposed rulemaking; notice of public meeting.

SUMMARY: On April 29, 2010, the Federal Maritime Commission issued a Notice of Proposed Rulemaking (NPRM), which appeared in the **Federal Register** on May 7, 2010, proposing a new exemption for non-vessel-operating common carriers 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 Commission will hold a public meeting to receive oral comments and allow participants to field questions from the Commission concerning the proposed rule.

DATES: The Commission will hold a public meeting on May 24, 2010. Written comments are due by June 4, 2010.

ADDRESSES: Submit all written comments (original and 15 copies) to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary; (202) 523–5725. *E-mail: secretary@fmc.gov.*

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

Commission has established the following allotment of time and order of presentation. The meeting will convene at 1:30 p.m., May 24, 2010, in the Commission's Main Hearing Room 100, 800 North Capitol Street, NW., Washington, DC 20573.

The Federal Maritime Commission welcomes written comments for the record. All written comments submitted in this proceeding (an Original and 15 copies) including written statements presented at the May 24th meeting are due by Friday, June 4, 2010. Written submissions, except for confidential business information, will be available for public inspection.

PANEL I

Participant(s)	Company	Time allotment (in minutes)
Edward D. Greenberg, Attorney for NCBFAA	National Customs Brokers & Forwarders Association of America, Inc..	10
Paulette Kolba, VP Ocean Compliance Panalpina, Inc.	Pantainer Ltd.	10
Robert J. Schott, President	SEASCHOTT, Division of AIRSCHOTT, Inc.	10
Robert A. Voltmann, President & CEO	Transportation Intermediaries Association	10

PANEL II

Participant(s)	Company	Time allotment (in minutes)
Neil Barni, President	CargoSphere	10
James E. Devine, President	Distribution Publications, Inc.	10
Stan Levy, President	Stan Levy Consulting	10
Gerard P. Wardell, President; Laurie A. Olson, VP Tariff Operations.	RateWave Tariff Services, Inc.	10

Karen V. Gregory,

Secretary.

[FR Doc. 2010–12299 Filed 5–20–10; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 17

[WT Docket No. 10–88; RM 11349; FCC 10–53]

2004 and 2006 Biennial Regulatory Reviews—Streamlining and Other Revisions of the Commission's Rules Governing Construction, Marking and Lighting of Antenna Structures; Amendments To Modernize and Clarify the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Commission seeks comment on revisions to the Commission's rules governing the construction, marking, and lighting of antenna structures. The Commission initiates this proceeding to update and modernize the Commission's rules.

DATES: Interested parties may file comments on or before July 20, 2010, and reply comments on or before August 19, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before July 20, 2010.

ADDRESSES: You may submit comments, identified by WT Docket No. 10–88; RM 11349; FCC 10–53, 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://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* 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 the Commission continues 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.
- *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.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: John Borkowski, Wireless Telecommunications Bureau, (202) 418–0626, e-mail *John.Borkowski@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WT Docket No. 10–88; RM 11349; FCC 10–53, adopted April 12, 2010, and released on April 20, 2010. The full text of the NPRM is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of

the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No. 10–88. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking (NPRM), the Commission seeks comment on revisions to the Commission's part 17 rules governing the construction, marking, and lighting of antenna structures. The Commission initiates this proceeding to update and modernize the part 17 rules. These proposed revisions are intended to improve compliance with these rules and allow the Commission to enforce them more effectively, helping to better ensure the safety of pilots and aircraft passengers nationwide. These proposed revisions would also remove outdated and burdensome requirements without compromising the Commission's statutory responsibility to prevent antenna structures from being hazards or menaces to air navigation.

II. Discussion

2. This NPRM proposes amendments to the part 17 rules to update and modernize them, including harmonizing them with Federal Aviation Administration (FAA) rules where appropriate. The following discussion will examine the entirety of part 17, considering: (1) Antenna structure registration and marking and lighting specifications; (2) maintenance of marking and lighting; and (3) other matters.

A. Antenna Structure Registration and Marking and Lighting Specifications

1. Provisions Governing Specification of Marking and Lighting

3. The provisions governing specification of marking and lighting for registered antenna structures are set forth in Sections 17.21 through 17.23 of the rules. Section 17.21 specifies that painting and lighting of an antenna structure is required if the structure exceeds 200 feet in height or if it requires aeronautical study, unless an applicant can show that absence of (or lesser) marking would not impair air safety. Section 17.22 provides that the Commission will generally assign specifications for painting and lighting in accordance with FAA Circulars referenced in Section 17.23, but also provides that if such painting or lighting is confusing, or endangers rather than assists airmen, the Commission may specify painting or lighting in the individual situation. Section 17.23 provides that, unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the FAA's painting and lighting recommendations set forth on the structure's FAA determination of "no hazard" as referenced in FAA Advisory Circulars AC 70/7460–1J ("Obstruction Marking and Lighting") and AC 150/5345–43E ("Specification for Obstruction Lighting Equipment"), both of which are cross-referenced.

4. In its 2004 Biennial Review Comments, PCIA—the Wireless Infrastructure Association (PCIA) states that FAA Advisory Circular AC 70/460–1J referenced in Section 17.23 has been superseded, creating a conflict between the Commission's marking and lighting requirements and the FAA's. In the Biennial Review Proceeding, PCIA, CTIA—the Wireless Association (CTIA), and Cingular Wireless LLC (Cingular) proposed that Section 17.23 be amended to reference the most recent versions of the FAA Advisory Circulars. PCIA seeks this rule change in its Petition for Rulemaking as well. In their comments on PCIA's Petition for Rulemaking, Cingular, Crown Castle USA, Inc. (Crown Castle), and the National Association of Broadcasters (NAB) agree that the Commission's rules should be consistent with the most recent FAA painting and lighting recommendations. In its Petition for Rulemaking, PCIA also seeks to amend Section 17.23 to clarify that the lighting and marking specifications assigned to a structure by the Commission upon registration do not change unless the FAA recommends new specifications for that particular structure.

5. The Commission proposes several revisions to these provisions. First, the Commission agrees with commenters that the rules should not reference obsolete editions of the Advisory Circulars. Rather than updating the references in the current rules, however, the Commission proposes to delete any reference to Advisory Circulars as unnecessary and potentially confusing. Because each antenna structure owner is clearly notified through the registration process of the specifications that apply to a particular structure, first by the FAA itself in its "no hazard" determination, and then by the Commission in the owner's antenna structure registration, the Commission believes that specific reference in the rules to particular Advisory Circulars is unnecessary. Such references also may cause confusion if the FAA updates the relevant circulars more frequently than the Commission amends its part 17 rules. Also, certain older registrations reference discontinued FCC Form 715/715A rather than the Advisory Circulars. To avoid these results, the Commission proposes that the rules require the marking and lighting recommended in the FAA determination and associated study, unless otherwise specified, rather than in any particular circular. The Commission seeks comment on this proposal, and in particular on whether there are any circumstances in which this approach would not be clear.

6. PCIA proposes that the Commission specify in the rules that lighting and marking requirements do not change unless the FAA recommends new specifications for particular structures. PCIA believes this language is necessary to clarify that a revised FAA Circular does not impose new obligations upon already-approved antenna structures. PCIA also indicates that this proposal seeks rule codification of a statement made on the FCC's Web site. The Commission seeks comment on PCIA's proposal. The Commission also seeks comment on whether, in the event the FAA changes its standards, it may instead be preferable for the Commission to have the flexibility to apply any new standards retroactively. Should the Commission defer in the first instance to the FAA as the expert agency on aircraft navigation safety as to whether revised standards should be applied to existing structures, unless otherwise specified by the FCC?

7. Consistent with this discussion, the Commission proposes several specific changes to the rules. Section 17.4 of the rules contains an overview of the antenna structure registration process. The Commission proposes adding to § 17.4 a provision clarifying that the FAA's recommended specifications are generally mandatory, but that the Commission may specify additional or different requirements. The Commission believes stating this simply up front will provide clarity regarding the central obligation of structure owners. The Commission also proposes to amend § 17.4 to indicate that no changes may be made to the lighting or marking specifications on an antenna structure registration without prior FAA and Commission approval. The Commission seeks comment on these proposals.

8. With respect to §§ 17.21 through 17.23, the Commission first proposes to amend § 17.21(a), which provides that antenna structures shall be painted and lighted when they exceed 60.96 meters (200 feet) in height above ground level

or they require special aeronautical study. The Commission proposes to instead reference FAA notification requirements. The Commission believes that referencing FAA notification requirements will clarify which antenna structures must comply with § 17.21. The Commission would retain the provision in § 17.21(b) that the Commission may modify requirements "for painting and/or lighting of antenna structures when it is shown by the applicant that the absence of such marking would not impair the safety of air navigation, or that a lesser marking requirement would insure the safety thereof." The Commission then proposes to delete as unnecessary the first sentence of § 17.22, which provides: "Whenever painting or lighting is required, the Commission will generally assign specifications in accordance with the FAA Advisory Circulars referenced in Section 17.23." The Commission would redesignate as paragraph 17.21(c) the remainder of current § 17.22, specifying that "[i]f an antenna installation is of such a nature that its painting and lighting in accordance with these specifications are confusing, or endanger rather than assist airmen, or are otherwise inadequate, the Commission will specify the type of painting and lighting or other marking to be used in the individual situation." Finally, the Commission would amend § 17.23, as discussed above, to replace the reference to specific Advisory Circulars with a more general reference to the FAA's determination of no hazard and associated study, and to clarify the structure owner's obligation to comply with any other specifications prescribed by the Commission. The Commission seeks comment on all these proposals.

9. Finally, the Commission proposes deleting § 17.17(a). The Commission's proposed removal of reference to FAA circulars in § 17.23 would eliminate the need for the stated exception in § 17.17(a). Moreover, the language in § 17.17(a) has resulted in some confusion as to what painting and lighting specifications antenna structures authorized prior to July 1, 1996, must maintain. The Commission does not make a specific proposal to amend § 17.17(b) in this Notice, but the Commission notes that the Commission would need to conform § 17.17(b) to any decision regarding PCIA's proposal to specify that lighting and marking requirements do not change unless the FAA recommends new specifications for particular structures. The Commission seeks comment on these proposals.

2. Accuracy of Location and Height Data

10. Section 17.4(a)(1) provides that alteration of an existing antenna structure requires a new registration. However, the Commission's rules do not define what constitutes an alteration such that a new registration is required. In the *ASR Streamlining Order* (11 FCC Rcd at 4287), the Commission determined that any change or correction of antenna structure site data of one second or greater in longitude or latitude, or one foot or greater in height, requires a new aeronautical study and a new determination by the FAA. The Commission noted that these criteria are consistent with the FAA's standards for when a new notification is required. In order to clarify the obligations of antenna structure owners, the Commission proposes adding a new section to § 17.4 specifying that any change in height of one foot or greater or any change in coordinates of one second or greater requires prior approval from the FAA and the Commission. The Commission seeks comment on this proposal.

11. Consistent with this standard, the Commission also seeks comment on whether to amend its rules to require that the height information provided on FCC Form 854 must be accurate within one foot and the coordinates provided in FCC Form 854 must be accurate within one second of longitude and latitude. The Commission further seeks comment on whether to require that antenna structure owners must use the most accurate data available when reporting height information and site coordinates, and on whether the Commission should specify a particular survey method. In the *ASR Streamlining Order,* the Commission stated that antenna structure owners "may use surveying tools of differing accuracy, such as maps, GPS receivers, or GPS receivers with differential corrections to obtain site data." Moreover, in the *ASR Clarification Order* (15 FCC Rcd at 8678–8679), the Commission declined to mandate a specific accuracy standard for the submission of antenna structure data in deference to the FAA. It has been the Commission's experience, however, that measurements taken using older survey methods may differ significantly from those performed using current GPS technology. In light of developments in technology and practice, the Commission therefore finds it appropriate to revisit whether the Commission should specify accuracy standards or survey methods. The Commission asks commenters to address whether the Commission should continue to defer to the FAA's expertise, and whether the Commission's promulgation of rules would risk creating conflicts with the FAA's process. Any comments proposing a specific method should explain that method and the benefits of mandating it for new antenna structure registrants.

3. Structures Requiring FAA Notification

12. Section 17.7 of the Commission's rules sets forth which antenna structures require notification to the FAA. Section 17.14 of the Commission's rules sets forth certain categories of antenna structures that are exempt from notification to the FAA. Sections 17.7 and 17.14 are restatements of FAA rules. Specifically, § 17.7 of the Commission's rules is a restatement of § 77.13 of the FAA's rules. Section 17.14 of the Commission's rules is a restatement of § 77.15 of the FAA's rules. These restatements of FAA rules in Commission rules appear to be unnecessary and duplicative, and their inclusion risks creating confusion in the event the FAA were to change its criteria. The Commission therefore proposes to delete §§ 17.7 and 17.14 of the Commission's rules. In lieu of these full restatements of FAA rules, the Commission proposes adding cross-references to relevant FAA rules in § 17.4 of the Commission's rules, which provides that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission. The Commission seeks comment on this tentative conclusion, and on whether there is any reason the Commission should retain language in its own rules stating which antenna structures require notification to the FAA.

4. Pending FAA Rulemaking Proceeding

13. The FAA's current part 77 rules set forth regulations pertaining to the physical attributes of objects (including communications facilities) that may affect navigable airspace. Under these rules, parties proposing to construct or modify a structure must file a "Notice of Proposed Construction or Alteration" with the FAA. The FAA then conducts an obstruction evaluation to determine whether the proposed structure will pose a hazard to air navigation. The Commission has, in turn, required any antenna structure for which a Notice of Proposed Construction or Alteration must be filed with the FAA to be registered with the Commission as well. As discussed in more detail above, this registration requirement is the vehicle by which the Commission exercises its

authority under the Communications Act to require painting and lighting of towers that may constitute a hazard to air navigation.

14. In a Notice of Proposed Rulemaking released in June, 2006, the FAA has proposed to modify its notification rules. Under the FAA's proposal, among other things, events that give rise to a notification requirement would be expanded to include construction of new facilities that operate on specified frequency bands, changes in authorized frequency, addition of new frequencies, increases in effective radiated power or antenna height above certain thresholds, and changes in antenna configuration for communications facilities that operate in specified radio frequency bands, independent of the physical attributes of such facilities. The Commission seeks comment on how the outcome of the FAA's proceeding may affect any of the matters being considered in the instant proceeding. In particular, the Commission seeks comment on whether, if the FAA were to adopt its proposed rules in whole or in part, the Commission should modify any of its rules or change any proposed approaches to issues addressed in this proceeding. In this regard, one such significant issue is whether the Commission should continue to require all instances of "Notice of Proposed Construction or Alteration" required by the FAA to result in an antenna structure registration or amendment of antenna structure registration with the Commission.

B. Maintenance of Marking and Lighting

15. The part 17 rules also detail certain requirements that concern the maintenance of the marking and lighting on antenna structures. These requirements include inspection and maintenance of lighting, records of extinguishment or improper functioning of lights, and maintenance of painting. The Commission believes that some of these requirements are unnecessarily burdensome to antenna structure owners and may be less effective at preventing hazards to air navigation than certain alternatives. The Commission also believes that some interpretations of these requirements overly complicate its enforcement efforts in this important public safety area. Therefore, the Commission is proposing several amendments and deletions to streamline and clarify these rules.

1. Inspection and Maintenance of Lighting

16. The basic regime governing inspection and maintenance of required lighting is set forth in §§ 17.47, 17.48, and 17.56(a) of the rules. Section 17.47 of the rules requires antenna structure owners to make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights or, alternatively, to provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner. Section 17.47 also requires antenna structure owners to inspect at intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly. Section 17.48(a) of the Rules requires immediate notification to the nearest Flight Service Station (FSS) or office of the FAA of any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes. Upon notification of such an incident, the FAA issues a Notice to Airmen (NOTAM) to alert aircraft of the light outage. Section 17.48(b) of the Rules provides that "[a]n extinguishment or improper functioning of a steady burning side intermediate light or lights, shall be corrected as soon as possible, but notification to the FAA or [*sic*] such extinguishment or improper functioning is not required." Section 17.56(a) of the rules requires antenna structure owners to replace or repair lights, automatic indicators or automatic control or alarm systems as soon as practicable.

17. In their comments to the 2004 Biennial Review, PCIA, CTIA and Cingular argue that quarterly physical inspection of antenna structures imposes needless and costly burdens and adds nothing to the reliability of the system. Also, the Commission, initially, and later the Wireless Telecommunications Bureau on delegated authority, have granted several tower owners waivers of § 17.47(b) of the Rules to permit annual rather than quarterly inspections for their automatic or mechanical control devices, indicators and alarm systems associated with their antenna structure lighting, on the basis that they use advanced monitoring systems. In its Petition for Rulemaking, PCIA, consistent with these waiver requests, recommends amendment of Section 17.47(b) of the rules to exempt systems using network operations control (NOC) center-based monitoring technologies from any requirement to regularly inspect all automatic or mechanical systems associated with antenna structure lighting. Sprint Nextel Corporation (Sprint Nextel), Cingular, Crown Castle and NAB all support such a rule amendment. In comments on a waiver request, Hark Tower Systems, Inc., also supported this approach.

18. The Commission seeks comment on two possible alternative changes to § 17.47. First, the Commission seeks comment on whether to delete § 17.47 of the rules in its entirety. The Commission is concerned that the current regime, which includes separate requirements for inspecting lighting systems, providing notice of extinguished lights, and replacing malfunctioning lights and monitoring systems, may create ambiguity for antenna structure owners regarding their regulatory obligations. In particular, an antenna structure owner may incorrectly conclude that so long as it performs the inspections required under § 17.47, it will not be subject to enforcement action if its lights fail to function. Eliminating the inspection requirements under § 17.47 would make clear that what matters is that the lighting required under the antenna structure registration remains on, or, if required lights become extinguished, that the structure owner promptly request a NOTAM. If these requirements are not met, the Commission may subject the structure owner to enforcement action regardless of the measures it followed to inspect its lighting and monitoring systems; and if these requirements are met, it would be immaterial to us how the structure owner ensured that its lights would remain functioning or NOTAMs would be requested. The Commission seeks comment on this possible approach, including on whether inspection requirements are necessary to ensure responsible monitoring of lighting systems.

19. Second, if the Commission determines not to eliminate all inspection requirements, the Commission seeks comment on whether to amend § 17.47(b) to exempt certain systems using NOC center-based monitoring technologies from the requirement to quarterly inspect all automatic or mechanical systems associated with antenna structure lighting. As explained in the Commission's order granting waivers to

American Tower Corporation (ATC) and Global Signal, Inc. (GSI), the types of systems used by ATC, GSI, and others reliably diagnose problems, including any failures of control devices, indicators and alarm systems, within real time. Thus, quarterly inspections of such systems may unnecessarily burden antenna structure owners without promoting aircraft navigation safety, and relieving inspection requirements for such towers may encourage tower owners to adopt state-of-the-art systems. In granting the ATC and GSI waiver requests, the Commission found that the use of advanced technology in those instances provided the benefits of more rapid response for lighting failures, with attendant aircraft safety benefits. The Commission seeks comment on the benefits and drawbacks of eliminating quarterly inspection requirements for systems utilizing advanced self-monitoring technology, and on whether required regular inspections that are less frequent, such as annually, should be retained. The Commission also seeks comment as to how the systems to be exempted from the quarterly inspection requirement should be defined.

20. The Commission proposes to retain the requirement in § 17.48(a) that antenna structure owners promptly report outages of top steady burning lights or flashing antenna structure lights to the FAA. However, the Commission believes amendment of this provision is necessary to ensure that a NOTAM is maintained so long as any outage continues. The FAA cancels all such notices within 15 days. However, the Commission's rules do not currently require antenna structure owners to notify the FAA if repairs to an antenna structure's lights require more than 15 days. Therefore, the Commission proposes to require antenna structure owners to provide continuously active NOTAM notice to the FAA of these lighting outages in accordance with current FAA requirements. Accordingly, antenna structure owners would be required to contact the FAA to extend the lighting outage date after 15 days and provide a return to service date. The Commission seeks comment on this proposal. The Commission specifically asks commenters to discuss how the Commission should balance the public interest benefit of having antenna structure owners contact the FAA every 15 days during a light outage against the burden on antenna structure owners of continual notification requirements. The Commission also notes that the reporting requirement of § 17.48(a) requires that the FAA be notified "by telephone or telegraph." The Commission tentatively concludes that this rule should be updated to require notification by means acceptable to the FAA, which currently is by a nationwide toll-free telephone number for reporting lighting outages, and the Commission seeks comment on this proposal.

21. Finally, the Commission requests comment on whether its rules should include time frames for replacing or repairing extinguished lights notwithstanding the issuance of a NOTAM, and if so, what those time frames should be. The Commission believes that the current requirements to replace or repair lights "as soon as practicable" (in § 17.56(a)) or "as soon as possible" (in § 17.48(b)) may be overly vague, and may engender confusion as to whether diligent efforts to correct lighting malfunctions obviate the need for a NOTAM. Accordingly, the Commission tentatively concludes that these provisions should be deleted. By proposing to delete these rule sections, however, the Commission does not intend to provide antenna structure owners with an unlimited amount of time to repair the lighting systems on their antenna structures, nor does the Commission suggest that antenna structure owners may avoid repairing the lighting systems on their antenna structures indefinitely by continually filing for NOTAMs. Moreover, because the FAA does not accept notifications or issue NOTAMs for extinguished steady burning side intermediate lights, in the absence of Section 17.48(b) the Commission's rules would contain no requirements relating to maintenance of these lights. The Commission therefore seeks comment on whether the Commission should implement a time limitation for lighting system repairs. If such a requirement is implemented, should it be based on the geographic location of the antenna structure? Should weather conditions be considered when determining the reasonableness of a time period requirement? The Commission seeks comment on these proposals.

2. Elimination of Unnecessary Provisions

22. Sections 17.45, 17.51, and 17.56(b) each set forth specific requirements for antenna structure owners to follow in exhibiting or maintaining lights. Section 17.45 of the rules specifies the type of temporary warning lights to be used during construction of antenna structures for which red obstruction lighting is required. Section 17.51 of the rules requires red obstruction lighting to be on from sunset to sunrise and high intensity and medium intensity lighting to burn continuously. Section 17.56(b) requires that the flash tubes in a high intensity obstruction lighting system shall be replaced whenever the peak effective daytime intensity falls below 200,000 candelas.

23. The Commission notes that in their 2004 Biennial Review comments, PCIA, CTIA and Cingular ask that § 17.51 be amended to harmonize it with Section 17.48 (Notification of Extinguishment or Improper Functioning Lights). Specifically, PCIA states that § 17.51 should be revised to provide that a malfunctioning flashing light does not violate § 17.51, so long as a NOTAM has been sought by the tower owner or operator and issued by the FAA. PCIA also suggests that § 17.51 should provide that it is not violated when a malfunction is beyond the control of the tower owner/operator (such as in a power failure).

24. The Commission tentatively concludes that each of these provisions should be deleted because the relevant requirements are specified in the FAA determination of no hazard and associated study for each tower, and the separate identification of specific requirements in the Commission's rules is therefore unnecessary and may create ambiguity in cases of conflict. Any antenna structure which is assigned specifications by the FAA for lighting is also assigned Chapter 4 (Lighting Guideline) of FAA Advisory Circular AC 70/7460–1. This chapter details the type of construction lights, both red and white, that should be used during construction. Chapter 4 also details requirements for the inspection, repair and maintenance of lights. Any antenna structure which is assigned red obstruction, high intensity or medium intensity lighting by the FAA is also assigned the applicable chapter (Chapter 5, 6 or 7) of the same FAA Advisory Circular (AC 70/7460–1) on its antenna structure registration. The Commission therefore proposes to delete each of these rule provisions in order to promote clarity and avoid potential conflicts. The Commission seeks comment on this tentative conclusion, and in particular on whether there are any instances in which the FAA would not assign the relevant specifications in its Advisory Circular.

25. The Commission does not agree with the commenters' position that its lighting requirements should include an exception where lights are extinguished due to loss of power beyond the structure owner's control. As discussed above, the Commission is proposing amending § 17.48 to clearly state the basic requirement to maintain the required lighting or, if lights become

extinguished, obtain and maintain a NOTAM. Thus, if lights become extinguished due to loss of power, the structure owner will remain in compliance with the rules if it immediately notifies the FAA and renews the notification every 15 days. The Commission does not believe it is either necessary or consistent with aircraft navigation safety to exempt outages due to loss of power from this process. Moreover, the Commission is not persuaded that the effects of power outages are beyond the control of antenna structure owners, or beyond their ability to remedy. The Commission seeks comment above on whether the Commission should establish time limits for repair or replacement of extinguished lights. Any rules that the Commission might adopt setting such time limits would apply to lights that are off due to a power outage. The Commission seeks comment on this analysis.

3. Records of Extinguishment or Improper Functioning of Lights

26. Section 17.49 requires antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights. The Commission proposes to amend this provision by adding a requirement to maintain such records for two years and provide the records to the Commission upon request. The Commission tentatively concludes that this retention period best balances the Commission's need to determine the compliance record against the burden of record retention on antenna structure owners. The Commission seeks comment on this tentative conclusion, and in particular on whether two years is the appropriate retention period. The Commission encourages commenters to provide data regarding the burden this record retention would impose on antenna structure owners, and the Commission invites comment on whether the Commission should eliminate the recordkeeping requirement entirely.

4. Maintenance of Painting

27. Section 17.50 of the rules specifies that antenna structures requiring painting under part 17 shall be cleaned or repainted as often as necessary to maintain good visibility. In their 2004 Biennial Review Comments, PCIA, CTIA and Cingular argue that the Commission needs an unambiguous standard for measuring good visibility, and suggest that the rule be amended to reflect the standard used by the FAA. In particular, PCIA proposes that the Commission amend § 17.50 to require that the "paint on the structure must be within the color tolerance depicted on the FAA's 'In Service Aviation Orange Tolerance Chart' as measured against the base of the tower from a distance of one-quarter mile." Cingular states that the current lack of a standard for "good visibility" "leads to the potential for inconsistent enforcement."

28. The Commission requests comment on whether to amend § 17.50 to specifically provide for use of the FAA's 'In Service Aviation Orange Tolerance Chart' to determine whether a structure needs to be cleaned or repainted. In the field, the Commission's Enforcement Bureau currently determines whether a structure needs to be cleaned or repainted by comparing it to the FAA's In Service Aviation Orange Tolerance Chart at the base of the structure and/or by observing the structure at one-quarter mile distance from the structure. The Commission believes that each of these approaches has certain benefits. On one hand, a close inspection of the tower may provide more information about the condition of the paint (*e.g.,* whether it is flaking) and about the actual color and how closely it matches the required parameters. On the other hand, a view from one-quarter mile distance, although subjective, may closely approximate tower visibility and conspicuity that pilots would encounter and therefore may better ensure that towers are visible. However, a view from a distance may be subject to inconsistencies depending upon such factors as direction, time of day, weather conditions, and silhouetting. Adding a specific reference to the color chart in § 17.50 could provide a more objective standard for gauging the condition of required painting and may provide better guidance for antenna structure owners and promote consistent enforcement. The Commission therefore seeks comment on whether to incorporate such a reference.

29. If the Commission does amend the rules to defer to the In Service Aviation Orange Tolerance Chart, the Commission further seeks comment on whether to compare the FAA's In Service Aviation Orange Tolerance Chart to the tower at a distance of one-quarter mile, as PCIA proposes, or at the base of the tower, as is the Enforcement Bureau's practice. The instructions on the FAA chart direct that "to use the charts place each directly over the surface to be examined." However, a more distant view may be most consistent with the FAA's Advisory Circular on Obstruction Marking and Lighting, which indicates that "the color should be sampled on the upper half of the structure, since weathering is greater there." The Commission seeks comment on which of these methods of using the chart, or both or neither, should be referenced in the rule. The Commission also seeks comment on whether, and if so how, the rule should combine use of the chart with other methods of gauging visibility, as well as any other suggestions on how the rule should be drafted.

C. Other Matters

1. Definitions

30. Section 17.2(a) of the rules defines an "antenna structure" as including "the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon." Section 17.2(c) defines an "antenna structure owner" as the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure. Commenters argue that because the definition of "antenna structure" includes antennas and other appurtenances, the definition of "antenna structure owner" could be read to include the service providers who own these antennas. Commenters therefore urge the Commission to amend its rules to clarify that the obligations of antenna structure owners fall only on the owner of the underlying structure. Specifically, in their comments to the 2004 Biennial Review, PCIA, CTIA and Cingular urge the Commission to revise the definition of antenna structure so that compliance obligations of infrastructure providers and licensed carriers are not ambiguous. PCIA and Cingular both argue that the definition needs to be revised to reinforce Commission decisions that the antenna structure owner is responsible for marking, lighting and notification responsibilities relating to the structure.

31. The Commission has previously made clear that registration responsibilities fall squarely on the antenna structure owners, and not on the licensees or permittees that are merely tenants of the structures. Nonetheless, the Commission agrees that incorporating a more precise definition into its rules would promote clarity for all parties. The Commission therefore proposes amending § 17.2(c) to provide that the antenna structure owner is the owner of "the underlying structure that supports or is intended to support antennas and other appurtenances." The Commission seeks comment on this proposal, including any unintended consequences that may result from this change.

32. The Commission also tentatively concludes that § 17.2(a) should be

amended to clarify both when a structure becomes, and when a structure ceases to be, an "antenna structure" under its rules. Section 303(q) of the Act provides that "[i]n the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled . * * *" Consistent with this provision, the Commission proposes amending § 17.2(a) to provide that a structure will continue to be considered an antenna structure and subject to its part 17 requirements until such time as that structure is dismantled, regardless of whether the structure continues to be used for the transmission and/or receipt of radio energy. Similarly, the Commission believes it is consistent with the intent of § 303(q) that a structure constructed for the primary purpose of transmitting or receiving radio energy be treated as an antenna structure subject to its rules from the time construction begins, regardless of whether the structure immediately is being used for its intended purpose. The Commission therefore proposes amending § 17.2(a) to reflect this tentative conclusion as well. The Commission seeks comment on these proposals. Finally, the Commission notes that the term "antenna structure" is defined in both §§ 1.907 and 17.2(a) of the Commission's rules. The Commission seeks comment on whether these two definitions should be harmonized.

2. Structures Not Requiring Registration

33. Under the Commission's rules, not all antenna structures must be registered with the Commission, only those of certain heights, depending on their location. Despite this limitation, some antenna structure owners have voluntarily registered their structures with the Commission, even though such registration is not required. The Commission seeks comment on whether the rules concerning antenna structures should be enforced against such voluntarily registered structures. In addition, the Commission seeks comment on whether owners of antenna structures that do not require registration should be prohibited from registering their towers, and whether antenna structure owners who have voluntarily registered structures should be required to withdraw their registrations from the Commission's antenna structure database. Such an action could reduce confusion concerning the regulatory status of these structures. The Commission seeks comment on both the benefits and drawbacks to the Commission and the public of keeping voluntarily registered structures in the database, as well as of permitting additional structures to be voluntarily registered. In this regard, the Commission notes that antenna structure owners often register structures that fall below the Commission's height thresholds in order to file an Environmental Assessment and obtain a Finding Of No Significant Impact under the Commission's environmental rules. The Commission invites comment regarding what changes to its environmental processing may be necessary if antenna structure registration under these circumstances were to be limited.

3. Posting of Antenna Structure Registration Number

34. Section 17.4(g) provides: "Except as provided in paragraph (h) of this section, the Antenna Structure Registration [ASR] number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure." In its Petition for Rulemaking, PCIA contends that it is not always possible to post the ASR number so that it is both "readily visible" and "near the base" of the tower. PCIA and Cingular both comment that the Commission's "Posting Guidelines" indicate that in such instances an appropriate place to post the ASR number is "along a perimeter fence" or "at the point of entry of the gate." PCIA recommends amendment of the rule to expressly permit posting of the ASR number at a compound fence or gate. Sprint Nextel, Crown Castle, NAB and Cingular concur.

35. The purpose of § 17.4(g) is to ensure that a member of the general public can identify the structure in the event of a light outage or other air safety hazard and report the problem to the Commission and/or the FAA, as well as to ensure that FCC and FAA personnel can readily identify the structure. As currently written, however, the rule does not require that the ASR number be posted in a place that would be visible to the general public. The Commission therefore proposes to modify § 17.4 to require that antenna structure owners display the ASR number so that it would be visible to a member of the general public who reaches the closest publicly accessible location near the base of the antenna structure. Where two or more separate locations of this nature exist for a single antenna structure, such as two roads from different directions to a mountaintop site, the Commission would require posting the Antenna Structure Registration number at each such location. The Commission tentatively concludes that amending the rule in this manner would both clarify the obligations of antenna structure owners and promote timely remediation when lighting is observed to be malfunctioning or extinguished. The Commission further tentatively concludes that it is unnecessary for the ASR number to be posted both at the base of the tower and at a point that is visible to the general public. The Commission seeks comment on these tentative conclusions, including whether there would be benefits to requiring an additional posting of the ASR number near the base of the tower where that location is not readily visible to the public. The Commission also seeks comment on how the rule should address those situations where two towers having separate ASR numbers may be located within a single fenced area, as well as situations in which an antenna structure is located on a building.

4. Provision of Antenna Structure Registration to Tenants

36. Section 17.4(f) requires that antenna structure owners immediately provide copies of FCC Form 854R (antenna structure registration) to each tenant licensee and permittee. In their Biennial Review comments, PCIA, CTIA and Cingular propose that the Commission eliminate this requirement altogether, and shift the burden to the Commission's licensees and permittees to obtain a copy of the Form 854R from the Commission's Web site. In its Petition for Rulemaking, PCIA specifically recommends that the rule should instead require antenna structure owners to provide tenants with the ASR number or some indication that the ASR has been changed or updated, so that licensees and permittees may obtain relevant Form 845R (antenna structure registration) information from the FCC's ASR Online System. Sprint Nextel, Cingular, Crown Castle and NAB agree, arguing that the requirement to provide paper copies no longer serves any practical purpose and imposes unnecessary costs.

37. The Commission agrees that antenna structure owners should no longer be required to provide paper copies of the Form 854R to their tenants, as the relevant information and access to the form can ordinarily be provided at least as effectively, and more economically, by electronic means. However, the Commission believes it is essential that the tenant licensees and permittees know when the antenna structure has been registered, and how to access the registration form. The

Commission therefore proposes to amend the relevant rules to allow antenna structure owners, as an alternative to providing a copy of Form 854R, to notify tenant licensees and permittees that the structure has been registered, and give the tenant licensees and permittees the antenna structure's registration number along with the link for the Commission's antenna structure registration Web site. This notification may be done using paper mail or electronic mail. The Commission seeks comment on this proposal.

5. Notification of Construction or Dismantlement

38. Section 17.57 requires that antenna structure owners notify the Commission within 24 hours of construction or dismantlement of an antenna structure, and immediately for changes in height or ownership. In its Biennial Review comments, PCIA recommends changing § 17.57 to harmonize the timing for these requirements with FAA rules. In its Petition for Rulemaking, PCIA indicates specifically that its proposal in this regard would be to change from 24 hours to five days the time for notification of construction or dismantlement, and to change from "immediately" to five days the time for notification of changes in height or ownership. Cingular and NAB support the concept of harmonization of the Commission's rules with FAA rules regarding notification of construction and/or dismantlement.

39. The Commission tentatively concludes that the Commission should not adopt these proposed changes. Initially, the Commission notes that neither PCIA nor Cingular cites the relevant FAA requirements or explains why they are appropriate for the Commission's purposes. In any event, these FCC notification requirements promote accuracy of the Commission's information, and it would not appear to create any conflict for them to be stricter than the FAA's. Given the simple nature of notification filings, commenters have not shown that the time frames are unreasonably burdensome. The Commission seeks comment on this issue, including discussion of any burdens that the existing rule may impose.

6. Facilities on Federal Land

40. Section 17.58 of the Commission's rules provides that any application proposing new or modified transmitting facilities to be located on land under the jurisdiction of the U.S. Forest Service or the Bureau of Land Management shall include a statement that the facilities will be so located, and that the applicant shall comply with the requirements of § 1.70 of the rules. This rule was adopted in 1967, along with former § 1.70, which prescribed procedures for handling applications involving the use of certain lands and reservations under the jurisdiction of the U.S. Government. Those procedures were abolished in 1977 at the request of the Department of Agriculture and the Department of the Interior, at which point that iteration of § 1.70 was deleted. As § 17.58 was intended to promote compliance with procedures that no longer exist, the Commission now proposes to delete § 17.58. The Commission seeks comment on this proposal, including whether there is any reason to retain a requirement that the Commission be notified of facilities on Forest Service or Bureau of Land Management lands.

III. Conclusion

41. By this NPRM, the Commission proposes various clarifications and amendments to the part 17 rules, in order to allow antenna structure owners to more efficiently and cost effectively ensure their compliance with those rules. The Commission seeks comment on these proposals.

IV. Procedural Matters

A. Initial Regulatory Flexibility Analysis

42. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 603, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on this IRFA. Comments must be specifically identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in Section V.A. of the item. 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 Proposed Rules

43. Section 303(q) of the Communications Act vests in the Commission the authority to require painting and/or lighting of radio towers that may constitute a hazard to air navigation. Part 17 of the Commission's rules sets forth procedures for identifying those antenna structures that might affect air navigation, consistent with recommendations made by the Federal Aviation Administration (FAA), and for registering such structures with the Commission. The Commission requires owners of antenna structures to register with the Commission those structures that meet the registration criteria and to exercise primary responsibility for the prescribed painting and lighting. The proposed rules seek to achieve the best framework to continue to fulfill the Commission's statutory responsibility to require antenna structure owners, registrants and Commission licensees to do whatever is necessary to prevent antenna structures from being hazards or menaces to air navigation.

44. The Commission proposes to amend § 17.4(a) and §§ 17.21, 17.22 (redesignated as § 17.21(c)), and 17.23 and to delete § 17.17(a) of the Commission's rules regarding antenna structure registration and painting and lighting specifications. The Commission also proposes conforming edits to §§ 1.61(a)(5) and 17.1(b). These proposed changes are intended to clarify the relationship between the Commission's rules and procedures and those of the FAA and to ensure continued consistency in those rules and procedures. The Commission also asks whether to amend § 17.17(b) (redesignated as § 17.24) by providing that a revised FAA Circular does not impose new obligations on already-approved antenna structures.

45. In order to clarify the obligations of antenna structure owners and to conform the Commission's regulations to Commission and FAA practice, the Commission proposes adding new sections to § 17.4 specifying that any change in height of one foot or greater, any change in coordinates of one second or greater, or any change in marking and lighting specifications requires prior approval from the FAA and the Commission. The Commission also proposes to consider whether to specify accuracy standards or survey methods in order to ensure consistency of data.

46. The Commission proposes to delete §§ 17.7 and 17.14 of the Commission's rules, which are restatements of FAA rules, and to substitute cross-references to relevant FAA rules in § 17.4 of the Commission's rules. This change could reduce the risk of confusion in the event the FAA were to change its criteria.

47. The Commission proposes to amend its rules governing inspection and maintenance of lighting by: (1) Amending § 17.47 to eliminate or reduce requirements to perform

inspections of lighting and light monitoring systems; (2) amending § 17.48(a) to require antenna structure owners to provide continuously active notice to the FAA of lighting outages; and (3) deleting vague references to timely repair timeframes in §§ 17.48(b) and 17.56(a). The Commission proposes to consider whether to eliminate § 17.47 in its entirety or to retain modified inspection requirements and whether to substitute more specific repair time limitations. These proposals are intended to relieve unnecessary burdens and reduce confusion while ensuring that aircraft navigation safety is best protected.

48. The Commission proposes to delete §§ 17.45, 17.51, and 17.56(b), which set forth specific requirements for exhibiting and maintaining lights, because they are unnecessary and may create ambiguity in cases of conflict with FAA specifications. This change could reduce the risk of confusion.

49. Section 17.49 requires antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights. The Commission proposes to add a requirement to maintain such records for two years and provide the records to the Commission upon request in order to balance the Commission's need to determine the compliance record against the burden of record retention on antenna structure owners.

50. The Commission is considering a proposal to amend § 17.50 to require use of the FAA's 'In Service Aviation Orange Tolerance Chart' to determine whether a structure needs to be cleaned or repainted and to specify how the chart is to be used. These changes may provide more objective standards for gauging visibility.

51. The Commission proposes to amend § 17.2(a) of the Commission's rules to clarify both when a structure becomes, and when a structure ceases to be, an "antenna structure" under our rules. The Commission also proposes to amend § 17.2(c) of the Commission's rules to clarify that the obligations of an "antenna structure owner" fall only on the owner of the underlying structure, and not on tenants, thus promoting clarity for all parties.

52. The Commission also proposes to consider whether the rules concerning antenna structures should be enforced against voluntarily registered structures, whether owners of antenna structures that do not require registration should be prohibited from registering their towers, and whether antenna structure owners who have voluntarily registered structures should be required to withdraw their registrations from the Commission's antenna structure database. Such action could reduce confusion by clarifying the regulatory status of these structures.

53. The Commission proposes to modify § 17.4(g) to require that antenna structure owners display the Antenna Structure Registration (ASR) number so that it would be visible to a member of the general public who reaches the closest publicly accessible location near each point of access to the antenna structure. The Commission further proposes to delete the requirement that the ASR number be posted near the base of the antenna structure. The Commission tentatively concludes that amending the rule in this manner would clarify the obligations of antenna structure owners, promote timely remediation when lighting is observed to be malfunctioning or extinguished, and eliminate unnecessary postings.

54. Section 17.4(f) requires that antenna structure owners immediately provide copies of FCC Form 854R (antenna structure registration) to each tenant licensee and permittee. Sections 17.4(e) and 17.6(c) impose a similar requirement on the first licensee in cases where the antenna structure owner is unable to file Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988. The Commission proposes to amend these rules to allow the alternative of providing a link to the Commission's antenna structure registration Web site via paper or electronic mail.

55. The Commission proposes to delete § 17.58, which was intended to promote compliance with procedures that are now obsolete. This change would streamline the antenna structure registration process.

2. Legal Basis

56. The legal basis for any action that may be taken pursuant to the Notice is contained in Sections 4(i), 4(j), 11, and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) through (j), 161, 303(q).

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

57. 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 proposed rules.[1] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[2] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[3] 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 Small Business Administration ("SBA").[4]

58. The Notice proposes rule changes that would impose requirements on a large number of entities relating to the registration of and maintenance of painting and lighting on antenna structures. Due to the number and diversity of owners of antenna structures and other responsible parties, including small entities that are Commission licensees as well as non-licensee tower companies, the Commission classifies and quantifies them in the remainder of this section.

59. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)."[5] Under that SBA category, a business is small if it has 1,500 or fewer employees.[6] The census category of "Cellular and Other Wireless Telecommunications" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)". However, since currently available data was gathered when "Cellular and Other Wireless Telecommunications" was the relevant category, earlier Census Bureau data collected under the category of "Cellular and Other Wireless Telecommunications" will be used here. Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[7] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or

[1] 5 U.S.C. 604(a)(3).

[2] 5 U.S.C. 601(6).

[3] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[4] 15 U.S.C. 632.

[5] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517210.

[6] *Id.*

[7] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

more.[8] Thus, under this category and size standard, the majority of firms can be considered small.

60. *Broadband Personal Communications Service.* The broadband Personal Communications Service (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.[9] 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.[10] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[11] 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 C Block 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.[12] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[13] On January 26, 2001, the Commission completed the auction of 422 C and F Block PCS licenses in Auction 35.[14] 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.

61. *Narrowband Personal Communications Service.* The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994, and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[15] Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses.[16] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.*[17] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[18] A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[19] The SBA has approved these small business size standards.[20] A third auction commenced on October 3, 2001, and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses.[21] Three of these claimed status as a small or very small entity and won 311 licenses.

62. *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.[22] 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.[23] The SBA has approved these small business size standards for the 900 MHz Service.[24] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 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 began on October 28, 1997, and was completed on December 8, 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.[25] A second auction for the 800 MHz band was held on January 10, 2002, and closed on January 17, 2002, and included 23 licenses. One bidder claiming small business status won five licenses.[26]

63. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders that 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 on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed "small business" status and won 129 licenses. Thus, combining all

[8] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[9] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order,* 11 FCC Rcd 7824, 7850–7852 paras. 57–60 (1996); *see also* 47 CFR 24.720(b).

[10] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order,* 11 FCC Rcd 7824, 7852 para. 60.

[11] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[12] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. January 14, 1997).

[13] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice,* 14 FCC Rcd 6688 (WTB 1999).

[14] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 2339 (2001).

[15] Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,* 10 FCC Rcd 175, 196 para. 46 (1994).

[16] *See* "Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674," *Public Notice,* PNWL 94–004 (rel. Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787," *Public Notice,* PNWL 94–27 (rel. Nov. 9, 1994).

[17] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making,* 15 FCC Rcd 10456, 10476 para. 40 (2000).

[18] *Id.*

[19] *Id.*

[20] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[21] *See* "Narrowband PCS Auction Closes," *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[22] 47 CFR 90.814(b)(1).

[23] *Id.*

[24] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

[25] *See* "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[26] *See* "Multi-Radio Service Auction Closes," *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

64. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does 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 $3 million or $15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed, *supra*). One firm has over $15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

65. *Advanced Wireless Services.* The *Report and Order* adopting service rules for Advanced Wireless Services (AWS) in the 1710–1755 and 2110–2155 MHz bands [27] affected applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. As discussed in the *AWS–1 Service Rules Order,* the Commission does not know precisely the type of service that a licensee in these bands might seek to provide.[28] Nonetheless, the Commission anticipates that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the *AWS–1 Service Rules Order* adopted the same small business size standards that the Commission adopted for the broadband PCS service. In particular, the Order defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The Order also provided small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent. In the auction held August 9 through September 18, 2006, 55% of the winning bidders were small businesses (57 of 104).[29]

66. *Rural Radiotelephone Service.* The Commission uses the SBA small business size standard applicable to Wireless Telecommunications Carriers (except satellite), *i.e.,* an entity employing no more than 1,500 persons.[30] 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 adopted herein.

67. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million or less for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million or less for each of the three preceding years.[31] The SBA has approved these definitions.[32] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997, and closed on April 25, 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.

68. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz Band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. Note that the census category of "Cellular and Other Wireless Telecommunications" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)". This category provides that a small business is a wireless company employing no more than 1,500 persons.[33] However, since currently available data was gathered when "Cellular and Other Wireless Telecommunications" was the relevant category, earlier Census Bureau data collected under the category of "Cellular and Other Wireless Telecommunications" will be used here. Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[34] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[35] Therefore, the majority of firms can be considered small.

69. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[36] This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[37] A "very small business" is defined as an entity that, together with

[27] Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02–353, 18 FCC Rcd 25162 (2003) (*AWS–1 Service Rules Order*).

[28] *See id.,* at para. 144.

[29] *See* News Release "Statements of FCC Chairman and Commissioners Before the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, U.S. House of Representatives", Chairman Martin's Written Statement, Exhibit 3, *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281580A2.pdf,* (4/15/2008).

[30] 13 CFR 121.201, NAICS code 517210.

[31] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order,* 12 FCC Rcd 10785, 10879 para. 194 (1997).

[32] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[33] 13 CFR 121.201, NAICS code 517210.

[34] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[35] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1,000 employees or more."

[36] Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order,* 12 FCC Rcd 10943, 11068–70 paras. 291–295 (1997).

[37] *Id.* at 11068 para. 291.

its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[38] The SBA has approved these small size standards.[39] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[40] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[41] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[42] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[43]

70. *700 MHz Guard Bands Licenses.* In the *700 MHz Guard Bands 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.[44] 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.[45] 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.[46] SBA approval of these definitions is not required.[47] An auction of 52 Major Economic Area (MEA) licenses for each of two spectrum blocks commenced on September 6, 2000, and closed on September 21, 2000.[48] 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 remaining 700 MHz Guard Bands licenses commenced on February 13, 2001, and closed on February 21, 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.[49] Subsequently, in the *700 MHz Second Report and Order,* the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel).[50] A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks.[51] Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands.

71. *700 MHz Band Commercial Licenses.* There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698–757, 758–763, 776–787, and 788–793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) "Small business," which is defined as an entity with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years; and (2) "very small business," which is defined as an entity with attributed average annual gross revenues that do not exceed $15 million for the preceding three years.[52] In Block C of the Lower 700 MHz Band (710–716 MHz and 740–746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: an "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.[53] The SBA has approved these small size standards.[54]

72. An auction of 740 licenses for Blocks C (710–716 MHz and 740–746 MHz) and D (716–722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002. 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.[55] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: Five EAG licenses and 251 CMA licenses.[56] 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.[57]

73. The remaining 62 megahertz of commercial spectrum was auctioned on January 24 through March 18, 2008. As explained above, bidding credits for all of these licenses were available to "small businesses" and "very small businesses." Auction 73 concluded with 1,090 provisionally winning bids covering 1,091 licenses and totaling $19,592,420,000. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. The provisionally winning bid for the D Block license, however, did not meet the applicable reserve price and thus did not become a winning bid. Approximately 55 small businesses had

[38] *Id.*

[39] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[40] *See generally* "220 MHz Service Auction Closes," *Public Notice,* 14 FCC Rcd 605 (WTB 1998).

[41] *See* "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice,* 14 FCC Rcd 1085 (WTB 1999).

[42] *See* "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice,* 14 FCC Rcd 11218 (WTB 1999).

[43] *See* "Multi-Radio Service Auction Closes," *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[44] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299 (2000).

[45] *Id.* at 5343 para. 108.

[46] *Id.*

[47] *Id.* At 5343 para. 108 n.246 (for the 746–764 MHz and 776–704 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

[48] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice,* 15 FCC Rcd 18026 (2000).

[49] *See* "700 MHz Guard Bands Auctions Closes: Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[50] *See* In the Matter of Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket 06–150, *Second Report and Order,* 22 FCC Rcd 15289, 15339–15344 paras. 118–134 (2007) (*700 MHz Second Report and Order*).

[51] *Id.*

[52] *See* Auction of 700 MHz Band Licenses Scheduled for January 24, 2008, AU Docket No. 07–157, *Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76,* DA 07–4171 at para. 70 (WTB rel. Oct. 5, 2007); Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022, 1087–88 (2002).

[53] *Id.* at 1088.

[54] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

[55] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[56] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[57] *Id.*

winning bids.[58] Currently, the 10 remaining megahertz associated with the D block have not yet been assigned.[59]

74. *Private and Common Carrier Paging.* The SBA had developed a small business size standard for wireless firms within the broad economic census category of "Paging".[60] However, the census category "Paging" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)."[61] Under that SBA category, a business is small if it has 1,500 or fewer employees.[62] However, since currently available data was gathered when "Paging" was the relevant category, earlier Census Bureau data collected under the category of "Paging" will be used here. Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[63] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[64] Thus, under this category, the majority of firms can be considered small.

75. In the *Paging Third Report and Order,* the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[65] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 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 $3 million for the preceding three years.[66] The SBA has approved these small business size standards.[67] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[68] Of the 2,499 licenses auctioned, 985 were sold.[69] Fifty-seven companies claiming small business status won 440 licenses.[70] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[71] 132 companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[72] Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the Commission's *Trends in Telephone Service,* 375 such carriers reported that they were engaged in the provision of either paging or "messaging service."[73] Of these, the Commission estimates that 370 are small, under the SBA-approved small business size standard.[74] The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

76. *Air-Ground Radiotelephone Service.* The Commission uses the SBA definition of small business size applicable to Wireless Telecommunications Carriers (except satellite), *i.e.,* an entity employing no more than 1,500 persons.[75] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

77. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. 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.[76] Most applicants for recreational licenses are individuals. Approximately 47,750 ship station licensees, who hold approximately 56,250 ship station licenses, and approximately 27,700 aircraft station licensees, who hold approximately 32,000 aircraft station licenses, operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 75,450 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million.[77] There are approximately 6,100 Marine Coast Service licenses, held by approximately 3,600 licensees, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

78. *Fixed Microwave Services.* Fixed microwave services include common

[58] *See* "Auction of 700 MHz Band Licenses Closes," *Public Notice,* 23 FCC Rcd 4572 (WTB 2008).

[59] *See* fcc.gov Web site at *http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73.*

[60] 13 CFR 121.201, NAICS code 517211.

[61] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517210.

[62] *Id.*

[63] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[64] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1,000 employees or more."

[65] *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* PR Docket No. 89–552, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[66] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (SBA Dec. 2, 1998 Letter).

[67] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98–107 (1999).

[68] *Id.* at 10085, para. 98.

[69] *See* "929 and 931 MHz Paging Auction Closes," *Public Notice,* 15 FCC Rcd 4858 (WTB 2000).

[70] *See id.*

[71] *See* "Lower and Upper Paging Band Auction Closes," *Public Notice,* 16 FCC Rcd 21821 (WTB 2002).

[72] *See* "Lower and Upper Paging Bands Auction Closes," *Public Notice,* 18 FCC Rcd 11154 (WTB 2003).

[73] *See Trends in Telephone Service,* Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers by Size of Business) (June 2005).

[74] 13 CFR 121.201, NAICS code 517210.

[75] *Id.*

[76] *Id.*

[77] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

carrier,[78] private operational-fixed,[79] and broadcast auxiliary radio services.[80] At present, there are approximately 31,428 common carrier fixed licensees and 79,732 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 provides that a small business is a wireless company employing no more than 1,500 persons.[81] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is 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 up to 31,428 common carrier fixed licensees and up to 79,732 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 adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

79. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[82] There is presently one licensee in this service. The Commission uses the SBA definition applicable to Wireless Telecommunications Carriers (except satellite), *i.e.,* an entity employing no more than 1,500 persons.[83] The Commission is unable to estimate at this time the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this analysis, that the licensee is a small entity, as that term is defined by the SBA.

80. *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.[84] 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.[85] The SBA has approved these small business size standards.[86] The auction of the 2,173 39 GHz licenses began on April 12, 2000, and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

81. *Broadband Radio Service and Educational Broadband Service.* The Broadband Radio Service ("BRS"), formerly known as the Multipoint Distribution Service ("MDS"),[87] and the Educational Broadband Service ("EBS"), formerly known as the Instructional Television Fixed Service ("ITFS"),[88] use 2 GHz band frequencies to transmit video programming and provide broadband services to residential subscribers.[89] These services, collectively referred to as "wireless cable," were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.[90] The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. The SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to MDS and ITFS.[91] Note that the census category of "Cable and Other Program Distribution" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)." This category provides that a small business is a wireless company employing no more than 1,500 persons.[92] However, since currently available data was gathered when "Cable and Other Program Distribution" was the relevant category, earlier Census Bureau data collected under the category of "Cable and Other Program Distribution" will be used here. Other standards also apply, as described.

82. The Commission has defined small MDS (now BRS) entities in the context of Commission license auctions. In the 1996 MDS auction,[93] the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[94] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[95] In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are hundreds of MDS licensees and wireless cable operators that did not receive their

[78] *See* 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[79] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[80] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[81] 13 CFR 121.201, NAICS code 517210.

[82] This service is governed by Subpart I of Part 22 of the Commission's rules. *See* 47 CFR 22.1001 through 22.1037.

[83] 13 CFR 121.201, NAICS code 517210.

[84] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, Report and Order, 63 FR 6079 (Feb. 6, 1998).

[85] *Id.*

[86] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

[87] *See* 47 CFR part 21, subpart K; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Part 1 of the Commission's Rules—Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) ("*MDS/ITFS Order*").

[88] *See* 47 CFR part 74, subpart I; *MDS/ITFS Order,* 19 FCC Rcd 14165 (2004).

[89] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report,* 20 FCC Rcd 2507, 2565 para. 131 (2006) ("*2006 Cable Competition Report*").

[90] *Id.*

[91] 13 CFR 121.201, NAICS code 515210.

[92] 13 CFR 121.201, NAICS code 517210.

[93] MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 Bidders won 493 licenses.)

[94] 47 CFR 21.961(b)(1).

[95] *See ITFS Order,* 10 FCC Rcd at 9589.

licenses as a result of the MDS auction and that fall under the former SBA small business size standard for Cable and Other Program Distribution.[96] Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 of these small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

83. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).[97] The Commission estimates that there are currently 2,452 EBS licenses, held by 1,524 EBS licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,424 EBS licensees are small entities.

84. *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.[98] The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 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.[99] 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.[100] The SBA has approved these small business size standards in the context of LMDS auctions.[101] 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. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders.

85. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas ("MSAs").[102] Of the 594 licenses, 567 were won by 167 entities qualifying as small businesses. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[103] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[104] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[105] The SBA has approved of these definitions.[106] A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, the Commission assumes for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

86. *24 GHz—Incumbent 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 was formerly that of "Cellular and Other Wireless Telecommunications" companies. Note that the census category of "Cellular and Other Wireless Telecommunications" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)." This category provides that a small business is a wireless company employing no more than 1,500 persons.[107] However, since currently available data was gathered when "Cellular and Other Wireless Telecommunications" was the relevant category, earlier Census Bureau data collected under the category of "Cellular and Other Wireless Telecommunications" will be used here. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[108] 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. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

87. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[109] "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[110] The SBA has approved these small business size standards.[111] These size standards will apply to the future auction, if held.

[96] Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "Cable and Other Program Distribution" (annual receipts of $13.5 million or less). *See* 13 CFR 121.201, NAICS code 515210.

[97] In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4) through (6). The Commission does not collect annual revenue data on EBS licensees.

[98] *See Local Multipoint Distribution Service, Second Report and Order,* 12 FCC Rcd 12545 (1997).

[99] *Id.*

[100] *See id.*

[101] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[102] *See* "*Interactive Video and Data Service (IVDS) Applications Accepted for Filing,*" *Public Notice,* 9 FCC Rcd 6227 (1994).

[103] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* PP Docket No. 93–253, Fourth Report and Order, 9 FCC Rcd 2330 (1994). 59 FR 24947 (May 13, 1994).

[104] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 64 FR 59656 (Nov. 3, 1999).

[105] *Id.*

[106] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) ("Alvarez to Phythyon Letter 1998").

[107] 13 CFR 121.201, NAICS code 517210.

[108] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[109] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967 (2000); *see also* 47 CFR 101.538(a)(2).

[110] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Report and Order,* 15 FCC Rcd 16934, 16967 (2000); *see also* 47 CFR 101.538(a)(1).

[111] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division,

Continued

88. *Private Land Mobile Radio.* Private Land Mobile Radio ("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. The SBA has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. Therefore, solely for purposes of citing to currently available data, the Commission will use a superseded SBA definition applicable to Cellular and Other Wireless Telecommunications. Note that the census category of "Cellular and Other Wireless Telecommunications" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)." This category provides that a small business is a wireless company employing no more than 1,500 persons.[112] However, since currently available data was gathered when "Cellular and Other Wireless Telecommunications" was the relevant category, earlier Census Bureau data collected under the category of "Cellular and Other Wireless Telecommunications" will be used here.

89. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs [113] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

90. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 44,083 licensees within these services. Governmental entities [114] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[115]

91. *Location and Monitoring Service ("LMS").* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million.[116] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million.[117] These definitions have been approved by the SBA.[118] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. The Commission concludes that the number of LMS licensees affected by this *Report and Order* includes these four entities. The Commission cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions. In addition, there are numerous site-by-site non-multilateration licensees, and the Commission does not know how many of these providers have annual revenues of no more than $15 million. The Commission assumes, for purposes of this analysis, that all of these licenses are held by small entities, as that small business size standard is established by the SBA.

92. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licensees as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[119] "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[120] The SBA has approved of these definitions.[121] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 EA market area MAS authorizations.

93. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate than the Commission's definition. The applicable definition of small entity in this instance appears to be the "Wireless Telecommunications Carriers (except satellite)" definition under the SBA rules.[122] Under that SBA category, a business is small if it has 1,500 or fewer employees.[123] The Commission's licensing database indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service.

94. *Television Broadcasting.* The proposed rules and policies apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $14 million in annual receipts.[124] Business concerns included in this industry are those "primarily engaged in broadcasting

Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

[112] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517210.

[113] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at paragraph 116.

[114] 47 CFR 1.1162.

[115] 5 U.S.C. 601(5).

[116] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order,* 13 FCC Rcd 15182 para. 20 (1998); *see also* 47 CFR 90.1103.

[117] *Id.*

[118] *See* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Feb. 22, 1999).

[119] *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order,* 15 FCC Rcd 11956, 12008 para. 123 (2000).

[120] *Id.*

[121] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

[122] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517210.

[123] *Id.*

[124] *See* 13 CFR 121.201, NAICS Code 515120.

images together with sound."[125] The Commission has estimated the number of licensed commercial television stations to be 1,392.[126] According to Commission staff review of the BIA/Kelsey, MAPro Television Database ("BIA") as of April 7, 2010, about 1,015 of an estimated 1,380 commercial television stations[127] (or about 74 percent) have revenues of $14 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed non-commercial educational (NCE) television stations to be 390.[128] The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[129] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

95. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

96. *Class A TV, LPTV, and TV translator stations.* The rules and policies proposed in this Notice include licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $14 million in annual receipts.[130] Currently, there are approximately 537 licensed Class A stations, 2,386 licensed LPTV stations, and 4,359 licensed TV translators.[131] Given the nature of these services, the Commission will presume that all of these licensees qualify as small entities under the SBA definition. The Commission notes, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. The Commission does not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $14 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

97. *Radio Broadcasting.* The proposed rules and policies could apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts.[132] Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public.[133] According to Commission staff review of the BIA/Kelsey Master Access Radio Analyzer Database on April 7, 2010, about 10,900 of 11,200 commercial radio stations (or about 97 percent) have revenues of $7 million or less and thus qualify as small entities under the SBA definition. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[134] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

98. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimates of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

99. *FM translator stations and low power FM stations.* The proposed rules and policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts.[135] Currently, there are approximately 6,155 licensed FM translator and booster stations and 864 licensed LPFM stations.[136] Given the nature of these services, the Commission will presume that all of

[125] *Id.* This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[126] *See* News Release, "Broadcast Station Totals as of December 31, 2009," 2010 WL 676084 (F.C.C.) (dated Feb. 26, 2010) ("*Broadcast Station Totals*"); also available at *http://www.fcc.gov/mb/*.

[127] The Commission recognizes that this total differs slightly from that contained in *Broadcast Station Totals, supra* note 446; however, the Commission is using BIA's estimate for purposes of this revenue comparison.

[128] *See Broadcast Station Totals, supra* note 126.

[129] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

[130] *See* 13 CFR 121.201, NAICS Code 515120.

[131] *See Broadcast Station Totals, supra* note 126.

[132] *See* 13 CFR 121.201, NAICS Code 515112.

[133] *Id.*

[134] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 121.103(a)(1).

[135] *See* 13 CFR 121.201, NAICS Code 515112.

[136] *See News Release,* "Broadcast Station Totals as of December 31, 2009" (rel. Feb. 26, 2010) (*http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC–296538A1.pdf269784A1.doc*).

these licensees qualify as small entities under the SBA definition.

100. *Cable Television Systems.* The proposed rules and policies could affect cable television systems. Cable television systems fall within the SBA standard for Wired Telecommunication Carriers, and in this category a business is small if it has 1500 or fewer employees.[137] This category includes, among others, cable operators, direct broadcast satellite services, fixed-satellite services, home satellite dish services, multipoint distribution services, multichannel multipoint distribution service, Instructional Television Fixed Service, local multipoint distribution service, satellite master antenna television systems, and open video systems.[138] Since currently available data was gathered when "Cable and Other Program Distribution" was the relevant category, earlier Census Bureau data collected under the category of "Cable and Other Program Distribution" will be used here. According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue.[139] Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. The Commission addresses below each service individually to provide a more precise estimate of small entities.

101. *Cable System Operators (Rate Regulation Standard).* The Commission has 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.[140] As of 2008, out of 814 [141] cable operators all but 10, that is 804, qualify as small cable companies under this standard.[142] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[143] Current Commission records show 6000 cable systems. Of these 726 have 20,000 subscribers or more, based on the same records. The Commission estimates that there are 5,000 small systems based upon this standard.

102. *Cable System Operators (Telecom Act Standard).* 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." [144] There are approximately 63.7 million cable subscribers in the United States today.[145] Accordingly, an operator serving fewer than 637,000 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.[146] Based on available data, the Commission finds that the number of cable operators serving 637,000 subscribers or less is also 804.[147] The Commission notes that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[148] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

103. *Satellite Telecommunications.* 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." [149] The category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[150] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[151] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[152] Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

104. *All Other Telecommunications.* Satellite-related businesses within this category include "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." [153] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[154] Of this total, 303

[137] 13 CFR 121.201 (NAICS Code 517110). This NAICS Code applies to all services listed in this paragraph.

[138] Those MVPDs relying primarily or exclusively on satellite transmission could also be considered to fall under the "Satellite Telecommunications" category. 13 CFR 121.201 (NAICS Code 517410).

[139] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series—Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of $10 million was used to estimate the number of small business firms because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $1412.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[140] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *See* Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[141] Cable MSO Ownership, A Geographical Analysis, 2009 Edition, 14–31, SNL Kagan (June 2009).

[142] *Id.* at 12.

[143] 47 CFR 76.901(c).

[144] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.).

[145] *See* Cable TV Investor: Deals & Finance, No. 655, SNL Kagan, March 31, 2009, at 6.

[146] 47 CFR 76.901(f); *see* Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[147] Cable MSO Ownership at 12.

[148] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to Section 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

[149] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[150] 13 CFR 121.201, NAICS code 517410.

[151] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[152] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[153] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[154] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and

firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[155] Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by its action.

105. *Non-Licensee Tower Owners.* The Commission's rules require that any entity proposing to construct an antenna structure over 200 feet or within the glide slope of an airport must register the antenna structure with the Commission on FCC Form 854.[156] Thus, non-licensee tower owners may be subject to any new or additional requirements adopted in this proceeding. As of April 14, 2010, there were 103,444 registration records in a 'Constructed' status and 13,291 registration records in a 'Granted, Not Constructed' status in the Antenna Structure Registration (ASR) database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which the Commission can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.[157] In addition, the Commission does not keep data on businesses with annual revenue over $25 million. Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, the Commission is unable to estimate the number of non-licensee tower owners that are small entities. However, because these regulations impact tower owners, the Commission is choosing a category related to our jurisdiction because of the nexus between our regulatory function and telecommunications with respect to towers. The Commission will assume that nearly all non-licensee tower companies are small businesses under the SBA's definition for "All Other Telecommunications."[158]

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

106. This NPRM proposes to amend § 17.4(g) by requiring that the Antenna Structure Registration Number be displayed so that it is conspicuously visible and legible from every point of ingress/egress to the publicly accessible area nearest the base of the antenna structure, instead of only near the base of the structure as before. If § 17.4(g) is amended, the owner of the structure would have to display the Antenna Structure Registration Number so that it is conspicuously visible and legible from potentially multiple locations near the base of the antenna structure instead of only at one location.

107. The NPRM proposes to amend § 17.48 by requiring antenna structure owners to provide continuously active notice to the FAA of lighting outages to allow the FAA to timely maintain Notices to Airmen (NOTAMs) or issue new NOTAMs, as necessary. Specifically, if the lights cannot be repaired within 15 days, the owner shall notify the FAA to extend the outage date and report a return to service date. The owner will repeat this process every 15 days until the lights are repaired. If the amendment to § 17.48 is adopted, the owner of the structure would have to provide continuously active notice to the FAA of lighting outages, instead of the one time notice currently required.

108. Although § 17.49 of the rules requires antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights, it does not currently specify how long the record should be kept or what is to be done with it. The Notice proposes that the record be kept for two years and that it be provided to the Commission upon request. If adopted, antenna structure owners would be required to keep their records for two years and provide them to the Commission upon request.

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

109. The Commission proposes to amend § 17.4(a) and §§ 17.21, 17.22 (redesignated as § 17.21(c)), and 17.23 and delete § 17.17(a) of the Commission's rules regarding antenna structure registration and painting and lighting specifications. The Commission also proposes conforming edits to §§ 1.61(a)(5) and 17.1(b). These proposed changes are intended both to promote aircraft navigation safety and also to reduce regulatory burdens on small entities by clarifying the relationship between the Commission's rules and procedures and those of the FAA and ensuring continued consistency in those rules and procedures. The Commission asks commenters to suggest alternatives that may further reduce the impact on small entities while achieving the above intended goals. The Commission specifically seeks comment on whether to further reduce regulatory burdens on small entities by amending § 17.17(b) (redesignated as § 17.24) to provide that a revised FAA Circular does not impose new obligations on already-approved antenna structures. The Commission seeks comment on whether such deregulatory action would unduly limit the Commission's flexibility and whether it would afford appropriate deference to the FAA's expertise and how possible alternatives could further lessen the burden on small businesses while achieving these goals.

110. In order to clarify the obligations of antenna structure owners and conform the Commission's regulations to Commission and FAA practice, the Commission proposes adding new sections to § 17.4 specifying that any change in height of one foot or greater, any change in coordinates of one second or greater, or any change in marking and lighting specifications requires prior approval from the FAA and the Commission. These proposed changes are intended both to promote aircraft navigation safety and to ease regulatory burdens by streamlining regulations and reducing confusion. The Commission also proposes to consider whether to specify accuracy standards or survey methods in order to ensure consistency of data. The Commission seeks to hear about alternative rules that would achieve the same goals while reducing burdens to small business.

111. The Commission proposes to delete §§ 17.7 and 17.14 of the Commission's rules, which are restatements of FAA rules, and to substitute cross-references to relevant FAA rules in § 17.4 of the Commission's rules. This change could ease burdens on regulated entities, including small businesses, by reducing the risk of confusion in the event the FAA were to change its criteria. The Commission seeks any alternatives to these proposed changes that would further reduce burdens on small business while achieving these goals.

112. The Commission proposes to amend its rules governing inspection and maintenance of lighting by: (1) Amending § 17.47 to eliminate or reduce requirements to perform inspections of lighting and light monitoring systems; (2) amending § 17.48(a) to require antenna structure owners to provide continuously active notice to the FAA of lighting outages; and (3) deleting vague references to timely repair timeframes in §§ 17.48(b) and 17.56(a). The Commission seeks to

Firm Size Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[155] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[156] 47 CFR 17.4(a), 17.7(a).

[157] The Commission notes, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

[158] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517919. Under this category, a business is small if it has 1,500 or fewer employees.

receive suggestions as to possible alternatives in this area that would best balance the goal of eliminating unnecessary regulatory burdens with the imperative to preserve aircraft navigation safety, while reducing the burden on small entities.

113. The Commission proposes to delete §§ 17.45, 17.51, and 17.56(b), which set forth specific requirements for exhibiting and maintaining lights, because they are unnecessary and may create ambiguity in cases of conflict with FAA specifications. These proposed changes are intended both to promote aircraft navigation safety and to ease regulatory burdens on all regulated entities by streamlining regulations and reducing confusion. The Commission determined not to propose an exception to lighting requirements where lights are extinguished due to a loss of power beyond the owner's control because such an exception appears inconsistent with aircraft navigation safety. The Commission seeks alternative proposals, if any such proposals would reduce the burden on small entities.

114. § 17.49 requires antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights. The Commission proposes to add a requirement to maintain such records for two years and provide the records to the Commission upon request in order to balance the Commission's need to determine the compliance record against the burden of record retention on antenna structure owners. The Commission tentatively concludes that this proposal best balances the Commission's need for a compliance record against the burden of record retention. The Commission seeks to receive alternative proposals based on data regarding the burden this record retention would impose on antenna structure owners, including the alternative of eliminating the recordkeeping requirement entirely. Such alternative proposals should address the issue of reducing burdens on small business.

115. The Commission requests comment on whether to amend § 17.50 to require use of the FAA's "In Service Aviation Orange Tolerance Chart" to determine whether a structure needs to be cleaned or repainted and to specify how the chart is to be used. These changes may provide more objective standards for gauging visibility. The Commission seeks alternative proposals that would achieve this goal while further reducing the burden on small business.

116. The Commission proposes to amend § 17.2(a) of the Commission's rules to clarify both when a structure becomes, and when a structure ceases to be, an "antenna structure" under its rules. The Commission also proposes to amend § 17.2(c) of the Commission's rules to clarify that the obligations of an "antenna structure owner" fall only on the owner of the underlying structure, and not on tenants, thus promoting clarity for all parties. The Commission seeks to receive alternate proposals that address the effects of these proposed rule changes in general, and more specifically on small entities.

117. The Commission asks commenters to address alternatives regarding whether the rules concerning antenna structures should be enforced against voluntarily registered structures, whether owners of antenna structures that do not require registration should be prohibited from registering their towers, and whether antenna structure owners who have voluntarily registered structures should be required to withdraw their registrations from the Commission's antenna structure database. Such action could reduce confusion by clarifying the regulatory status of these structures. The Commission seeks to receive alternate proposals addressing the benefits and drawbacks of such action, particularly with respect to its impact on antenna structure owners that are small businesses.

118. The Commission proposes to modify § 17.4(g) to require that antenna structure owners display the ASR number so that it would be visible to a member of the general public who reaches the closest publicly accessible location near each point of access to the antenna structure. The Commission further proposes to delete the requirement that the ASR number be posted near the base of the antenna structure. The Commission tentatively concludes that amending the rule in this manner would clarify the obligations of antenna structure owners, promote timely remediation when lighting is observed to be malfunctioning or extinguished, and eliminate unnecessary postings. The Commission seeks alternate proposals that would best achieve these goals while reducing the burdens on small business.

119. Section 17.4(f) requires that antenna structure owners immediately provide copies of FCC Form 854R (antenna structure registration) to each tenant licensee and permittee. Sections 17.4(e) and 17.6(c) impose a similar requirement on the first licensee where the antenna structure owner is unable to file Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988. The Commission proposes to amend these rules to allow the alternative of providing a link to the Commission's antenna structure registration Web site via paper or electronic mail. The Commission tentatively concludes that this proposal would best reduce the burden on regulated entities, including small businesses, while ensuring that tenant licensees and permittees remain informed. Thus, the Commission determined not to propose eliminating this requirement altogether or simply requiring antenna structure owners to provide their tenants with the ASR number. The Commission seeks alternative proposals that would achieve its goals.

120. The Commission determined not to propose eliminating § 17.57 to increase to five days the time period for notifying the Commission of construction, dismantlement, and changes in height or ownership. The Commission notes that the existing time periods have not been shown to be inconsistent with FAA requirements and that they promote the accuracy of the Commission's information. The Commission seeks discussion of alternate proposals that will reduce burdens on small business, including discussion of any burdens the existing rule may impose.

121. The Commission proposes to delete § 17.58, which was intended to promote compliance with procedures that are now obsolete. This change would streamline the antenna structure registration process, thereby easing the burden on regulated entities. The Commission seeks discussion of any alternative proposals that would also reduce burdens on small entities.

122. For each of the proposals in the Notice, the Commission seeks discussion, and where relevant, alternative proposals, on the effect that each prospective new requirement, or alternative rules, might have on small entities. For each proposed rule or alternative, the Commission seeks discussion about the burden that the prospective regulation would impose on small entities and how the Commission could impose such regulations while minimizing the burdens on small entities. For each proposed rule, the Commission asks whether there are any alternatives the Commission could implement that could achieve the Commission's goals while at the same time minimizing the burdens on small entities. For the duration of this docketed proceeding, the Commission will continue to examine alternatives with the objectives of eliminating

unnecessary regulations and minimizing any significant economic impact on small entities.

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

123. None.

B. Initial Paperwork Reduction Act

124. This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due July 20, 2010.

125. *Comments should address:* (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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

126. *OMB Control Number:* None.

127. *Title:* Part 17 Construction, Marking, and Lighting of Antenna Structures.

128. *Form No.:* None.

129. *Type of Review:* New collection.

130. *Respondents:* Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Governments.

131. *Number of Respondents:* 22,000.

132. *Number of Responses:* 258,570.

133. *Estimated Time per Response:* .1 hr. to 3 hrs. on average.

134. *Frequency of Response:* On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

135. *Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 4(i), 4(j), 11 and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) through (j), 161, and 303(q).

136. *Total Annual Burden:* 378,027 hours.

137. *Total Annual Costs:* $1,287,000.

138. *Privacy Act Impact Assessment:* No impact.

139. *Nature and Extent of Confidentiality:* There is no need for confidentiality.

140. *Needs and Uses:* The Commission is requesting OMB approval for disclosure, reporting, and record keeping requirements pertaining to part 17 of the Commission's rules. In order to clarify the obligations of antenna structure owners and conform the Commission's regulations to Commission and FAA practice, the Commission proposes changes to certain sections of the Commission's part 17 rules. These proposed changes are intended both to promote aircraft navigation safety and to ease regulatory burdens by streamlining regulations and reducing confusion. The new information collection requirements contained in the proposed part 17 amendments are necessary to implement a uniform registration process as well as safe and effective lighting procedures for owners of antenna structures. The following are the information collection requirements:

- *17.4(j)*—Antenna structure owners must display the Antenna Structure Registration (ASR) number so that it would be visible to a member of the general public who reaches the closest publicly accessible location near each point of access to the antenna structure;
- *17.48*—Antenna structure owners must provide continuously active notice to the FAA of antenna structure lighting outages;
- *17.49*—Antenna structure owners must maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights for two years and provide the records to the Commission upon request.

141. The Commission tentatively concludes that these collections are necessary to effectuate the above rule changes that clarify the obligations of antenna structure owners, ensure aircraft navigation safety when lighting is observed to be malfunctioning or extinguished, and eliminate unnecessary postings.

C. Other Procedural Matters

1. Ex Parte Presentations

142. The rulemaking 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 generally is required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

2. Comment Filing Procedures

143. 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. All filings related to this Notice of Proposed Rulemaking should refer to WT Docket No. 10–88. 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.
- ECFS filers must transmit one electronic copy of the comments for WT Docket No. 10–88. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The filing hours

at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

144. Parties should send a copy of their filings to John Borkowski, Federal Communications Commission, Room 6404, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *John.Borkowski@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

145. Documents in WT Docket No. 10–88 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

3. Accessible Formats

146. 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).

V. Ordering Clauses

147. Accordingly, *it is ordered,* pursuant to sections 4(i), 4(j), 11 and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) through (j), 161, 303(q), that this Notice in WT Docket No. 10–88 *is adopted.*

148. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Reporting and recordkeeping requirements.

47 CFR Part 17

Aviation safety; Communications equipment; Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reason discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 17 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(j), 155, 157, 225, and 303(r).

2. Section 1.61 is amended by revising paragraph (a)(5) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

(a)* * *

(5) Upon receipt of FCC Form 854, and attached FAA final determination of "no hazard," the Bureau may prescribe antenna structure painting and/or lighting specifications or other conditions in accordance with the FAA airspace recommendation. Unless otherwise specified by the Bureau, the antenna structure must conform to the FAA's painting and lighting recommendations set forth in the FAA's determination of "no hazard" and the associated FAA study number. The Bureau returns a completed Antenna Structure Registration (FCC Form 854R) to the registrant. If the proposed structure is disapproved the registrant is so advised.

* * * * *

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

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

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

4. Section 17.1 is amended by revising paragraph (b) to read as follows:

§ 17.1 Basis and purpose.

* * * * *

(b) The purpose of this part is to prescribe certain procedures for antenna structure registration and standards with respect to the Commission's consideration of proposed antenna structures which will serve as a guide to antenna structure owners.

5. Section 17.2 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 17.2 Definitions.

(a) *Antenna structure.* The term antenna structure means a structure that is constructed or used for the primary purpose of supporting antennas to transmit and/or receive radio energy, and any antennas and other appurtenances mounted thereon, from the time construction of the supporting structure begins until such time as the supporting structure is dismantled.

(b) *Antenna farm area.* A geographical location, with established boundaries, designated by the Federal Communications Commission, in which antenna towers with a common impact on aviation may be grouped.

(c) *Antenna structure owner.* For the purposes of this part, an antenna structure owner is the individual or entity vested with ownership, equitable ownership, dominion, or title to the underlying structure that supports or is intended to support antennas and other appurtenances. Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsible for compliance with the requirements of this part.

* * * * *

6. Revise § 17.4 to read as follows:

§ 17.4 Antenna structure registration.

(a) The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) must register the structure with the Commission. (*See* 14 CFR 77.13 for FAA notification requirements.) This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission. If the FAA exempts an antenna structure from notification, it is exempt from registration with the Commission. (*See* 14 CFR 77.15 for FAA exemptions to its notification requirements.)

(1) For a proposed antenna structure or alteration of an existing antenna structure, the owner must register the structure prior to construction or alteration.

(2) For a structure that did not originally fall under the definition of "antenna structure," the owner must

register the structure prior to hosting a Commission licensee.

(b) Except as provided in paragraph (i) of this section, each owner must file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in paragraph (a) of this section must submit a valid FAA determination of "no hazard." In order to be considered valid by the Commission, the FAA determination of "no hazard" must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will include the highest point of the structure including any obstruction lighting or lightning arrester.

(c) Absent Commission specification, the painting and lighting specifications recommended by the FAA are mandatory (see § 17.23 of this chapter). However, the Commission may specify painting and/or lighting requirements for each antenna structure registration in addition to or different from those specified by the FAA.

(d) Any change in the overall height of one foot or greater or coordinates of one second or greater in longitude or latitude of an antenna structure requires prior approval from the FAA and the Commission.

(e) Any change in the marking and lighting specifications described on any antenna structure registration requires prior approval from the FAA and the Commission.

(f) If an Environmental Assessment is required under § 1.1307 of this chapter, the Bureau will address the environmental concerns prior to processing the registration.

(g) If a final FAA determination of "no hazard" is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.

(h) The Commission shall issue, to the registrant, FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The structure owner shall immediately provide to all tenant licensees and permittees notification that the structure has been registered, along with either a copy of Form 854R or the Antenna Structure Registration Number and a link to the FCC antenna structure Web site *http://wireless.fcc.gov/antenna/*. This notification may be done electronically or via paper mail.

(i) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with paragraph (h) of this section, and for posting the registration number as required by paragraph (j) of this section.

(j) Except as described in paragraph (k) of this section, the Antenna Structure Registration Number must be displayed so that it is conspicuously visible and legible from the publicly accessible area nearest the base of the antenna structure along the publicly accessible roadway or path. If the base of the antenna structure has more than one point of ingress/egress, the Antenna Structure Registration Number must be posted at the publicly accessible area nearest each such point of ingress/egress. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure or at a publicly accessible location.

(k) The owner is not required to post the Antenna Structure Registration Number in cases where a Federal, State, or local government entity provides written notice to the owner that such a posting would detract from the appearance of a historic landmark. In this case, the owner must make the Antenna Structure Registration Number available to representatives of the Commission, the FAA, and the general public upon reasonable demand.

7. Section 17.6 is amended by revising the section heading and paragraph (c), to read as follows:

§ 17.6 Responsibility for painting and lighting compliance.

* * * * *

(c) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first licensee authorized to locate on the structure must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with § 17.4(h), and for posting the registration number as required by § 17.4(j).

8. Revise the heading to subpart B of part 17 to read as follows:

Subpart B—Antenna Farm Areas

§ 17.7 [Removed and Reserved]

9. Remove and reserve § 17.7.

§ 17.14 [Removed and Reserved]

10. Remove and reserve § 17.14.

§ 17.17 [Removed and Reserved]

11. Remove and reserve § 17.17.

12. Section 17.21 is amended by revising the introductory text, revising paragraph (a) and adding paragraph (c) to read as follows:

§ 17.21 Painting and lighting, when required.

Antenna structures shall be painted and lighted when:

(a) Their height exceeds any obstruction standard requiring notification to the FAA (see § 17.4(a)).

* * * * *

(c) If an antenna installation is of such a nature that its painting and lighting specifications in accordance with the FAA airspace recommendation are confusing, or endanger rather than assist airmen, or are otherwise inadequate, the Commission will specify the type of painting and lighting or other marking to be used in the individual situation.

§ 17.22 [Removed and Reserved]

13. Remove and reserve § 17.22.

14. Section 17.23 is revised to read as follows:

§ 17.23 Specifications for painting and lighting antenna structures.

Unless otherwise specified by the Commission, each new or altered antenna structure must conform to the FAA's painting and lighting specifications set forth in the FAA's final determination of "no hazard" and the associated FAA study for that particular structure. For purposes of this part, any specifications, standards, and general requirements set forth by the FAA in the structure's determination of "no hazard" and the associated FAA study are mandatory. Additionally, each antenna structure must be painted and lighted in accordance with any painting and lighting requirements prescribed on the antenna structure's registration, or in accordance with any other specifications provided by the Commission.

15. Add § 17.24 to read as follows:

§ 17.24 Existing structures.

No change to painting or lighting criteria or relocation of airports shall at any time impose a new restriction upon any then existing or authorized antenna structure or structures.

§ 17.45 [Removed and Reserved]

16. Remove and reserve § 17.45.

17. Section 17.48 is revised to read as follows:

§ 17.48 Notification of extinguishment or improper functioning of lights.

The owner of any antenna structure that requires registration of the structure with the Commission and has been assigned lighting specifications referenced in this part shall report immediately to the Federal Aviation Administration, by means acceptable to the Federal Aviation Administration, any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes. If the lights cannot be repaired within 15 days, the owner shall notify the FAA to extend the outage date and report a return to service date. The owner will repeat this process every 15 days until the lights are repaired. Such reports shall set forth the condition of the light or lights, the circumstances which caused the failure, the probable date for restoration of service, the FCC Antenna Structure Registration Number, the height of the structure (AGL and AMSL if known) and the name, title, address, and telephone number of the person making the report. Further notification to the Federal Aviation Administration by means acceptable to the FAA shall be given immediately upon resumption of normal operation of the light or lights.

18. Section 17.49 is amended by revising the introductory text to read as follows:

§ 17.49 Recording of antenna structure light inspections in the owner record.

The owner of each antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part must maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light. This record shall be retained for a period of two years and provided to the FCC or its agents upon request. The record shall include the following information for each such event:

* * * * *

§ 17.51 [Removed and Reserved]

19. Remove and reserve § 17.51.

§ 17.56 [Removed and Reserved]

20. Remove and reserve § 17.56.

§ 17.58 [Removed and Reserved]

21. Remove and reserve § 17.58.

[FR Doc. 2010–12142 Filed 5–20–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–AX76

Fisheries in the Western Pacific; Community Development Program Process

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

ACTION: Notice of availability of fishery ecosystem plan amendments; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the fishery ecosystem plans (FEPs) for American Samoa, Hawaii, Marianas, and western Pacific Pelagics. If approved by the Secretary of Commerce (Secretary), the amendments would establish requirements and procedures for reviewing and approving community development plans for access to western Pacific fisheries. The intent of the amendments is to promote the participation of island communities in fisheries that they have traditionally depended upon, but may not have the capabilities to support continued and substantial participation in, possibly due to economic, regulatory, or other constraints.

DATES: Comments on the amendments must be received by July 20, 2010.

ADDRESSES: Comments on the amendments, identified by 0648–AX76, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*; or
- Mail: Mail written comments to William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of these two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. Comments will be posted for public viewing after thecomment period has closed. All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the amendments (which are identical for all four FEPs) containing background information on the issue are available from *www.regulations.gov* and from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or web site *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: This document is also available at *www.gpoaccess.gov/fr*.

Section 305(i)(2) of the Magnuson-Stevens Act authorizes the Council and the Secretary, through NMFS, to establish a community development program for western Pacific fisheries. The intent of the program is to provide western Pacific communities access to fisheries that they have traditionally depended upon, but may not have the capabilities to support continued and substantial participation in, possibly due to economic, regulatory, or other constraints.

In 2002, NMFS announced the eligibility criteria for participating in the program (67 FR 18512; April 16, 2002). To participate in the program, communities are required to develop and submit a development plan, but there is currently no mechanism to solicit, review, and approve these plans. To address this issue, the Council developed and submitted to NMFS for review, amendments to the FEPs for American Samoa, Hawaii, the Mariana Archipelago, and western Pacific Pelagics to establish such a mechanism. The amendments are identical for each FEP.

To be eligible for the community development program, a community must:

1. Be located in American Samoa, Guam, Hawaii, or the Northern Mariana Islands (collectively, the western Pacific);

2. Consist of community residents descended from aboriginal people indigenous to the western Pacific area who conducted commercial or subsistence fishing using traditional

fishing practices in the waters of the western Pacific;

3. Consist of individuals who reside in their ancestral homeland;

4. Have knowledge of customary practices relevant to fisheries of the western Pacific;

5. Have a traditional dependence on fisheries of the western Pacific;

6. Are experiencing economic or other constraints that prevent full participation in the western Pacific fisheries and, in recent years, have not had harvesting, processing or marketing capability sufficient to support substantial participation in fisheries in the area; and

7. Develop and submit a community development plan to the Council and NMFS.

Each community development plan must contain the following information:

1. A statement of the purpose and goals of the plan;

2. A description of, and justification for, the proposed fishing activity;

3. The location of the proposed fishing activity;

4. The species to be harvested, directly and incidentally;

5. The gear type(s) to be used;

6. The frequency and duration of the proposed fishing activity; and

7. A statement describing the degree of involvement by the indigenous community members including the name, address, telephone and other contact information of each person who would conduct the proposed fishing activity, and a description of how the community and or its members meet each of the eligibility criteria.

If a vessel is to be used by the community to conduct fishing activities, the plan must include the vessel name and official number (USCG documentation, state, territory, or other registration number), length, displacement, fish holding capacity, any valid federal fishing permit number, and the name and contact information of the owner(s) and operator(s).

The amendments would require the Council to review each plan to ensure that it meets the intent of Section 305(i)(2) of the Magnuson-Stevens Act and contains all of the required information. If the Council finds these requirements are met, the Council would then forward the plan to the NMFS Regional Administrator for review.

The Regional Administrator would review each plan to ensure it is consistent with the FEPs, Magnuson-Stevens Act, and other applicable laws. NMFS would then publish a notice in the **Federal Register** to solicit public comment on the plan and associated environmental review documents. Within 90 days after the close of the public comment period, the Regional Administrator would notify the applicant in writing of the decision to approve or disapprove the community development plan. If the plan is approved, the Regional Administrator would publish a notice in the **Federal Register** describing the plan's authorized activities. The Regional Administrator may attach limiting terms and conditions to the authorization for proper management and monitoring of the fishing activity, including, but not limited to, catch and trip limits, times and places where fishing may or may not be conducted, vessel monitoring system, observers, and/or reporting requirements.

Public comments on the proposed amendments must be received by July 20, 2010 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendments. A proposed rule to implement the measures recommended in the amendment has been prepared for Secretarial review and approval. NMFS expect to publish and request public comment on the proposed rule in the near future.

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

Dated: May 17, 2010.

James P. Burgess,

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

[FR Doc. 2010–12283 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 75, No. 98

Friday, May 21, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2010

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; Correction.

SUMMARY: The Rural Housing Service published a document in the **Federal Register** on April 27, 2010, announcing that it is soliciting competitive applications under its Housing Preservation Grant program. The set-aside funding for the Rural Economic Area Partnership Zones was excluded from the notice and the listing for the Rural Development Ohio State Office telephone number, and TDD number and West Virginia State Office address were incorrectly identified in the notice.

FOR FURTHER INFORMATION CONTACT: Bonnie Edwards-Jackson, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, USDA Rural Development, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD–Federal Information Relay Service) or via e-mail at, *Bonnie.Edwards@wdc.usda.gov.*

Correction

In the **Federal Register** of April 27, 2010, in FR Doc. 2010–9648, on page, 22096, in the first column, the listing for the award information should read:

For Fiscal Year 2010, $10,146,815.03 is available for the HPG Program. The total includes $746,815.03 in carryover funds. A set-aside of $74,681.50 has been established for grants located in Rural Economic Area Partnership Zones and other funds will be distributed under a formula allocation to states pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Program Funds." Decisions on funding will be based on pre-applications.

Correction

In the **Federal Register** of April 27, 2010, in FR Doc. 2010–9648, on page, 22097, in the second column, the listing for the Rural Development Ohio State Office, telephone number, and TDD number for contact should read: Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2409, TDD (800) 877–8339, Cathy Simmons.

Correction

In the **Federal Register** of April 27, 2010, in FR Doc. 2010–9648, on page, 22098, in the first column, the listing for the Rural Development West Virginia State Office, address to contact should read: West Virginia State Office, 530 Freedom Road, Ripley, WV 25271–9794, (304) 372–3441, ext. 105, TDD (304) 284–4836, Penny Thaxton.

Dated: May 13, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–12162 Filed 5–20–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Superior Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Superior Resource Advisory Committee will meet in Duluth, Minnesota. 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 to orient the new Superior Resource Advisory Committee members on their roles and responsibilities.

DATES: The meeting will be held on Friday, June 11, 2010, 9:45 a.m.

ADDRESSES: The meeting will he held at the Superior National Forest Headquarters, 8901 Grand Ave Place, Duluth, MN 55808. Written comments should be sent to Superior National Forest, RAC, 8901 Grand Ave Place, Duluth, MN 55808. Comments may also be sent via e-mail to *Lradosevichcraig@fs.fed.us,* or via facsimile to 218–626–4312.

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 Superior National Forest Headquarters. This meeting is open to the public. Visitors are encouraged to call ahead to 218–626–4300 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lisa Radosevich-Craig, Partnership Coordinator & Tribal Liaison, Superior National Forest Headquarters, 218–626–4336, *Lradosevichcraig@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: Overview of the roles and responsibilities of the Superior Resource Advisory Committee members; Election of officers, Development of rules and operational guidelines; Overview of the history and uses of the Superior National Forest; Public forum on submitting project proposals. The agenda and any applicable documents may be previewed at *http://WWW.fs.fed.us/R9/superior.* 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. A public input session will be provided and individuals who made written requests by Monday, June 7, 2010 will have the opportunity to address the Comittee at those sessions.

Dated: May 14, 2010.

James Sanders,

Forest Supervisor, Superior National Forest, Duluth, Minnesota.

[FR Doc. 2010–12089 Filed 5–20–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will meet in Hamilton, Montana. The purpose of the meeting is to review projects.

DATES: The meeting will be held May 25, 2010.

ADDRESSES: The meeting will be held at 1801 N. First Street. Written comments should be sent to Stevensville RD, 88 Main Street, Stevensville, MT 59870. Comments may also be sent via e-mail to *dritter@fs.fed.us* or via facsimile to 406–777–5461.

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 Stevensville Ranger District. Visitors are encouraged to call ahead to 406–777–5461 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Dan Ritter or Nancy Trotter at 406–777–5461.

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., Mountain Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring any matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by May 24, 2010 will have the opportunity to address the Council at those sessions.

Dated: May 13, 2010.

Julie K. King,

Forest Supervisor.

[FR Doc. 2010–12149 Filed 5–20–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

GMUG Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The GMUG RAC will meet in Delta, Colorado. 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 to gather the newly appointed Committee members together to elect a Chair, determine operating principles and organize to accept project proposals for Title II funds within Garfield, Mesa, Delta, Gunnison and Montrose Counties, Colorado.

DATES: The meeting will be held June 9, 2010, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Forest Supervisor's Office at 2250 Highway 50, Delta, Colorado in the South Spruce Conference Room. Written comments should be sent to Attn: GMUG RAC, 2250 Highway 50, Delta, CO 81416. Comments may also be sent via e-mail to *lloupe@fs.fed.us* or via facsimile to Attn: Lee Ann Loupe, RAC Coordinator at 970.874.6698.

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 *http://www.fs.fed.us/r2/gmug/* under "GMUG RAC Information." Visitors are encouraged to call ahead to Lee Ann Loupe, RAC Coordinator at 970.874.6717 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lee Ann Loupe, GMUG RAC Coordinator, 970.874.6717 or e-mail: *lloupe@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: The newly appointed Committee members will gather together and meet for the first time, address questions about the roles of members, support of the committee and other pertinent information, elect a chairperson, determine operating principles for the RAC and organize to accept project proposals for Title II funds within Garfield, Mesa, Delta, Gunnison and Montrose Counties, Colorado.

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 11, 2010.

Sherry Hazelhurst,

Deputy Forest Supervisor/GMUG RAC DFO.

[FR Doc. 2010–12152 Filed 5–20–10; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting: Canceled

DATE AND TIME: Tuesday, May 18, 2010, 11 a.m.–12:15 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2010–12358 Filed 5–19–10; 11:15 am]

BILLING CODE 8610–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Procedures for Considering Requests From the Public for Textile and Apparel Safeguard Actions on Imports From Oman

May 17, 2010.

AGENCY: The Committee for the Implementation of Textile Agreements (the "Committee").

ACTION: Notice of procedures.

SUMMARY: This notice sets forth the procedures the Committee will follow in considering requests from the public for textile and apparel safeguard actions as provided for in title III, subtitle B, section 321 through section 328 of the United States-Oman Free Trade Agreement Implementation Act.

DATES: *Effective Date:* May 21, 2010.

ADDRESSES: Requests must be submitted to: Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Maria D'Andrea, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–1550.

SUPPLEMENTARY INFORMATION:

Title III, subtitle B, section 321 through section 328 of the United States-Oman Free Trade Agreement Implementation Act (the "Act") implements the textile and apparel safeguard provisions, provided for in Article 3.1 of the United States-Oman Free Trade Agreement (the "Agreement"). The safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, an Omani textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.1 permits the United States to increase duties on the imported article from Oman to a level that does not exceed the lesser of the prevailing U.S. normal trade relations ("NTR")/most-favored-nation ("MFN") duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement enters into force. In Presidential Proclamation 8332 of December 29, 2008 (73 FR 80289 (Dec. 31, 2008)), the President delegated to the Committee certain functions under subtitle B of title III of the Act.

The import tariff relief is effective beginning on the date that the Committee determines that an "Omani textile or apparel article" as defined in section 301(2) of the Act, is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article. Consistent with section 323(a) of the Act, the maximum period of import tariff relief, as set forth in section 3 of this notice, shall be three years. However, if the initial period for import tariff relief is less than three years, consistent with section 323(b) of the Act, the Committee may extend the period of import relief to the maximum three years if the Committee determines that the continuation is necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition, and that the domestic industry is, in fact, making a positive adjustment to import competition. Import tariff relief may not be applied to the same article under these procedures if (1) relief previously has been granted with respect to that article under these provisions; or (2) the article is subject to relief under Chapter 1 of Title II of the Trade Act of 1974.

Authority to provide import tariff relief with respect to an Omani textile or apparel article will expire ten years after duties on the article are eliminated pursuant to the Agreement.

Under Article 3.1.6 of the Agreement, if the United States provides relief to a domestic industry under the textile and apparel safeguard, it must provide Oman "mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action." Such concessions shall be limited to textile and apparel products, unless the United States and Oman agree otherwise. If the United States and Oman are unable to agree on trade liberalizing compensation, Oman may increase customs duties equivalently on U.S. products. The obligation to provide compensation terminates upon termination of the safeguard relief. Section 327 of the Act extends the President's authority to provide compensation under section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, to measures taken pursuant to the Agreement's textile and apparel safeguard provisions.

In order to facilitate the implementation of Title III, Subtitle B, section 321 through section 328 of the Act, the Committee has determined that actions taken under this safeguard fall within the foreign affairs exception to the rulemaking provision of 5 U.S.C. 553(a)(1). These procedures are not subject to the requirement to provide prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(a)(1) and 553(b)(A).

Procedures for Requesting Textile and Apparel Safeguard Actions

1. Requirements for Requests. Pursuant to section 321(a) of the Act and section 7 of Presidential Proclamation 8332 of December 29, 2008, an interested party may file a request for a textile and apparel safeguard action with the Committee. The Committee will review requests from the interested party sent to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Ten copies of any such request must be provided. As provided in section 328 of the Act, the Committee will protect from disclosure any business confidential information that is marked "business confidential" to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided, in which business confidential information is summarized or, if necessary, deleted. At the conclusion of the request, an interested party must attest that "all information contained in the request is complete and accurate and no false claims, statements, or representations have been made." Consistently with section 321(a) of the Act, the Committee will review a request initially to determine whether to commence consideration of the request on its merits. Within 15 working days of receipt of a request, the Committee will determine whether the request provides the information necessary for the Committee to consider the request in light of the considerations set forth below. If the request does not, the Committee will promptly notify the requester of the reasons for this determination and the request will not be considered. However, the Committee will reevaluate any request that is resubmitted with additional information.

Consistent with longstanding Committee practice in considering textile safeguard actions, the Committee will consider an interested party to be

an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) A domestic producer or producers of an article that is like or directly competitive with the subject Omani textile or apparel article; or (B) a domestic producer or producers of a component used in the production of an article that is like or directly competitive with the subject Omani textile or apparel article.

A request will only be considered if the request includes the specific information set forth below in support of a claim that a textile or apparel article from Oman is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article.

A. Product description. Name and description of the imported article concerned, including the category or categories or part thereof of the U.S. Textile and Apparel Category System (see "Textile Correlation" at *http://otexa.ita.doc.gov/corr.htm*[HJ1]) under which such article is classified, the Harmonized Tariff Schedule of the United States subheading(s) under which such article is classified, and the name and description of the like or directly competitive domestic article concerned.

B. Import data. The following data, in quantity by category unit (see "Textile Correlation"), on total imports of the subject article into the United States and imports from Oman into the United States:

* Annual data for the most recent three full calendar years for which such data are available;

* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January–March 2010, April–June 2010 and January–March 2009, April–June 2009).

The data should demonstrate that imports of an Omani origin textile or apparel article that are like or directly competitive with the articles produced by the domestic industry concerned are increasing in absolute terms or relative to the domestic market for that article.

C. Production data. The following data, in quantity by category unit (see "Textile Correlation"), on U.S. domestic production of the like or directly competitive articles of U.S. origin indicating the nature and extent of the serious damage or actual threat thereof:

* Annual data for the most recent three full calendar years for which such data are available;

* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January–March 2010, April–June 2010 and January–March 2009, April–June 2009).

If the like or directly competitive article(s) of U.S. origin does not correspond to a category or categories of the U.S. Textile and Apparel Category system for which production data are available from official statistics of the U.S. Department of Commerce (see "U.S. Imports, Production, Markets, Import Production Ratios and Domestic Market Shares for Textile and Apparel Product Categories" at Web site *http://otexa.ita.doc.gov/ipbook.pdf*), the requester must provide a complete listing of all sources from which the data were obtained and an affirmation that to the best of the requester's knowledge, the data represent substantially all of the domestic production of the like or directly competitive article(s) of U.S. origin. In such cases, data should be reported in the first unit of quantity in the Harmonized Tariff Schedule of the United States (*http://www.usitc.gov/tata/hts*) for the Omani origin textile and/or apparel articles and the like or directly competitive articles of U.S. origin.

D. Market Share Data. The following data, in quantity by category unit (see "Textile Correlation"), on imports from Oman as a percentage of the domestic market (defined as the sum of domestic production of the like or directly competitive article and total imports of the subject article); on total imports as a percentage of the domestic market; and on domestic production of like or directly competitive articles as a percentage of the domestic market:

* Annual data for the most recent three full calendar years for which such data are available;

* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January–March 2010, April–June 2010 and January–March 2009, April–June 2009).

E. Additional data showing serious damage or actual threat thereof. All data available to the requester showing changes in productivity, utilization of capacity, inventories, exports, wages, employment, domestic prices, profits, and investment, and any other information, relating to the existence of serious damage or actual threat thereof caused by imports from Oman to the industry producing the like or directly competitive article that is the subject of the request. To the extent that such information is not available, the requester should provide best estimates and the basis therefore:

* Annual data for the most recent three full calendar years for which such data are available;

* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January–March 2010, April–June 2010 and January–March 2009, April–June 2009).

2. Consideration of Requests. Consistent with section 321(b) of the Act, if the Committee determines that the request provides the information necessary for it to be considered, the Committee will cause to be published in the **Federal Register** a notice seeking public comments regarding the request, which will include a summary of the request and the date by which comments must be received. The **Federal Register** notice and the request, with the exception of information marked "business confidential," will be posted by the Department of Commerce's Office of Textiles and Apparel ("OTEXA") on the Internet (*http://otexa.ita.doc.gov*). The comment period shall be 30 calendar days. To the extent business confidential information is provided, a non-confidential version must also be provided, in which business confidential information is summarized or, if necessary, deleted. At the conclusion of its submission of such public comments, an interested party must attest that "all information contained in the request is complete and accurate and no false claims, statements, or representations have been made." Comments received, with the exception of information marked "business confidential," will be available in the Department of Commerce's Trade Information Center for review by the public. If a comment alleges that there is no serious damage or actual threat thereof, or that the subject imports are not the cause of the serious damage or actual threat thereof, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive articles. In the case of requests submitted by entities that are not the actual producers of a like or directly competitive article, particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive article.

Any interested party may submit information to rebut, clarify, or correct public comments submitted by any other interested party at any time prior to the deadline provided in this section for submission of such public comments. If public comments are submitted less than 10 days before, or on, the applicable deadline for submission of such public comments, an interested party may submit information to rebut, clarify, or correct the public comments no later than 10 days after the applicable deadline for submission of public comments.

With respect to any request considered by the Committee, the Committee will make a determination within 60 calendar days of the close of the comment period. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published in a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**.

3. Determination and Provision of Relief. The Committee shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, an Omani textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. In making a determination, the Committee: (1) Shall examine the effect of increased imports on the domestic industry as reflected in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and (2) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof. The Committee, without delay, will provide written notice of its decision to the Government of Oman and will consult with said party upon its request.

If a determination under this section is affirmative, the Committee may provide import tariff relief to a U.S. industry to the extent necessary to remedy or prevent the serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition. Such relief may consist of an increase in duties to the lower of: (1) The NTR/MFN duty rate in place for the textile or apparel article at the time the relief is granted; or (2) the NTR/MFN duty rate for that article on the day before the Agreement enters into force.

The import tariff relief is effective beginning on the date that the Committee's affirmative determination is published in the **Federal Register**. The maximum period of import tariff relief shall be three years. However, if the initial period for import relief is less than three years, the Committee may extend the period of import relief to the maximum three years if the Committee determines that the continuation is necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment, and that there is evidence that the domestic industry is making a positive adjustment to import competition. Import tariff relief may not be imposed for an aggregate period greater than three years. Import tariff relief may not be applied to the same article under these procedures if relief previously has been granted with respect to that article under: (1) These provisions; or (2) Chapter 1 of Title II of the Trade Act of 1974.

Authority to provide import tariff relief for a textile or apparel article from Oman that is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article, will expire ten years after duties on the article are eliminated pursuant to this Agreement.

4. Self Initiation. The Committee may, on its own initiative, consider whether imports of a textile or apparel article from Oman are being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In such considerations, the Committee will follow procedures consistent with those set forth in section 2 of this notice, including causing to be published in the **Federal Register** a notice seeking public comment regarding the action it is considering.

5. Record Keeping and Business Confidential Information. OTEXA will maintain an official record for each request on behalf of the Committee. The official record will include all factual information, written argument, or other material developed by, presented to, or obtained by OTEXA regarding the request, as well as other material provided to the Department of Commerce by other government agencies for inclusion in the official record. The official record will include Committee memoranda pertaining to the request, memoranda of Committee meetings, meetings between OTEXA staff and the public, determinations, and notices published in the **Federal Register.** The official record will contain material which is public, business confidential, privileged, and classified, but will not include pre-decisional inter-agency or intra-agency communications. If the Committee decides it is appropriate to consider materials submitted in an untimely manner, such materials will be maintained in the official record. Otherwise, such material will be returned to the submitter and will not be maintained as part of the official record. OTEXA will make the official record public except for business confidential information, privileged information, classified information, and other information the disclosure of which is prohibited by U.S. law. The public record will be available to the public for inspection and copying in a public reading room located in the Department of Commerce, Trade Information Center.

Information designated by the submitter as business confidential will normally be considered to be business confidential unless it is publicly available. The Committee will protect from disclosure any business confidential information that is marked "business confidential" to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided, in which business confidential information is summarized or, if necessary, deleted. The Committee will make available to the public non-confidential versions of the request that is being considered, non-confidential versions of any public comments received with respect to a request, and, in the event consultations are requested, the statement of the reasons and justifications for the determination subsequent to the delivery of the statement to Oman.

Paperwork Reduction Act: The notice contains a collection of information subject to the requirements of the Paperwork Reduction Act ("PRA"). The Office of Management and Budget ("OMB") has approved the collection of information related to procedures for considering requests from the public for textile and apparel safeguard actions on

imports from Oman under control number 0625–0266. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless the collection of information displays a currently valid OMB control number.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2010–12285 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Aerospace Supplier Mission to Russia

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service, is organizing an Aerospace Supplier Mission to Moscow, October 3–5, 2010 and to Ulyanovsk October 5–7 (returning to Moscow on October 8th for departure to the United States). This aerospace mission, to be led by a senior U.S. Department of Commerce official, is designed to provide U.S. aerospace companies (particularly Small and Medium-Sized Enterprises) with a highly efficient and cost-effective opportunity to establish profitable commercial relationships with prospective agents, distributors and end-users in Russia's aerospace market. Participating U.S. companies will receive market intelligence briefings by Russian industry experts, information on how to do business in Russia, networking opportunities and most importantly, pre-scheduled, one-on-one meetings with Russian aerospace company representatives. Mission participants will also benefit from visiting key local aerospace original equipment manufacturers and will have the opportunity to speak with procurement managers about supply chain opportunities. This mission is an ideal opportunity for U.S. aerospace companies to gain valuable international business experience in a rapidly growing market. This mission presents strong potential for success with the ongoing support of the U.S. Commercial Service in Russia.

Commercial Setting

With over 140 million consumers, a growing middle class, and significant infrastructure needs, Russia remains one of the most promising markets for U.S. exporters. In 2009, per capita personal disposable income ($4,830) and GDP ($15,200) were the highest among the BRIC countries. Prior to the global economic crisis, during which 2009 GDP declined 7.9%, Russia had a nine-year run of continuous rapid economic expansion, with GDP growing approximately 7% annually. Most domestic and international experts believe that Russia emerged from recession in the third quarter of 2009; forecasts for 2010 growth in GDP range from 3.3% to 6.2%. Experts also expect that market conditions for U.S. and other exporters will improve as the recovery picks up speed.

$ millions	2008	2009	2010 (estimate)
Total Market Size	2,812	4,287	6,067
Total Local Production	3,100	3,777	4,476
Total Exports	2,326	2,288	2,250
Total Imports	2,038	2,798	3,841
Imports from the U.S.	513	597	694

The Russian aviation industry remains an important strategic industry and a promising market for foreign suppliers of aircraft equipment. In 2009, state financing of the industry increased twenty-fold as compared with 2004. The Russian government plays an active role in supporting the industry. United Aircraft Corporation (UAC), a state-controlled corporation established in 2006, spearheads the development of the national aviation industry.

In 2009, the Russian government allocated 19.45 billion rubles ($644 million) to the development of the industry under a federal program. In addition to traditional types of support, such as direct contributions to UAC's authorized capital and interest rate subsidies on modernization loans, the government also extended new subsidies for loans to support innovation and investment projects. This all signals an increased interest by Russian OEMs and tier suppliers to consider new procurement, which in turn opens broad prospects for U.S. suppliers of aircraft systems, components, machine tools and materials.

Since the Russian aviation industry consists of several intertwined industries (airframe, helicopter, engine building) and submarkets (OEMs, tier suppliers, distributors), opportunities for U.S. suppliers are not limited simply to a certain type of product, but cut across a variety of products along the production chain. These opportunities range from advanced machine tools and aviation materials to software, small and large components and spare parts, and complete on-board systems.

Mission Goals

The trade mission's goal is to introduce U.S. exporters of aerospace supply chain products to potential end-users and partners, including potential agents, distributors, and licensees, with the aim of creating business partnerships that will contribute to increasing U.S. exports to the Russian aerospace market, particularly the aircraft and aircraft parts market. The trade mission's purpose is to advance ITA's goal to broaden and deepen the U.S. exporter base by providing individual participants with opportunities to achieve aerospace export success in Russia.

Mission Scenario

Participants in the mission to Russia will benefit from a full range of business facilitation and trade promotion services provided by the U.S. Commercial Service in Russia, including: Meetings with individuals from both the public sector and private business. Participants will receive a briefing by Russian experts on the local aerospace market, as well as an overview of the country's economic and political environment and how to do business in the complex Russian market. The mission will include one-to-one business meetings between U.S. participants and potential Russian end-users and partners, and site visits to aircraft manufacturing facilities and aerospace original aerospace

manufacturers, where companies will have the opportunity to meet senior OEM representatives and learn about planned projects and expected procurement needs. A networking event will be planned as well, if time and budget considerations allow.

Timetable

The proposed schedule allows for about two days in Moscow and possibly two days in Ulyanovsk.

October 3 (Sunday) Mission members arrive in Moscow
Moscow Sightseeing and Group Dinner
October 4 (Monday) *Morning:* U.S. Embassy/Commercial Service Briefing
Moscow Presentations by local experts
Afternoon: Individual Meetings with potential Russian partners
Evening: Possible Networking Event
October 5 *Morning:* Individual Meetings with potential Russian partners
(Tuesday) *Afternoon:* Site Visits
Moscow *Evening:* Depart for Ulyanovsk
October 6 *Morning:* Presentation by Ulyanovsk Regional Government
(Wednesday) *Afternoon:* Site Visits
Ulyanovsk *Evening:* Cultural program
October 7 *Morning:* Individual company meetings
(Thursday) *Afternoon:* Individual company meetings
Ulyanovsk *Evening:* Depart for Moscow
October 8 (Friday) Debriefing at U.S. Commercial Service Office
Moscow Departure for Airport

Participation Requirements

All parties interested in participating in the Commercial Service Aerospace Supplier Development Mission to Russia must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of ten and a maximum of fifteen companies will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a company has been selected to participate on the mission, a participation fee paid to the U.S. Department of Commerce is required. The participation fee for one company representative will be $5,250 for small or medium-sized enterprises (SME) [1] and $6,575 for large companies, which will cover one representative.[2] The fee for each additional firm representative (large firm or SME) is $250. Expenses for travel-airfare, lodging, in-country transportation (except for airport transfers and bus transportation to/from group meetings and air travel from Moscow to Ulyanovsk and back to Moscow), meals and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission Participation Agreement and a completed Market Interest Questionnaire, which must include adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services to be promoted through the mission are either produced in the United States or marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's products or services for the Russian aerospace market;
- Applicant's potential for business in Russia, including the likelihood of exports resulting from the mission;
- Consistency in the applicant's goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other internet Web sites, press releases to general and trade media, e-mail, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS Moscow will conduct a webinar on aerospace opportunities in the Russian market in May 2010; the mission will be promoted during the webinar as well. The International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for the mission will begin immediately and will close on June 30, 2010. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after June 30, 2010. Applications received after the deadline will be considered only if space and scheduling constraints permit.

Information can also be obtained by contacting the mission contacts listed below:

Contacts

U.S. Commercial Service:
Diane Mooney, Director, Seattle USEAC, *Tel:* 206–553–5615, ext. 236, *FAX:* 206–553–7253, E-mail: *Diane.Mooney@trade.gov;*
Vladislav Borodulin, Commercial Specialist, CS Moscow, *Tel:* 7 (495) 728 5235, *FAX:* 7 (495) 728 5585, *Vladislav.Borodulin@mail.doc.gov;*
Ilona Shtrom, Commercial Officer, CS Moscow, *Tel:* 7 (495) 728 5306, *Tel:* 7 (495) 728 5585.

Natalia Susak,
Global Trade Programs, Commercial Service Trade Missions Program.

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BILLING CODE 3510–FP–P

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations.

[2] Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008.

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Legal Processes.

Form Number(s): None.

Agency Approval Number: 0651–0046.

Type of Request: Revision of a currently approved collection.

Burden: 52 hours annually.

Number of Respondents: 291 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 1 hour to gather the necessary information, prepare the appropriate documents, and submit the information in this collection to the USPTO.

Needs and Uses: This collection covers information requirements related to civil actions and claims involving current or former employees of the United States Patent and Trademark Office (USPTO). The rules for these legal processes may be found under 37 CFR part 104, which outlines procedures for service of process, demands for employee testimony and production of documents, reports of unauthorized testimony, employee indemnification, and filing claims against the USPTO under the Federal Tort Claims Act (28 U.S.C. 2672). The public uses this collection to serve a summons or complaint on the USPTO, demand employee testimony or documents related to a legal proceeding, or file a claim against the USPTO under the Federal Tort Claims Act. Respondents may petition the USPTO to waive or suspend the rules for legal processes in extraordinary situations. This collection is also necessary so that current and former USPTO employees may properly forward service and demands to the Office of General Counsel, report unauthorized testimony, and request indemnification. No forms are provided by the USPTO for submitting the information in this collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0046 copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before June 21, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: May 17, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–12215 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the United States Patent and Trademark Office (USPTO).

Form Number(s): PTO–158, PTO–158A, 158T, 158LS, PTO–275, PTO–107A, PTO–1209, PTO–2126, PTO–2149, PTO–2150.

Agency Approval Number: 0651–0012.

Type of Request: Revision of a currently approved collection.

Burden: 98,028 hours annually.

Number of Respondents: 93,340 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public between 1 minute (0.02 hours) and 40 hours, depending upon the complexity of the situation, to gather the necessary information, prepare, and submit the forms and requirements in this collection.

Needs and Uses: This information is required by 35 U.S.C. 2(b)(2)(D) and administered by the USPTO through 37 CFR 1.21, 10.14, 10.170, 11.2, 11.5–11.14 and 11.28. The information is used by the Director of the Office of Enrollment and Discipline (OED) to determine whether the applicant for registration is of good moral character and repute; has the necessary legal, scientific, and technical qualifications; and is otherwise competent to advise and assist applicants in the presentation and prosecution of patent applications.

Note that the USPTO is approved to collect a fee under 37 CFR 11.8 and is seeking continued approval to collect that fee. The USPTO has not implemented the changes from that final rule or the new information collection activities associated with that rulemaking; however, we continue to include the estimates of that burden in this request. The USPTO at this time is not collecting that fee but is retaining an estimated burden for the fee collection. If the agency chooses to begin collecting the fee, it will inform the public.

Please Note ALSO that the USPTO is requesting continued approval for items currently approved but not collected that are associated with 37 CFR 11.13 and were introduced as collection items on June 24, 2004 by the final rule 0651–AB55, Changes to Representation of Others Before the United States Patent and Trademark Office (60 Fed. Reg. 35428). OMB has previously approved the collection of these items. The USPTO has not implemented the changes from that proposed rule or the new information collection activities associated with that rulemaking; however, we continue to include the estimates of that burden in this request.

If the agency determines that it will not implement the Rule and/or determines that the fee under 37 CFR 11.8 will never be collected, the agency will request a removal of the burden estimates from this collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A_Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0012 copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and

Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before June 21, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A_Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: May 17, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–12214 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; International Import Certificate

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 20, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States and several other countries have increased the effectiveness of their respective controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country, the importer submits an international import certificate to the U.S. Government to certify that he/she will import commodities into the United States and will not reexport such commodities, except in accordance with the export control regulations of the United States. The U.S. Government, in turn, certifies that such representations have been made.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0017.

Form Number(s): Form BIS–645P, International Import Certificate.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 340.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 91.

Estimated Total Annual Cost to Public: $1,814.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 17, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–12185 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Delivery Verification Procedure

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 20, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Foreign governments, on occasions, require U.S. importers of strategic commodities to furnish their foreign supplier with a U.S. Delivery Verification Certificate validating that the commodities shipped to the U.S. were in fact received. This procedure increases the effectiveness of controls on the international trade of strategic commodities.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0016.

Form Number(s): BIS–647P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Response: 31 minutes.

Estimated Total Annual Burden Hours: 56.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 17, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–12184 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

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

DATES: *Effective Date:* May 21, 2010.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the "Department") and the International Trade Commission ("ITC"), the Department is issuing an antidumping duty order on certain oil country tubular goods ("OCTG") from the People's Republic of China ("PRC"). On May 14, 2010 the ITC notified the Department of its affirmative determination of threat of material injury to a U.S. industry, and its negative determination of critical circumstances. *See Certain Oil Country Tubular Goods from China* (Investigation No. 731–TA–1159 (Final), USITC Publication 4152 (May 2010)). In addition, the Department is amending its final determination as a result of ministerial errors.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–0414, respectively.

SUPPLEMENTARY INFORMATION: In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, ("Act"), the Department published the final determination of sales at less than fair value in the antidumping investigation of OCTG from the PRC. *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010) ("*Final Determination*").

Amendment to the Final Determination

On April 19, 2010, the Department published its affirmative final determination in this proceeding. *See Final Determination.* On April 21, 2010, Tianjin Pipe (Group) Corporation ("TPCO"), a mandatory respondent, and Petitioners [1] submitted ministerial error allegations and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors in the calculation of TPCO's dumping margin. Petitioners submitted rebuttal comments on April 26, 2010. TPCO submitted rebuttal comments on April 23, 2010 and on April 27, 2010.[2] No other interested party submitted ministerial error allegations or rebuttal comments.

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made ministerial errors in our calculations for the *Final Determination* with respect to TPCO. For a detailed discussion of these ministerial errors, as well as the Department's analysis of the errors and allegations, *see* the Memorandum to the File, "Ministerial Error Memorandum, Certain Oil Country Tubular Goods from the People's Republic of China, Final Determination of Sales at Less Than Fair Value," dated May 18, 2010.

Additionally, in the *Final Determination,* we determined that numerous companies qualified for a separate rate. *See Final Determination.* Because the only other mandatory respondent in this investigation, Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Tube Co., Ltd. (collectively "Changbao"), was determined to be part of the PRC-wide entity in the *Final Determination,* the cash deposit rate for these separate-rate companies is based on the calculated rate of the sole remaining mandatory respondent: TPCO. *See id.; see also Final Determination* and accompanying "Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the People's Republic of China", at Comment 30. Therefore, because the margin for TPCO has changed since the *Final Determination,* the separate rate has changed as well. It is now 32.07 percent. *See* Memorandum to the File, "Investigation of Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Determination Analysis Memorandum, Tianjin Pipe (Group) Corporation," dated May 18, 2010. The amended weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin percent
Tianjin Pipe International Economic and Trading Corporation	Tianjin Pipe (Group) Corporation	32.07
Angang Group Hong Kong Co., Ltd	Angang Steel Co. Ltd	32.07
Angang Steel Co., Ltd., and Angang Group International Trade Corporation.	Angang Steel Co. Ltd	32.07
Anhui Tianda Oil Pipe Co., Ltd	Anhui Tianda Oil Pipe Co., Ltd	32.07
Anshan Zhongyou Tipo Pipe & Tubing Co., Ltd	Anshan Zhongyou Tipo Pipe & Tubing Co., Ltd	32.07
Baotou Steel International Economic and Trading Co., Ltd	Seamless Tube Mill of Inner Mongolia Baotou Steel Union Co., Ltd.[3].	32.07
Benxi Northern Steel Pipes Co., Ltd	Benxi Northern Steel Pipes Co., Ltd	32.07

[1] United States Steel Corporation, Maverick Tube Corporation, TMK IPSCO, V&M Star L.P., Wheatland Tube Corp., Evraz Rocky Mountain Steel, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC are the petitioners (collectively "Petitioners") in this investigation.

[2] This second set of rebuttal comments was submitted by TPCO in response to Petitioners' rebuttal comments submitted on April 23, 2010.

Exporter	Producer	Weighted-average margin percent
Chengdu Wanghui Petroleum Pipe Co. Ltd	Chengdu Wanghui Petroleum Pipe Co. Ltd	32.07
Dalipal Pipe Company	Dalipal Pipe Company	32.07
Faray Petroleum Steel Pipe Co. Ltd	Faray Petroleum Steel Pipe Co. Ltd	32.07
Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch.	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch.	32.07
Hengyang Steel Tube Group International Trading, Inc	Hengyang Valin MPM Tube Co., Ltd.; Hengyang Valin Steel Tube Co., Ltd.	32.07
Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	32.07
Jiangsu Chengde Steel Tube Share Co., Ltd	Jiangsu Chengde Steel Tube Share Co., Ltd	32.07
Jiangyin City Changjiang Steel Pipe Co., Ltd	Jiangyin City Changjiang Steel Pipe Co., Ltd	32.07
Pangang Group Beihai Steel Pipe Corporation	Pangang Group Beihai Steel Pipe Corporation	32.07
Pangang Group Chengdu Iron & Steel	Pangang Group Chengdu Iron & Steel	32.07
Qingdao Bonded Logistics Park Products International Trading Co., Ltd.	Shengli Oilfield Highland Petroleum Equipment Co., Ltd.;	32.07
	Shandong Continental Petroleum Equipment Co., Ltd.; Aofei Tele Dongying Import & Export Co., Ltd.; Highgrade Tubular Manufacturing (Tianjin) Co., Ltd.; Cangzhou City Baohai Petroleum Material Co., Ltd.	32.07
Qiqihaer Haoying Iron and Steel Co., Ltd. of Northeast Special Steel Group.	Qiqihaer Haoying Iron and Steel Co., Ltd. of Northeast Special Steel Group.	32.07
Shandong Dongbao Steel Pipe Co., Ltd	Shandong Dongbao Steel Pipe Co., Ltd	32.07
ShanDong HuaBao Steel Pipe Co., Ltd	ShanDong HuaBao Steel Pipe Co., Ltd	32.07
Shandong Molong Petroleum Machinery Co., Ltd	Shandong Molong Petroleum Machinery Co., Ltd	32.07
Shanghai Metals & Minerals Import & Export Corp./Shanghai Minmetals Materials & Products Corp.	Jiangsu Changbao Steel Pipe Co., Ltd.;	32.07
	Huludao Steel Pipe Industrial Co., Ltd.; Northeast Special Steel Group Qiqihaer Haoying Steel and Iron Co., Ltd.; Beijing Youlu Co., Ltd.	
Shanghai Zhongyou Tipo Steel Pipe Co., Ltd	Shanghai Zhongyou Tipo Steel Pipe Co., Ltd	32.07
Shengli Oil Field Freet Petroleum Equipment Co., Ltd	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch;. Faray Petroleum Steel Pipe Co., Ltd.; Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.	32.07
Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch;. Anhui Tianda Oil Pipe Co., Ltd; Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	32.07
Shengli Oilfield Highland Petroleum Equipment Co., Ltd	Tianjin Pipe Group Corp.; Goods & Materials Supply Dept. of Shengli Oilfield SinoPEC; Dagang Oilfield Group New Century Machinery Co. Ltd.; Tianjin Seamless Steel Pipe Plant; Baoshan Iron & Steel Co. Ltd.	32.07
Shengli Oilfield Shengji Petroleum Equipment Co., Ltd	Shengli Oilfield Shengji Petroleum Equipment Co., Ltd	32.07
Tianjin Xingyuda Import and Export Co., Ltd. & Hong Kong Gallant Group Limited.	Tianjin Lifengyuanda Steel Group Co., Ltd	32.07
Tianjin Seamless Steel Pipe Plant	Tianjin Seamless Steel Pipe Plant	32.07
Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	32.07
Wuxi Baoda Petroleum Special Pipe Manufacturing Co., Ltd	Wuxi Baoda Petroleum Special Pipe Manufacturing Co., Ltd	32.07
Wuxi Seamless Oil Pipe Co., Ltd	Wuxi Seamless Oil Pipe Co., Ltd	32.07
Wuxi Sp. Steel Tube Manufacturing Co., Ltd	Wuxi Precese Special Steel Co., Ltd	32.07
Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd	Huai'an Zhenda Steel Tube Manufacturing Co., Ltd	32.07
Xigang Seamless Steel Tube Co., Ltd	Xigang Seamless Steel Tube Co., Ltd.; Wuxi Seamless Special Pipe Co., Ltd.	32.07
Yangzhou Lontrin Steel Tube Co., Ltd	Yangzhou Lontrin Steel Tube Co., Ltd	32.07
Zhejiang Jianli Co., Ltd. & Zhejiang Jianli Steel Tube Co., Ltd	Zhejiang Jianli Co., Ltd.; Zhejiang Jianli Steel Tube Co., Ltd.	32.07
PRC-wide Entity *		99.14

* *Includes:* Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Tube Co., Ltd. and Shengli Oil Field Freet Import & Export Trade Co., Ltd.

Antidumping Duty Order

On May 14, 2010, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation. In its determination, the ITC found a threat

[3] In *Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 74 FR 59117 (November 17, 2009) and *Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value,* 74 FR 69065 (December 30, 2009), we inadvertently identified the producer as Baotou Steel International Economic and Trading Co., Ltd.

of material injury. According to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted without the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the Act requires U.S. Customs and Border Protection ("CBP") to refund any cash deposits or bonds of estimated antidumping duties posted since the preliminary antidumping determination if the ITC's final determination is threat-based. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of OCTG from the PRC entered, or withdrawn from warehouse, for consumption on or after November 17, 2009, and before the date of publication of the ITC's final determination in the **Federal Register**. Suspension of liquidation will continue after this date. *See* the Suspension of Liquidation section below. In addition, with regard to the ITC's negative critical circumstances determination, and regarding to exports from the PRC-wide entity, we will also instruct CBP to lift suspension, release any bond or other security, and refund any cash deposit made to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after August 19, 2009[4] (*i.e.,* 90 days prior to the date of publication of the preliminary determination in the **Federal Register**), through November 16, 2009.

Scope of the Order

The scope of this order consists of certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. Excluded from the scope of the order are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to suspend liquidation on all entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

Additionally, in the *Final Determination,* the Department noted that in *Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 3203 (January 20, 2010) ("*CVD Final*") the Department determined that the products under investigation, exported and produced by TPCO, benefitted from an export subsidy. Therefore, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price for TPCO, as indicated above, minus the amount determined to constitute an export subsidy.

Further, for the two separate-rate companies in this investigation that also participated as mandatory respondents in the CVD investigation (*i.e.,* Wuxi Seamless Oil Pipe Co., Ltd., and Zhejiang Jianli Co., Ltd. & Zhejiang Jianli Steel Tube Co., Ltd.), because it was determined in the *CVD Final* that these companies did not benefit from any export subsidy, we will not make an adjustment to the antidumping duty rate of these companies for purposes of cash deposits.

For the remaining separate-rate companies, we will instruct CBP to adjust the dumping margin by the amount of export subsidies included in the All Others rate from the *CVD Final.*

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as discussed above. *See* section 735(c)(3) of the Act. The "PRC-wide" rate applies to all exporters of subject merchandise not specifically listed.

In accordance with section 736 of the Act, the Department will also direct CBP to assess antidumping duties on all unliquidated entries of OCTG from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**.

This notice constitutes the antidumping duty order with respect to OCTG from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main

[4] This date was incorrectly identified as "April 19, 2009" in the *Final Determination.*

Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: May 19, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–12370 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 35–2010]

Foreign–Trade Zone 50 Long Beach, California, Application for Subzone, Louisville Bedding Company (Household Bedding Products), Ontario, California

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Board of Harbor Commissioners of the Port of Long Beach, grantee of FTZ 50, requesting special–purpose subzone status for the bedding products manufacturing facility of Louisville Bedding Company (LBC) located in Ontario, California. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 14, 2010.

The LBC plant (105 employees/9.7 acres) is located at 1200 South Etiwanda Avenue in Ontario, California. The facility is used to manufacture household bedding products, including mattress pads and pillows (up to 10 million pillows and 2 million mattress pads annually) for the U.S. market and export. LBC is requesting authority to utilize foreign–origin wide roll (80 inches and wider), high thread count (180 threads per inch and higher) cotton, polyester, and synthetic woven fabric and pillow shells (classified under HTSUS Headings 5208, 5210, 5512, 5513, and 6307; duty rate range: 7 14.9%) to be cut, sewn, quilted and assembled into the bedding products noted above under FTZ procedures. The company has also submitted an application to the Board for subzone status for its Louisville, Kentucky, facilities (Docket 28–2010, 75 FR 24572, 5–5–2010).

FTZ procedures could exempt LBC from customs duty payments on the foreign–origin fabrics and pillow shells used in export production. On its shipments for the domestic market, the finished household bedding products would be entered for consumption from the proposed subzone classified under HTSUS 9404.90, and LBC is seeking authority to elect the various finished bedding product duty rates (4.4 - 7.3%, *ad valorem*) for the foreign–origin fabric and pillow shell material inputs. Domestic–status fibers would be used to fill the foreign pillow shells. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is July 20, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 4, 2010.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Pierre Duy at Pierre.Duy@trade.gov or (202) 482–1378.

Dated: May 17, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–12287 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2010–0042]

Elimination of Classification Requirement in the Green Technology Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) implemented the Green Technology Pilot Program on December 8, 2009, which permits patent applications pertaining to environmental quality, energy conservation, development of renewable energy resources, and greenhouse gas emission reduction to be advanced out of turn for examination and reviewed earlier (accorded special status). The program is designed to promote the development of green technologies. However, the pilot program was limited to only applications classified in a number of U.S. classifications to assist the USPTO to balance the workload and gauge resources needed for the program. The USPTO has determined that the classification requirement is unnecessary because the workload has been balanced with other mechanism, and this requirement was causing the denial of petitions for applications that are drawn to green technologies. The USPTO is hereby eliminating the classification requirement for any petitions that are decided on or after the publication date of this notice. This will permit more applications to qualify for the program, thereby allowing more inventions related to green technologies to be advanced out of turn for examination and reviewed earlier.

DATES: *Effective Date:* This change to the Green Technology Pilot Program is effective May 21, 2010.

Duration: The Green Technology Pilot Program will run for twelve months from December 8, 2009, and the USPTO will only accept the first 3,000 grantable petitions to make special under the Green Technology Pilot Program in new applications filed before December 8, 2009. Accordingly, if less than 3,000 grantable petitions are received, the pilot program will end on December 8, 2010.

FOR FURTHER INFORMATION CONTACT: Pinchus M. Laufer and Joni Y. Chang, Senior Legal Advisors, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at 571–272–7726 or 571–272–7720; by facsimile transmission to 571–273–7726, marked to the attention of Pinchus M. Laufer; or by mail addressed to: Mail Stop Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The USPTO published a notice for the implementation of the Green Technology Pilot Program on December 8, 2009. *See Pilot Program for Green Technologies Including Greenhouse Gas*

Reduction, 74 FR 64666 (December 8, 2009), 1349 *Off. Gaz. Pat. Office* 362 (December 29, 2009) (Green Technology Notice). The Green Technology Notice indicated that an applicant may have an application advanced out of turn (accorded special status) for examination, if the application pertained to green technologies including greenhouse gas reduction (applications pertaining to environmental quality, energy conservation, development of renewable energy resources or greenhouse gas emission reduction) and met other requirements specified in the Green Technology Notice. The pilot program was designed to promote the development of green technologies. The USPTO received positive feedback and suggestions from the stakeholders regarding the pilot program.

The Green Technology Notice required *inter alia* that the application be classified in one of the U.S. classifications listed in the Green Technology Notice to be accorded special status under the Green Technology Pilot Program. Limiting the pilot program to only applications classified in these U.S. classifications assisted the USPTO to balance the workload and gauge resources needed for the program. The USPTO has determined that the classification requirement in the Green Technology Notice is unnecessary because the workload has been balanced with other mechanism, and this requirement was causing the denial of petitions for applications that are drawn to green technologies. Therefore, the USPTO is hereby eliminating the classification requirement for any petitions that are decided on or after the publication date of this notice. This will permit more applications to qualify for the pilot program, thereby allowing more inventions related to green technologies to be advanced out of turn for examination and reviewed earlier. Applicants whose petitions were dismissed or denied solely on the basis that their applications did not meet the classification requirement may file a renewed petition. If the renewed petition is filed within one month of the publication date of this notice, it will be given priority as of the date applicant filed the initial petition.

To participate in the pilot program, applicant must file a petition to make special under the Green Technology Pilot Program that satisfies all other requirements set forth in the Green Technology Notice. For example, to satisfy the eligibility requirements, the petition must contain the following statements. The petition must include a statement providing the basis for the special status (*e.g.,* for an application pertaining to environmental quality, the petition must state that special status is sought because the invention materially enhances the quality of the environment by contributing to the restoration or maintenance of the basic life-sustaining natural elements). The petition must also include a statement explaining how the materiality standard is met, unless (1) the application clearly discloses that the claimed invention materially enhances the quality of the environment by contributing to the restoration or maintenance of one of the basic life-sustaining natural elements, or (2) the application disclosure is clear on its face that the claimed invention materially contributes to (a) development of renewable energy or energy conservation, or (b) greenhouse gas emission reduction.

Dated: May 12, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–12328 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Executive Green ICT & Energy Efficiency Trade Mission to Mexico City, Mexico

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, and U.S. & Foreign Commercial Service are organizing an Executive Green ICT & Energy Efficiency Trade Mission to Mexico City from September 27–29, 2010. This Executive led mission will focus on assisting U.S. providers of "Green Information & Communication Technology (ICT)" solutions, as well as energy efficiency technologies to enter or increase their presence in various sectors of the Mexican market. This will include data centers, telecommunications, utilities, and construction. Green ICTs—or smart technologies—provide monitoring, supervision and automation capabilities to reach energy efficiency in the mentioned industries, such as smart grids and smart buildings. The mission will support U.S. delegates to gain market insight, local private and public contacts, and identify potential business opportunities and partners. In addition to the welcome reception and Matchmaking Services, a 1-day Green ICT & Energy Efficiency conference will take place at the World Trade Center in Mexico City. Relevant issues on energy efficiency in data centers, smart grids, and green buildings will be discussed. Mission delegates will have an opportunity to exhibit outside of the conference hall during this event.

Furthermore, this mission will take place during the same days as The Green Expo at the World Trade Center in Mexico City. As a separate activity and independent of the mission, delegates will be granted a discount by EJ Krause, organizer of The Green Expo, to exhibit at the show in the USA Pavilion.

Commercial Setting

On August 10, 2009 during the North American Leaders Summit, Presidents Obama and Calderón committed their two countries to work together on environmental cooperation, sustainable development, and clean energy research, development, and deployment issues.

President Felipe Calderon in his 2007 National Strategy on Climate Change recognized the importance and need for environmentally friendly policies and solutions within Mexico and set a target of reducing 107 million tons of green house gases (GHG) by 2014 in the energy sector alone. Mexico currently has several green friendly projects funded by the World Bank, including wind technologies, waste management, renewable energy development projects, modernization of the water and sanitation sectors, and a hybrid solar thermal power plant. With a demonstrated interest in expanding environmentally friendly projects and policies, Mexico provides a growing market for green technologies.

The Information and Communications Technology industry (ICT), which includes telecom service operators (fixed, wireless, cable, Internet, *etc.*) as well as IT service and management firms, integrators, software developers, and equipment manufacturers, have a fundamental role in reducing the negative environmental impact of emissions.

ICT has increased productivity and competitiveness, and supported economic growth around the world. Today, ICT is an important supporter of a sustainable environment by becoming an enabler of energy efficiencies in multiple industrial sectors, particularly

in power transmission and distribution, manufacturing, construction, and transportation emissions. Furthermore, the ICT sector has its own energy efficiency challenges to overcome, such as to reduce energy consumption in enterprise IT and Data Center operations.

Mission Goals

The goals of the Green ICT and Energy Efficiency Trade Mission to Mexico City are to (1) create business, networking, and exhibition opportunities for participating companies, and create awareness in Mexico of the U.S. green information technology and energy efficiency technologies available; (2) provide information and energy efficiency solutions for the Mexican Government, public utility company, construction sector, and IT companies and telecommunication operators by highlighting U.S. company solutions; (3) showcase ICT sustainable environment and energy efficiency solutions for different industry sectors to improve monitoring and supervision.

Mission Scenario

The Green ICT and Energy Efficiency Trade Mission will promote and showcase mission delegates at different levels. They will be able to attend and exhibit in a specialized conference. Additionally, they will have the opportunity to formally exhibit in the USA Pavilion during The Green Expo. Finally, delegates will have various opportunities for high level matchmaking and networking with Mexican companies, government, organizations and specialists.

The mission will have the following components:

• *Networking and Welcome Reception.* September 27—7 p.m.–9:30 p.m. A networking reception will be held the evening before the Green ICT and Energy Efficiency Conference. Attendees will include mission members, U.S. Government officials, Government of Mexico officials, speakers and sponsors. The venue will be the Ambassador's Residence.

• *Green ICT and Energy Efficiency Conference.* September 28—8 a.m.–6 p.m. There will be 8 keynote speakers discussing key issues of Green ICT and Energy Efficiency solutions in three sectors: Telecommunications, electric grid, and construction. The speakers will be any or a combination of the following: Industry, sponsors, USG, and GOM officials. The focus will be on U.S. products/solutions and their application to Mexico.

• *Exhibition.* September 28—8 a.m.–6 p.m. Mission members can exhibit products and services on tabletop displays outside of the conference hall.

• *Matchmaking.* September 29—8 a.m.–6 p.m. Pre-screened one-on-one appointments will be arranged in Mexico City.

• *The Green Expo Trade Show.* September 28–30. CS Mexico will host a USA Pavilion for companies providing environmental solutions, such as water, alternative energy, *etc.* EJ Krause will grant a discount to those mission members that would like to exhibit at the pavilion during their visit to Mexico City.

Proposed Mission Timetable

Mission participants will be encouraged to arrive no later than early afternoon Monday, September 27 in order to participate in the evening networking and welcome reception.

Monday, Sept. 27	6:30 p.m.–7 p.m. Trade Mission briefing in hotel. 7:30 p.m.–9:30 p.m. Networking Reception, Ambassador's Residence.
Tuesday, Sept. 28	Mexico City. 8 a.m.–6 p.m. Green ICT and Energy Efficiency Conference, Room Olmeca 3, WTC Mexico City.
Wednesday, Sept. 29	Mexico City. 8 a.m.–6 p.m. Gold Key Appointments, Mexico City. End Mission.

Participation Requirements

All parties interested in participating in the Executive Green ICT and Energy Efficiency Trade Mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of fifteen U.S. companies and maximum of twenty-five U.S. companies will be selected to participate in the mission from the applicant pool. The Executive Green ICT and Energy Efficiency Trade Mission will seek to recruit U.S. IT small and medium size companies that provide products, solutions, technologies, and "know-how" aimed at efficient energy use in the telecom, energy and construction sectors.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $2,900 for large firms and $2,450 for a small or medium-sized enterprise (SME).[1] The fee includes participation of two company representatives; the fee for each additional firm representative (large firm or SME) is $500. Expenses for travel, transportation, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

Selection will be based on the following criteria:

• Suitability of a company's products or services to the mission's goals.

• Applicant's potential for business in Mexico, including likelihood of exports resulting from the trade mission.

• Consistency of the applicant's goals and objectives with the stated scope of the trade mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*).

submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than August 2, 2010. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service in Mexico City:

Aliza Totayo, Commercial Officer, T: +52 (55) 5140–2635, *Aliza.Totayo@mail.doc.gov;*

Juan Carlos Prieto, Commercial Specialist, T: +52 (55) 5140–2634, *JuanCarlos.Prieto@mail.doc.gov.*

Natalia Susak,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–12207 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502)]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review,* 75 FR 18788 (April 13, 2010) (*Preliminary Results*). This administrative review covers the period March 1, 2008 through February 28, 2009. This review covers one producer/exporter of the subject merchandise to the United States, Saha Thai Steel Pipe (Public) Company, Ltd.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue final results in an administrative review of an antidumping duty order within 120 days after the date on which notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 120-day period up to a 180-day period.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department requested comments from interested parties on the effect, if any, of the application of the quarterly cost methodology on the Department's level of trade analysis. In particular, the Department requested that parties comment on whether the quarterly cost approach requires an evaluation on a quarterly basis of the pattern of price differences and how any such differences should be analyzed for purposes of determining whether a level of trade adjustment is warranted. Consequently, the Department needs additional time to consider comments that were filed by the parties and to develop an appropriate analytical approach.

In accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department has decided to extend the time limit for the final results from 120 days to 180 days, making the new due date for the final results, October 10, 2010. However, October 10, 2010 falls on a Sunday, and Monday, October 11, 2010 is a federal holiday. It is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for the completion of the final results is now October 12, 2010, the first business day following the 180-day period.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: May 14, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–12305 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–946]

Pre–Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of pre–stressed concrete steel wire strand from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2209.

SUPPLEMENTARY INFORMATION:

Background

This investigation covers 61 programs and the following producers/exporters: Fasten Group Import & Export Co., Ltd. (Fasten I&E), Fasten Group Corporation (Fasten Corp.), Jiangyin Fasten Steel (Fasten Steel), Jiangyin Hongyu Metal Products Co., Ltd. (Hongyu Metal), Jiangyin Walsin Steel Cable Co., Ltd. (Walsin) and Jiangyin Hongsheng Co., Ltd. (Hongsheng) (collectively, the

Fasten Companies) and Xinhua Metal Products Company (Xinhua), Xinyu Iron and Steel Joint Stock Limited Company (Xinyu), and Xinyu Iron and Steel Limited Liability Company (Xingang) (collectively, the Xinhua Companies). The petitioners in this investigation are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp. (collectively, the petitioners).

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the PRC's most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

Case History

The following events have occurred since the Department announced the Preliminary Determination on October 27, 2009. *See Pre–Stressed Concrete Steel Wire Strand from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 74 FR 56756 (November 2, 2009) (*Preliminary Determination*).

From November 3, 2009, through December 23, 2009, we issued supplemental questionnaires to Government of the PRC (the GOC), the Fasten Companies, and the Xinhua Companies. From November 9, 2009, through January 25, 2010, the GOC, the Fasten Companies, and the Xinhua Companies submitted supplemental questionnaire responses. On October 28, 2009, petitioners requested that the Department align the due date of the final determination of the countervailing duty (CVD) investigation with the due date of the final determination in the companion antidumping (AD) investigation. On November 13, 2009, the Department aligned the due date of the final determination in the CVD investigation with the due date of the final determination in the AD investigation. *See Pre–Stressed Concrete Steel Wire Strand from the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 59960 (November 19, 2009). On November 20, 2009, the Xinhua Companies submitted a request for a public hearing. From November 23, 2009, through January 22, 2010, we issued verification outlines to the Fasten Companies, the GOC, and the Xinhua Companies. From January 14, 2010, through February 3, 2010, verifiers from the Department conducted verification of the questionnaire responses submitted by the Fasten Companies, the Xinhua Companies, and the GOC. From February 23, 2010, through March 9, 2010, we issued verification reports for the GOC, the Fasten Companies, and the Xinhua Companies. On March 16 and March 24, interested parties submitted their case and rebuttal briefs. On April 14, 2010, the Department placed on the record of the investigation publicly available information concerning the provision of wire rod for less than adequate remuneration (LTAR) program. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations (April 14, 2010) (New Information Memorandum). On April 21 and 26, 2010, interested parties submitted comments and clarifying information concerning the information the Department placed on the record.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for this CVD investigation is now May 14, 2010. *See* Memorandum to the Record from Ronald K Lorentzen, Deputy Assistant Secretary 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 Investigation

For purposes of this investigation, PC strand is steel wire strand, other than of stainless steel, which is suitable for use in, but not limited to, pre–stressed concrete (both pre–tensioned and post–tensioned) applications. The scope of this investigation encompasses all types and diameters of PC strand whether uncoated (uncovered) or coated (covered) by any substance, including but not limited to, grease, plastic sheath, or epoxy. This merchandise includes, but is not limited to, PC strand produced to the American Society for Testing and Materials (ASTM) A–416 specification, or comparable domestic or foreign specifications. PC strand made from galvanized wire is excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft^2 standard set forth in ASTM–A–475.

The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On July 17, 2009, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of the subject merchandise. *See* Pre–Stressed Concrete Steel Wire Strand from China, Investigation Nos. 701–TA–464 and 731–TA–1160 (Preliminary), 74 FR 34782 (July 17, 2009).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Decision Memorandum. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation: the Fasten Companies and the Xinhua Companies. Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all–others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. The all–others rate may not include zero and *de minimis* net subsidy rates, or any rates based solely on the facts available.

Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all–others rate by weight averaging the rates of the Fasten Companies and the Xinhua

Companies because doing so risks disclosure of proprietary information. Therefore, for the all–others rate, we have calculated a simple average of the two responding firms' rates.

Producer/Exporter	Subsidy Rate
Fasten Group Corporation (Fasten Corp.), Fasten Group Import & Export Co., Ltd. (Fasten I&E), Jiangyin Hongsheng Co. Ltd. (Hongsheng), Jiangyin Fasten Steel (Fasten Steel), Jiangyin Hongyu Metal Products Co., Ltd. (Hongyu Metal), and Jiangyin Walsin Steel Cable Co., Ltd. (Walsin) (Collectively, the Fasten Companies)	8.85 percent ad valorem
Xinhua Metal Products Company (Xinhua), Xinyu Iron and Steel Joint Stock Limited Company (Xinyu), and Xinyu Iron and Steel Limited Liability Company (Xingang) (Collectively the Xinhua Companies)	45.85 percent ad valorem
All Others	27.35 percent ad valorem

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for consumption on or after November 2, 2009, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with sections 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 2, 2010, but to continue the suspension of liquidation of all entries from November 2, 2010, through March 1, 2010.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 14, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Whether the Imposition of Countervailing Duties on the Same Imports that are Subject to Commerce's NME AD Methodology is Contrary to Law

Comment 2: Whether the Simultaneous Application of CVD Market Benchmarks and the AD Surrogate Value Methodology Unlawfully Double–Counts the Remedy for Domestic Subsidies

Comment 3: Whether the Department May Place the Burden on Respondents to "Prove" the Double–Counting of Remedies

Comment 4: Whether the Department's Application of a December 11, 2001 "Cut–Off" Date for Examining Alleged Subsidies Is Appropriate

Comment 5: Whether the GOC Failed to Cooperate in Providing Ownership Information for Producer A in a Manner that Warrants the Application of AFA

Comment 6: Whether the GOC Failed to Cooperate in Providing Ownership Information for Producer B in a Manner that Warrants the Application of AFA

Comment 7: Whether Record Evidence Demonstrates that Producer A is a GOC Authority

Comment 8: Whether Record Evidence Demonstrates that Producer B is a GOC Authority

Comment 9: Whether the GOC Failed to Indicate Whether Certain Wire Rod Suppliers Were Producers or Trading Companies

Comment 10: Whether SOEs and Firms Majority–Owned by the GOC Constitute Government Authorities

Comment 11: Whether Private Resellers of Wire Rod Should Be Treated as Government Authorities

Comment 12: Whether the Provision of Wire Rod to PC Strand Producers is Specific

Comment 13: Whether the Benchmark for the Wire Rod for LTAR Program Should Reflect All Delivery Charges, Including Shipping and Insurance Costs

Comment 14: Whether the Department Should Include Wire Rod Prices from the CRU Monitor and AMM Monitor in the LTAR Benchmark

Comment 15: Whether to Use an In–Country Benchmark to Measure Benefits Under the Provision of Wire Rod for LTAR Program

Comment 16: Whether Benefits Under the Provision of Wire Rod Program Should Be Attributed to Sales of Fasten I&E and Hongshen

Comment 17: Whether the Wire Rod Sold for LTAR Should be Attributed Only to Sales of Wire Rod

Comment 18: Whether the Department Committed a Ministerial Error for the Fasten and the Xinhua Companies Under the Provision of Wire Rod for LTAR Program And Whether the Department Should Correct the GOC Verification Report for Alleged Errors

Comment 19: Whether the Department Erred By Including Intra–Company Sales in the Denominator Used in the Net Subsidy Calculation of the Wire Rod for LTAR Program
Comment 20: The Suitability of the Benchmark Used to Calculate Benefits Under the Policy Lending Program
Comment 21: Whether GOC Policy Lending Is Specific
Comment 22: Whether Chinese Banks are Government Authorities
Comment 23: Whether The Department Should Apply AFA Available to Unverifiable Information Provided by Xinhua

Comment 24: Whether the Department Should Investigate the PRC's Alleged Undervaluation of its Currency and Find that it Constitutes a Countervailable Export Subsidy
*Comment 25:*Whether Provision of Land by Municipal and Provincial Governments to Respondents Was Countervailable

*Comment 26:*Whether the Provision of Electricity Is Not Countervailable Because the Program Provides General Infrastructure Which Does Not Constitute a Financial Contribution, Co 27, 45

[FR Doc. 2010–12292 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–945]

Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

DATES: *Effective Date:* May 21, 2010.

SUMMARY: On December 23, 2009, the Department of Commerce (the "Department") published its notice of preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of prestressed concrete steel strand ("PC strand") from the People's Republic of China ("PRC").[1] The period of investigation ("POI") is October 1, 2008, through March 31, 2009. We invited interested parties to comment on our preliminary determination. Based on our analysis of the comments received, we have made changes to our margin calculations for the respondents. We determine that PC strand from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

FOR FURTHER INFORMATION CONTACT: Alan Ray or Alexis Polovina, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5403 or (202) 482–3927, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its *Preliminary Determination* on December 23, 2009. Between January 18, 2010, and January 27, 2010, the Department conducted verifications of Wuxi Jinyang Metal Products Co., Ltd. ("WJMP") and Xinhua Metal Products Co., Ltd. ("Xinhua Metal"). *See* the "Verification" section below for additional information.

Upon the March 2, 2010, release of the verification reports,[2] we invited parties to comment on the *Preliminary Determination.* On March 15, 2010, we received case briefs from Petitioners,[3] Xinhua Metal, WJMP, and the separate-rate applicant Fasten Group Import & Export Co. Ltd. ("Fasten I&E"). On March 22, 2010, we received rebuttal briefs from Petitioners, Xinhua Metal, WJMP, and the Government of China ("GOC"). The Department held the public hearing on March 31, 2010.

Tolling of Administrative Deadlines

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for this final determination is now May 14, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Prestressed Concrete Steel Strand From the People's Republic of China: Issues and Decision Memorandum" ("Issues and Decision Memorandum"), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Room 1117, and is accessible on the World Wide Web at *http://trade.gov/ia/index.asp.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, we have made changes to the margin calculations for the final determination. For the final determination, we have calculated surrogate financial ratios using the fiscal year 2008–2009 financial statements of Rajratan Global Wire Ltd. *See* Issues and Decision Memorandum at Comment 1. Additionally, unlike in the *Preliminary Determination,* where World Trade Atlas ("WTA") data was available for only the first five months of the POI, for the final determination, WTA data covering the full POI is available. Therefore, for surrogate values calculated for the final determination derived from WTA data, we have relied on WTA data covering the full POI. *See* Memorandum to the File, from Alan Ray, Case Analyst, through Alex Villanueva, Program Manager, Prestressed Concrete Steel Wire Strand from the People's Republic of China: Placing Additional Surrogate Value Data on the Record, dated January 11, 2010; Memorandum to the File from Alexis Polovina, Case Analyst, through Alex

[1] *See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 74 FR 68232 (December 23, 2009) ("*Preliminary Determination*").

[2] Memorandum to the File, from Alexis Polovina, Case Analyst, through Alex Villanueva, Program Manager, Verification of the Sales and Processing Response of Xinhua Metal Products Co., Ltd. in the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand From the People's Republic of China ("PRC"), dated March 2, 2010 ("Xinhua Metal Verification Report"); Memorandum to the File, from Alan Ray, Case Analyst, through Alex Villanueva, Program Manager, Verification of the Sales and Processing Response of Wuxi Jinyang Metal Products Co., Ltd. in the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand From the People's Republic of China ("PRC"), dated March 2, 2010 ("WJMP Verification Report").

[3] American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp., (collectively, "Petitioners").

Villanueva, Program Manager, AD/CVD Operations, Office 9: Prestressed Concrete Steel Wire Strand from the People's Republic of China: Surrogate Values for the Final Determination, dated May 14, 2010 ("Final Surrogate Value Memo").

In addition, we have made some company-specific changes since the *Preliminary Determination.* Specifically, for the final determination, we have applied partial facts available to Xinhua Metal's wire rod usage pursuant to section 776(a)(2)(D). *See* Issues and Decision Memorandum at Comment 2. Regarding WJMP, for the final determination, we have decided not to value movement expenses between the pickling plant and the main factory as a factor of production. Additionally, lime used by WJMP to neutralize water is being considered as part of factory overhead. We have revalued the surrogate values for steel belt and coal consumed by WJMP. *See* Issues and Decision Memorandum at Comment 3. Finally, we have applied partial FA to WJMP's drawbench consumption factor.

Scope of Investigation

The scope of this investigation consists of PC strand, produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft standard set forth in ASTM–A–475. The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Affiliation

In the *Preliminary Determination,* the Department determined that, based on the evidence on the record in this investigation including evidence presented in WJMP's questionnaire responses, WJMP is affiliated with Corus America, Inc. ("CAI"). CAI was involved in WJMP's sales process pursuant to sections 771(33)(E), (F) and (G) of the Act, based on ownership and common control. *See Preliminary Determination,* 74 FR at 68234–35.

No other information has been placed on the record since the *Preliminary Determination* to contradict the above information upon which we based our finding that these companies are affiliated. Therefore, for the final determination, we continue to find that WJMP and CAI are affiliated.

Use of Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination 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 in the requested form and manner, together with a full explanation and suggested alternative form 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), 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; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the administering authority finds that an interested party has not acted to the best of its ability to comply with a request for information, the administering authority may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.

Xinhua Metal

Pursuant to sections 776(a)(2)(D) of the Act, we are applying partial facts otherwise available to Xinhua Metal because the Department finds that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record with respect to a portion of Xinhua Metal's wire rod usage. On November 2, 2009, Xinhua Metal stated in their supplemental questionnaire response that that "Xinhua Metal does not weigh the wire rod after it has been de-scaled and cut. The best demonstration of yield loss is the FOP for wire rod." [4] However, at verification and after an analysis of the actual data reported for wire rod usage and subtracting the by-products offsets from the wire rod usage rate, the wire rod usage rate was less than 1 kilogram for 1 kilogram of PC strand produced by Xinhua Metal. Although Xinhua Metal does collect many of its wire rod by-products, it is not possible to produce 1 kilogram of PC strand from less than 1 kilogram of wire rod input. Therefore, the information supplied by Xinhua Metal could not be verified, and we are applying FA, pursuant to 776(a)(2)(D) of the Act to Xinhua Metal's wire rod usage.

For the final determination, the Department will use a simple average of information from the petition and WJMP, to add a yield loss to Xinhua Metal's POI wire rod usage. *See* Issues and Decision Memorandum at Comment 2.

WJMP

Pursuant to section 776(a) of the Act, we are applying partial facts otherwise available to WJMP because the Department finds that the information necessary to calculate an accurate and

[4] *See* Xinhua Metal's 1st Supplemental D Questionnaire response at 5, dated November 2, 2009.

otherwise reliable margin is not available on the record with respect to WJMP's consumption of drawbench factor of production ("FOP"). At verification, the Department found that WJMP was consuming drawbench as a factor to produce PC strand.[5] Because WJMP could have reported drawbench, as it was used in the same production process step as the drawing lubricants, a factor that was reported by WJMP, and WJMP could have easily identified it by reviewing the raw materials account, we determine that WJMP did not act to the best of its ability and that we will apply an adverse inference, pursuant to section 776(b) of the Act. As an adverse inference, the Department will use the highest monthly consumption factor for drawing lubricants as the consumption factor for drawbench and value drawbench using the surrogate value for drawing lubricants.[6] The Department is using drawing lubricants as a surrogate factor and value for drawbench because it is used in the same stage of the production process, which represents the best information available on the record.

Verification

As provided in section 782(i) of the Act, we conducted verification of the information submitted by WJMP and Xinhua Metal for use in our final determination. *See* Xinhua Metal Verification Report; WJMP Verification Report. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by Respondents.

Surrogate Country

In the *Preliminary Determination,* we stated that we selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. *See Preliminary Determination,* 74 FR at 68234. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and 19 CFR 351.107(d). In the *Preliminary Determination,* we found that Xinhua Metal, WJMP, and the separate-rate applicant, Fasten I&E, demonstrated their eligibility for, and were hence assigned, separate-rate status. No party has commented on the eligibility of these companies for separate rate status. *See Preliminary Determination,* 74 FR at 68235–36. For the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation. Thus, we continue to find that they are eligible for separate-rate status.

As indicated in the *Preliminary Determination,* Liaonin TongDa Building Material Industry Co., Ltd. ("Tongda") did not respond to the supplemental questionnaire, Silvery Dragon PC Steel Products Group Co., Ltd. ("Silvery Dragon Steel") stated that it would not participate as a mandatory respondent, and Tianjin Shengte filed a deficient Section A questionnaire and failed to respond to the Department's request for more information. *See Preliminary Determination,* 74 FR at 68240. We preliminarily found that Tongda, Silvery Dragon Steel, and Tianjin Shengte were not eligible for separate rates. For this final determination, we continue to find that Tongda, Silvery Dragon Steel, and Tianjin Shengte are not eligible for separate rates.

The PRC-Wide Rate

In the *Preliminary Determination* we treated PRC exporters/producers that did not respond to the Department's request for information as part of the PRC-wide entity because they did not demonstrate that they operate free of government control. *See Preliminary Determination,* 74 FR at 68236–37. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination.* The PRC-wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of FA is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) ("SAA"). We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity. Because we begin with the presumption that all companies within a NME country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Synthetic Indigo From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from Xinhua Metal, WJMP, and Fasten I&E, which are listed in the "Final Determination Margins" section below.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any

[5] *See* WJMP Verification Report at 2, dated March 3, 2010.

[6] *See* Memorandum to the File from Alan Ray, Case Analyst, through Alex Villanueva, Program Manager, Analysis of the Final Determination of the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand ("PC strand"): Wuxi Jinyang Metal Products Co., Ltd. ("WJMP"), dated May 14, 2010.

previous review under section 751 concerning the subject merchandise."[7] The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.[8] The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[9] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[10] As total adverse facts available ("AFA") the Department preliminarily selected the rate of 193.55 percent from the Petition. In the *Preliminary Determination,* we preliminarily found that the rate of 193.55 percent is corroborated within the meaning of section 776(c) of the Act. *See Preliminary Determination,* 74 FR at 68237. Because no parties commented on the selection of the PRC-wide rate, we continue to find that the margin of 193.55 percent has probative value. Accordingly, we find that the rate of 193.55 percent is corroborated within the meaning of section 776(c) of the Act.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the following entities for the POI:

Exporter	Producer	Weighted-average margin
WJMP	WJMP	42.97
Xinhua Metal	Xinhua Metal	175.94
Fasten I&E	Jiangyin Fasten Steel Products Co., Ltd., Jiangyin Walsin Steel Cable Co., Ltd.	175.94
	Jiangyin Hongyu Metal Products Co., Ltd.	
PRC-wide Entity*		193.55

*This rate also applies to Tianjin Shengte, Silvery Dragon Steel, and Tongda.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after December 23, 2009, the date of publication of the *Preliminary Determination.* CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

Additionally, the Department determined in its final determination for the companion countervailing duty ("CVD") investigation that Xinhua Metal's merchandise benefited from export subsidies. Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for Xinhua Metal, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from India,* 69 FR 67306, 67307 (November 17, 2004).

With respect to WJMP, the voluntary respondent in this proceeding, the Department did not individually examine its exports of merchandise under investigation in the final determination for the companion CVD investigation. As a result, WJMP is captured under the "All Others" rate, which is an average of the companies examined in final determination for the companion CVD investigation. Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for WJMP, indicated above, minus the amount determined to constitute an export subsidy in the "All Others" rate.

With respect to Fasten Group I&E, the separate rate company, we note that the rate applied in this proceeding as a separate rate is derived from the calculated rate received by Xinhua Metal. Therefore, because Xinhua Metal received export subsidies in final determination for the companion countervailing duty investigation, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for Xinhua Metal, as indicated above, minus the amount determined to constitute an export subsidy.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative

[7] SAA at 870.

[8] *Id.*

[9] *Id.*

[10] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 14, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Comment 1: Surrogate Values

A. Financial Ratios
B. Wire Rod
C. By-product Offset for Scrap Tie Wire

Comment 2: Xinhua Metal

A. Adverse Facts Available ("AFA")
B. Foreign Brokerage and Handling
C. PRC Domestic Insurance

Comment 3: WJMP

A. AFA
B. Treatment of Certain Factors as Factory Overhead
C. Valuation of Coal
D. Valuation of Seals—Steel Belts

Comment 4: Fasten Group I&E's Separate Rate

Comment 5: Surrogate-Value Based Methodology

[FR Doc. 2010–12310 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW26

Fisheries of the Northeast Region; Pacific Region

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

ACTION: Notification of determination of overfishing or an overfished condition.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that in the Northeast Region, Gulf of Maine/Georges Bank pollock, Gulf of Maine/Georges Bank windowpane and Northwestern Atlantic Coast witch flounder are subject to overfishing and are in an overfished condition. Also, in the Northeast Region, Southern New England/Mid-Atlantic windowpane is subject to overfishing and Georges Bank winter flounder is in an overfished condition. In addition, in the Pacific Region, the fall Chinook salmon stock in the Sacramento River has been determined to be in an overfished condition.

NMFS notifies the appropriate fishery management council (Council) whenever it determines that; overfishing is occurring, a stock is in an overfished condition, or a stock is approaching an overfished condition. If a Council has been notified that a stock is in an overfished condition the Council must, within 2 years, prepare and implement an FMP amendment or proposed regulations to rebuild the affected stock.

FOR FURTHER INFORMATION CONTACT: Mark Nelson, (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS, on behalf of the Secretary, notifies Councils whenever it determines; a stock or stock complex is approaching an overfished condition, a stock or stock complex is overfished, or existing action taken to prevent previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress. NMFS also notifies Councils when it determines a stock or stock complex is subject to overfishing.

For a fishery determined to be overfished or approaching an overfished condition, NMFS also requests that the appropriate Council, or the Secretary, for fisheries under section 302(a)(3) of the Magnuson-Stevens Act, take action to end or prevent overfishing in the fishery and to implement conservation and management measures to rebuild overfished stocks. Councils (or the Secretary) receiving notification that a fishery is overfished must, within 2 years of notification, implement a rebuilding plan, through an FMP Amendment or proposed regulations, which ends overfishing immediately and provides for rebuilding the fishery in accordance with 16 U.S.C. 1854(e)(3)-(4) as implemented by 50 CFR 600.310(j)(2)(ii). Councils receiving a notice that a fishery is approaching an overfished condition must prepare and implement, within two years, an FMP amendment or proposed regulations to prevent overfishing from occurring. When developing rebuilding plans Councils (or the Secretary), in addition to rebuilding the fishery within the shortest time possible in accordance with 16 U.S.C. 1854(e)(4) and 50 CFR 600.310(j)(2)(ii), must ensure that such actions address the requirements to amend the FMP for each affected stock or stock complex to establish a mechanism for specifying and actually specify Annual Catch Limits (ACLs) and Accountability Measures (AMs) to prevent overfishing in accordance with 16 U.S.C. 1853(a)(15) and 50 CFR 600.310(j)(2)(i).

On August 4, 2008, NMFS published the Report of the 3rd Groundfish Assessment Review Meeting (GARM III) which showed that Gulf of Maine/Georges Bank pollock, Gulf of Maine/Georges Bank windowpane and Northwestern Atlantic Coast witch flounder are subject to overfishing and are in an overfished condition. In addition, GARM III showed that Southern New England/Mid-Atlantic windowpane is subject to overfishing and Georges Bank winter flounder is in an overfished condition. The New England Fishery Management Council (NEFMC) was notified on September 2, 2008, of the results of the GARM III. However, official status changes could not be made at the time because GARM III also recommended changes in the status determination criteria (SDC) contained in the Multispecies FMP, which required an FMP amendment before the status determinations could be changed. These changes occurred in January 2010.

On March 2, 2010, NMFS informed the Pacific Fisheries Management Council that the Sacramento River Fall Chinook salmon stock failed to meet the escapement goal for the third consecutive year, which has triggered an overfished status determination.

As noted above, within 2 years of notification of an overfished determination, the respective Council (or the Secretary) must adopt and implement a rebuilding plan, through an FMP Amendment or proposed implementing regulations, which ends overfishing immediately and provides for rebuilding of the stock. In addition, for the fisheries experiencing overfishing, the responsible Councils must propose, and NMFS must adopt, effective ACLs and AMs to end overfishing.

Dated: May 14, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–12282 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU76

Fisheries of the South Atlantic and the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); spiny lobster.

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

ACTION: Modification to schedule, location, and contact information for SEDAR Webinars and Workshop for South Atlantic and Gulf of Mexico spiny lobster.

SUMMARY: This notice updates information relative to the SEDAR update assessment of the South Atlantic and Gulf of Mexico stock of spiny lobster. This update will consist of a series of webinars and an Update Workshop. This assessment will update the stock assessment conducted under SEDAR 8. See **SUPPLEMENTARY INFORMATION**. The original notice published in the **Federal Register** on March 2, 2010, 75 FR 9397.

DATES: The Data Webinar occurred on March 23, 2010. Assessment Update Webinars will occur on June 30, and August 17, 2010. The Update Workshop will take place September 28–30, 2010. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Webinars may be attended by the public. Those interested in participating should contact Julie A Neer at SEDAR. See **FOR FURTHER INFORMATION CONTACT** to request an invitation providing webinar access information.

The Update Workshop will be held at the Key West Marriott Beachside Hotel, 3841 N. Roosevelt Blvd, Key West, Florida 33040; telephone: (305) 296–8100.

FOR FURTHER INFORMATION CONTACT: Julie A Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; email: *julie.neer@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. A full benchmark assessment conducted under SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop Process and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Review Workshop Report documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; international experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR conducts updates of benchmark stock assessments previously conducted through the SEDAR program. Update assessments add additional data points to datasets incorporated in the original SEDAR benchmark assessment and run the benchmark assessment model to update population estimates. The spiny lobster update assessment will update the SEDAR 8 benchmark of Southeastern United States spiny lobster, which included both the South Atlantic and Gulf of Mexico. The update process consists of a series of webinars and an update workshop.

Spiny Lobster Update Process Schedule:

New Dates for the SEDAR assessment webinars: June 30 and August 17, 2010, 1 p.m. - 4 p.m.

Using updated datasets adopted during the Data Webinar, participants will employ assessment models used in SEDAR 8 to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

New Dates for the SEDAR Spiny Lobster Update Workshop: September 28–30, 2010

September 28 and 29, 2010: 9 p.m. - 6 p.m.; September 30, 2010: 8 a.m. - 12 p.m.

During the Update Workshop assessment analysts will discuss and evaluate decisions made during the Data and Assessment Webinars. Participants will compare and contrast various assessment approaches, and determine whether the assessments are adequate for submission to Science and Statistics Committees of the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council. Workshop panelists will document their findings and recommendations in an Assessment Workshop Report.

Although non-emergency issues not contained in this agenda may come before these groups 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

The Update Workshop is 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 10 business days prior to the workshop.

Dated: May 18, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–12311 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW34

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued one-year Letters of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: These authorizations are effective from June 1, 2010 through May 31, 2011, July 1, 2010 through June 30, 2011, and August 1, 2010 through July 31, 2011.

ADDRESSES: The application and LOAs are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (who has delegated the authority to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States (U.S.) citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammal.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to EROS were published on June 19, 2008 (73 FR 34875), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued an LOA to Fairways Offshore Exploration, Inc., El Paso Exploration & Production Company, L.P., and ATP Oil & Gas Corporation. Issuance of the LOAs is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: May 17, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–12293 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW57

New England 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 New England Fishery Management Council's (Council) Groundfish/Scallop Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, June 7, 2010 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600; fax: (401) 734–9700.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the panel's agenda are as follows:

1. The Joint Groundfish/Scallop Advisory Panel (AP) will meet to consider measures that will facilitate harvesting optimum yield from the two fisheries by addressing the potential constraints of groundfish stock allocations. The Joint AP may also consider measures to reduce catch of groundfish in the scallop fishery by adopting measures that would allow benefits for the fishery from reduction in groundfish catch. These measures will be considered by the Joint Committee at a future date, and may become part of an amendment to the Northeast Multispecies and Scallop Fishery Management Plans.

2. Other business may also be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal

action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 18, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–12291 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW56

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Salmon Advisory Subpanel (SAS) will hold a work session by telephone conference to develop recommendations for the June 2010 Council meeting.

DATES: The telephone conference will be held Monday, June 7, 2010, from 1:30 p.m. to 4 p.m.

ADDRESSES: A public listening station will be available at the Pacific Council Office, Small Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review information in the Pacific Council's June 2010 meeting briefing book related to salmon management, and to develop comments and recommendations for consideration at the June 2010 Pacific Council meeting.

Although non-emergency issues not contained in the meeting agenda may come before the SAS for discussion, those issues may not be the subject of formal SAS action during this meeting. SAS 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 SAS's intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 18, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–12312 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Andrea Staebler Berton, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4037.

Background

On September 1, 2009, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on New Pneumatic Off-the-Road Tires ("OTR tires") from the People's Republic of China ("PRC") for the period of review ("POR") February 20, 2008, through August 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review,* 74 FR 45179 (September 1, 2009). On September 28, 2009, Guizhou Tire I&E Corporation, Guizhou Tyre Co., Ltd., and Guizhou Advanced Rubber Co., Ltd. (collectively "GTC"), exporters of OTR tires, requested that the Department conduct an administrative review of its exports to the United States during the POR. On September 29, 2009, GPX International Tire Corporation ("GPX"), an importer of OTR tires, requested that the Department conduct an administrative review of OTR tires exports from the following entities: GTC; Hebei Starbright Tire Co., Ltd. ("Starbright"); Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC"); Jiangsu Feichi Co., Ltd. ("Feichi"); Shangdong Huitong Tyre Co., Ltd. ("Huitong"); Aeolus Tyre Co., Ltd. ("Aeolus"); Triangle Tyre Co., Ltd. ("Triangle"); and Tianjin Wanda Tyre Group ("Wanda"). On September 30, 2009, Super Grip, an importer of OTR tires, and Innova Rubber Co., Ltd. ("Innova"), a PRC exporter and producer of OTR tires, requested that the Department conduct an administrative review of Innova's exports. Also on September 30, 2009, TUTRIC, a PRC exporter of OTR tires, requested that the Department conduct an administrative review of its own exports. The Department received timely requests for review for six additional exporters: Hanghzou Zhongce Rubber Co., Ltd., KS Holding Limited and KS Resources Limited, Laizhou Xiongying Rubber Industry Co., Ltd., Qingdao Free Trade Zone Full World International Trading Co., Ltd., Qingdao Taifa Group Co., Ltd., and Weihai Zhongwei Rubber Co., Ltd. The Department then published in the *Federal Register* the initiation notice for the antidumping duty administrative review of OTR tires from the PRC for the 2008–2009 POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part,* 74 FR 54956 (October 26, 2009).

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Secretary may also extend this time limit if the Secretary decides that it is reasonable to do so. On November 20, 2009, GPX

timely withdrew its request for an administrative review of exports from GTC, TUTRIC, Feichi, Huitong, Aeolus, Triangle, and Wanda (*i.e.,* within 90 days of the publication of the notice of initiation of this review). On November 24, 2009, Super Grip and Innova timely withdrew their requests for an administrative review of exports from Innova. On December 10, 2009, GTC timely withdrew its request for an administrative review of its exports. On February 24, 2010, TUTRIC withdrew its request for an administrative review of its exports. In spite of the fact that TUTRIC missed the deadline, we are accepting the request because the Department has not invested significant recourses into the analysis of TUTRIC's responses. Because no additional party requested a review of GTC's, TUTRIC's, Feichi's, Huitong's, Aeolus', Triangle's, Wanda's, and Innova's exports, the Department hereby rescinds the administrative review of OTR tires with respect to these entities in accordance with 19 CFR 351.213(d)(1). This administrative review will continue with respect to Starbright, Hanghzou Zhongce Rubber Co., Ltd., KS Holding Limited and KS Resources Limited, Laizhou Xiongying Rubber Industry Co., Ltd., Qingdao Free Trade Zone Full World International Trading Co., Ltd., Qingdao Taifa Group Co., Ltd. and Weihai Zhongwei Rubber Co., Ltd.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For GTC, TUTRIC, Feichi, Huitong, Aeolus, and Triangle, which each had previously established eligibility for a separate rate, antidumping duties shall be assessed 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). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Because Wanda and Innova remain part of the PRC entity, their respective entries may be under review in the ongoing administrative review. Accordingly, the Department will not order liquidation of entries for Wanda or Innova. The Department intends to issue assessment instructions for the PRC entity, which will cover any entries by Wanda and Innova, 15 days after publication of the final results of the ongoing administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations 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 assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 14, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–12295 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1678]

Reorganization of Foreign–Trade Zone 2, under Alternative Site Framework, New Orleans, Louisiana, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general–purpose zones;

Whereas, the Board of Commissioners of the Port of New Orleans, grantee of Foreign–Trade Zone 2, submitted an application to the Board (FTZ Docket 58–2009, filed 12/14/2009) for authority to reorganize under the ASF with a service area of Orleans, Jefferson and St. Bernard Parishes, Louisiana, adjacent to the New Orleans Customs and Border Protection port of entry, and FTZ 2's existing Sites 2, 4, 6 and 7 would be categorized as magnet sites, existing Sites 1 and 8 through 61 would be categorized as usage–driven sites, and existing Site 3 would be deleted;

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 68041–68042, 12/22/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 2 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000–acre activation limit for the overall general–purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 4, 6 and 7 if not activated by May 31, 2015, and to a three-year ASF sunset provision for usage–driven sites that would terminate authority for Sites 1 and 8 through 61 if no foreign–status merchandise is admitted for a bona fide customs purpose by May 31, 2013.

Signed at Washington, DC, this 13th day of May 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–12289 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU56

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Pacific Ocean, July Through September 2010

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Lamont-Doherty Earth Observatory (L–DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a marine geophysical survey at the Shatsky Rise in the northwest Pacific Ocean, July

through September, 2010. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to L–DEO to incidentally harass, by Level B harassment only, 34 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than June 21, 2010.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments is *PR1.0648-XU56@noaa.gov.* NMFS is not responsible for e-mail comments send to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The following documents associated with the application are also available at same internet address: the National Science Foundation's (NSF) draft Environmental Assessment (EA) and associated report (Report) prepared by LGL Limited Environmental Research Associates (LGL) for NSF, titled, "Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* on the Shatsky Rise in the Northwest Pacific Ocean, July–September, 2010." Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 713–2289, ext. 113 or Benjamin Laws, Office of Protected Resources, NMFS, (301) 713–2289, ext. 159.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "*harassment*" *as:*

Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on February 2, 2010 from L–DEO for the taking by harassment, of marine mammals, incidental to conducting a marine geophysical survey in the northwest Pacific Ocean. L–DEO, with research funding from the U.S. National Science Foundation (NSF), plans to conduct a marine seismic survey in the northwest Pacific Ocean, from July through September, 2010.

L–DEO plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), a seismic airgun array, and ocean bottom seismometers (OBS) to conduct a geophysical survey at the Shatsky Rise, a large igneous plateau in the northwest Pacific Ocean. The proposed survey will provide data necessary to decipher the crustal structure of the Shatsky Rise; may address major questions of Earth history, geodynamics, and tectonics; could impact the understanding of terrestrial magmatism and mantle convection; and may obtain data that could be used to improve estimates of regional earthquake occurrence and distribution. In addition to the proposed operations of the seismic airgun array, L–DEO intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey.

Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array, may have the potential to cause marine mammals in the survey area to be behaviorally disturbed in a manner that NMFS considers to be Level B harassment. This is the principal means of marine mammal taking associated with these activities and L–DEO has requested an authorization to take several marine mammals by Level B harassment.

Description of the Specified Activity

L–DEO's proposed seismic survey on the Shatsky Rise is scheduled to commence on July 24, 2010 and continue for approximately 17 days ending on September 7, 2010. L–DEO will operate the *Langseth* to deploy an airgun array, deploy and retrieve OBS, and tow a hydrophone streamer to complete the survey.

The *Langseth* will depart from Apra Harbor, Guam on July 19, 2010 for a six-day transit to the Shatsky Rise, located at 30–37° N, 154–161° E in international waters offshore from Japan. Some minor deviation from these dates is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Therefore, NMFS plans to issue an

authorization that extends to October 21, 2010.

Geophysical survey activities will involve conventional seismic methodologies to decipher the crustal structure of the Shatsky Rise. To obtain high-resolution, 3–D structures of the area's magmatic systems and thermal structures, the *Langseth* will deploy a towed array of 36 airguns as an energy source and approximately 28 OBSs and a 6-kilometer (km) long hydrophone streamer. As the airgun array is towed along the survey lines, the hydrophone streamers will receive the returning acoustic signals and transfer the data to the vessel's onboard processing system. The OBSs record the returning acoustic signals internally for later analysis.

The proposed Shatsky Rise study (*e.g.,* equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will take place in international waters deeper than 1,000 meters (m) (3,280 feet (ft)) and will require approximately 17 days (d) to complete approximately 15 transects of variable lengths totaling 3,160 kilometers (km) of survey lines. Data acquisition will include approximately 408 hours (hr) of airgun operation (17 d × 24 hr).

The scientific team consists of Drs. Jun Korenaga (Yale University, New Haven, CT), William Sager (Texas A&M University, College Station, TX), and John Diebold (L–DEO, Palisades, NY).

Vessel Specifications

The *Langseth,* owned by NSF, is a seismic research vessel with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals emanating from the airgun array. The vessel, which has a length of 71.5 m (235 feet (ft); a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834, can accommodate up to 55 people. The ship is powered by two 3,550 horsepower (hp) Bergen BRG–6 diesel engines which drive the two propellers. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800-hp bowthruster, which is not used during seismic acquisition. The operation speed during seismic acquisition is typically 7.4 to 9.3 km/hr (3.9 to 5.0 knots (kn)) and the cruising speed of the *Langseth* outside of seismic operations is 18.5 km/hr (9.9 kn).

The vessel also has an observation tower from which visual observers will watch for marine mammals before and during the proposed airgun operations. When stationed on the observation platform, the observer's eye level will be approximately 18 m (58 ft) above sea level providing an unobstructed view around the entire vessel.

Acoustic Source Specifications

Seismic Airguns

The full airgun array for the proposed survey consists of 36 airguns (a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 cubic inches (in^3)), with a total volume of approximately 6,600 in^3 and a firing pressure of 1,900 pounds per square inch (psi). The dominant frequency components range from two to 188 Hertz (Hz).

The array configuration consists of four identical linear arrays or strings, with 10 airguns on each string; the first and last airguns will be spaced 16 m (52 ft) apart. For each operating array or string, the *Langseth* crew will fire the nine airguns simultaneously. They will keep the tenth airgun in reserve as a spare, which will be turned on in case of failure of one of the other airguns. The crew will distribute the four airgun strings across an area measuring approximately 24 by 16 m (79 by 52 ft) behind the *Langseth* and will be towed approximately 100 m (328 ft) behind the vessel at a tow depth of nine to 12 m (29.5 to 49.2 ft) depending on the transect. The airgun array will fire every 20 seconds (s) for the multi-channel seismic (MCS) surveying (13 transects) and will fire every 70 s when recording data on the OBS (2 transects). The tow depth of the array will be 9 m (29.5 ft) for the MCS transects and 12 m (39.3 ft) for the OBS transects. During firing, the airguns will emit a brief (approximately 0.1 s) pulse of sound. The airguns will be silent during the intervening periods of operations.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun arrays used by L–DEO on the *Langseth* are 236 to 265 dB re: 1 $\mu Pa_{(p\text{-}p)}$. The rms value for a given airgun pulse is typically 16 dB re: 1 μPa lower than the peak-to-peak value. Accordingly, L–DEO has predicted the received sound levels in relation to distance and direction from the airguns, for the 36-airgun array and for a single 1900LL 40-in^3 airgun, which will be used during power downs. A detailed description of the modeling effort is provided in Appendix A of LGL's Report. These are the nominal source levels applicable to downward propagation. The effective source levels for horizontal propagation are lower than those for downward propagation when the source consists of numerous airguns spaced apart from one another.

Appendix B of LGL's report and previous **Federal Register** notices (*see* 69 FR 31792, June 7, 2004; 71 FR 58790, October 5, 2006; 72 FR 71625, December 18, 2007; 73 FR 52950, September 12, 2008, or 73 FR 71606, November 25, 2008, and 74 FR 42861, August 25, 2009) discuss the characteristics of the airgun pulses in detail. NMFS refers the reviewers to those documents for additional information.

Predicted Sound Levels for the Airguns

Tolstoy *et al.,* (2009) recently reported results for propagation measurements of pulses from the *Langseth's* 36-airgun array in two water depths, approximately 50 m and 1,600 m (164 and 5,249 ft), in the Gulf of Mexico in 2007 and 2008. L–DEO has used these reported empirical values to determine exclusion zones (EZ) for the airgun array, designate mitigation zones, and estimate take (described in greater detail

in Section VII of the application) for marine mammals.

L–DEO has summarized the modeled safety radii for the planned airgun configuration in Table 1 which shows the measured and predicted distances at which sound levels (160–, 180–, and 190–dB) are expected to be received from the 36-airgun array and a single airgun operating in water greater than 1,000 m (3,820 ft) in depth.

TABLE 1—MEASURED (ARRAY) OR PREDICTED (SINGLE AIRGUN) DISTANCES TO WHICH SOUND LEVELS ≥190, 180, AND 160 DB RE: 1 μPA COULD BE RECEIVED IN DEEP (>1000 M; 3280 FT) WATER FROM THE 36-AIRGUN ARRAY, AS WELL AS A SINGLE AIRGUN, DURING THE PROPOSED SHATSKY RISE SEISMIC SURVEY, JULY–SEPTEMBER, 2010 (BASED ON L–DEO MODELS AND TOLSTOY ET AL., 2009)

Source and volume	Tow depth (m)	*Predicted RMS distances (m)*		
		190 dB	180 dB	160 dB
Single Bolt airgun 40 in³	9–12*	12	40	385
4 strings 36 airguns 6600 in³	9	400	940	3850
	12	460	1100	4400

*The tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single 40-in³ airgun; thus the predicted safety radii are essentially the same at each tow depth.

Results of the Gulf of Mexico calibration study (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth. The tow depth of the airgun array for the proposed survey will range from 9 to 12 m (29.5 to 39.4 ft). However, in the Gulf of Mexico calibration study, the *Langseth* towed the airgun array at a depth of 6 m (19.6 ft) which is less than the tow depth range (9 to 12 m (29.5 to 39.4 ft)) for this proposed seismic survey. Accordingly, L–DEO has applied correction factors to the distances reported by Tolstoy *et al.* (2009) for shallow and intermediate depth water (*i.e.,* they calculated the ratios between the 160–, 180–, and 190–dB distances at 6 m versus 9 m (19.6 ft versus 29.5 ft) and the ratios between the 160–, 180–, and 190–dB distances at 6 m versus 12 m (19.6 ft versus 39.4 ft) from the modeled results for the 6,600-in³ airgun array). Refer to Appendix A of LGL's Environmental Assessment Report for additional information regarding how L–DEO calculated model predictions in Table 1 and how the applicant used empirical measurements to correct the modeled numbers.

Ocean Bottom Seismometer

The *Langseth* crew will deploy approximately 28 OBS on the Shatsky Rise (*see* Figure 1 of L–DEO's application) over the course of approximately three days. The *Langseth* crew will retrieve all OBSs after seismic operations are completed. L–DEO expects the retrieval to last approximately five days.

L–DEO proposes to use the Woods Hole Oceanographic Institution (WHOI) "D2" OBS during the cruise. This type of OBS is approximately one meter in height and has a maximum diameter of 50 centimeters (cm). The anchor (2.5 × 30.5 × 38.1 cm) is made of hot-rolled steel and weighs 23 kilograms (kg). The acoustic release transponder used to communicate with the OBS uses frequencies of 9 to 13 kHz. The source level of the release signal is 190 dB re: 1 μPa.

Multibeam Echosounder

The *Langseth* will operate a Kongsberg EM 122 MBES concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted MBES emits brief pulses of sound (also called a ping) (10.5 to 13 kilohertz (kHz)) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is one or two degrees (°) fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

For deep-water operations, each ping consists of eight successive fan-shaped transmissions, up to 15 milliseconds (ms) in duration and each ensonifying a sector that extends 1° fore-aft. The eight successive transmissions span an overall cross-track angular extent of about 150°, with 2 ms gaps between the pulses for successive sectors.

Sub-Bottom Profiler

The *Langseth* will also operate a Knudsen 320B SBP continuously throughout the cruise with the MBES. An SBP operates at mid to high frequencies and is generally used simultaneously with an MBES to provide information about the sedimentary features and bottom topography. SBP pulses are directed downward at typical frequencies of approximately three to 18 kHz. However, the dominant frequency component of the SBP is 3.5 kHz which is directed downward in a 27° cone by a hull-mounted transducer on the vessel. The maximum output is 1,000 watts (204 dB re: 1 μPa), but in practice, the output varies with water depth. The pulse interval is one second, but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-second pause.

NMFS expects that acoustic stimuli resulting from the proposed operation of the single airgun or the 36-airgun array has the potential to harass marine mammals, incidental to the conduct of the proposed seismic survey. NMFS does not expect that the movement of the *Langseth,* during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (7.4 to 9.3 km/hr; 3.9 to 5.0 kn).

Description of the Marine Mammals in the Area of the Proposed Specified Activity

Thirty-four marine mammal species may occur in the Shatsky Rise survey area, including 26 odontocetes (toothed cetaceans), 7 mysticetes (baleen whales) and one pinniped. Six of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the north Pacific right (*Eubalena japonica*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale.

The western North Pacific gray whale (*Eschrichtius robustus*) occurs in the northwest Pacific Ocean and is listed as endangered under the ESA and as critically endangered by the International Union for Conservation of Nature (IUCN). L–DEO does not expect to encounter this species within the proposed survey area as gray whales are known to prefer nearshore coastal waters. Thus, L–DEO does not present analysis for this species nor does the application request take for this species.

Table 2 presents information on the abundance, distribution, population status, and conservation status of marine mammals that may occur in the proposed survey area.

TABLE 2—HABITAT, REGIONAL POPULATION SIZE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA AT THE SHATSKY RISE AREA IN THE NORTHWEST PACIFIC OCEAN

Species	Habitat	Regional population size [a]	U.S. ESA [b]	IUCN [c]	CITES [d]
Mysticetes					
North Pacific right whale	Pelagic and coastal	few 100 [e]	EN	EN	I
Humpback whale	Mainly nearshore waters and banks.	938–1107 [f]	EN	LC	I
Minke whale	Pelagic and coastal	25,000 [g]	NL	LC	I
Bryde's whale	Pelagic and coastal	20,501 [h]	NL	DD	I
Sei whale	Primarily offshore, pelagic	7260–12,620 [i]	EN	EN	I
Fin whale	Continental slope, mostly pelagic	13,620–18,680 [j]	EN	EN	I
Blue whale	Pelagic and coastal	3500 [k]	EN	EN	I
Odontocetes					
Sperm whale	Usually pelagic and deep seas	29,674 [l]	EN	VU	I
Pygmy sperm whale	Deep waters off the shelf	N.A.	NL	DD	II
Dwarf sperm whale	Deep waters off the shelf	11,200 [m]	NL	DD	II
Cuvier's beaked whale	Pelagic	20,000 [m]	NL	LC	II
Baird's beaked whale	Deep water	N.A.	NL	DD	II
Longman's beaked whale	Deep water	N.A.	NL	DD	II
Hubb's beaked whale	Deep water	25,300 [n]	NL	DD	II
Ginkgo-toothed beaked whale	Pelagic	25,300 [n]	NL	DD	II
Blainville's beaked whale	Pelagic	25,300 [n]	NL	DD	II
Stejneger's beaked whale	Deep water	25,300 [n]	NL	DD	II
Rough-toothed dolphin	Deep water	145,900 [m]	NL	LC	II
Common bottlenose dolphin	Coastal and oceanic, shelf break	168,000 [o]	NL	LC	II
Pantropical spotted dolphin	Coastal and pelagic	438,000 [o]	NL	LC	II
Spinner dolphin)	Coastal and pelagic	801,000 [p]	NL	DD	II
Striped dolphin	Off continental shelf	570,000 [o]	NL	LC	II
Fraser's dolphin	Waters >1000 m	289,300 [m]	NL	LC	II
Short-beaked common dolphin.	Shelf and pelagic, seamounts	2,963,000 [q]	NL	LC	II
Pacific white-sided dolphin	Continental slope and pelagic	988,000 [r]	NL	LC	II
Northern right whale dolphin	Deep water	307,000 [r]	NL	LC	II
Risso's dolphin	Waters >1000 m, seamounts	838,000 [o]	NL	LC	II
Melon-headed whale	Oceanic	45,400 [m]	NL	LC	II
Pygmy killer whale	Deep, pantropical waters	38,900 [m]	NL	DD	II
False killer whale	Pelagic	16,000 [o]	NL	DD	II
Killer whale	Widely distributed	8500 [m]	NL	DD	II
Short-finned pilot whale	Mostly pelagic, high-relief topography.	53,000 [o]	NL	DD	II
Dall's porpoise	Deep water	1,337,224 [s]	NL	LC	II
Pinnipeds					
Northern fur seal	Coastal and pelagic	1.1 million [t]	NL	VU	—

N.A.—Data not available or species status was not assessed.

[a] Region for population size, in order of preference based on available data, is Western North Pacific, North Pacific, or Eastern Tropical Pacific; *see* footnotes below.

[b] U.S. Endangered Species Act; EN = Endangered, NL = Not listed.

[c] Codes for IUCN (2009) classifications; EN = Endangered; VU = Vulnerable; LC = Least Concern; DD = Data Deficient.

[d] Convention on International Trade in Endangered Species of Wild Fauna and Flora (UNEP–WCMC 2009): Appendix I = Threatened with extinction; Appendix II = not necessarily now threatened with extinction but may become so unless trade is closely controlled.

[e] North Pacific (Jefferson *et al.,* 2008).

[f] Western North Pacific (Calambokidis *et al.,* 2008).

[g] Northwest Pacific and Okhotsk Sea (Buckland *et al.,* 1992; IWC 2009).

[h] Western North Pacific (Kitakado *et al.,* 2008; IWC 2009).

[i] North Pacific (Tillman, 1977).

[j] North Pacific (Ohsumi and Wada, 1974).

[k] North Pacific (NMFS, 1998).

[l] Western North Pacific (Whitehead, 2002b).

[m] Eastern Tropical Pacific (ETP) (Wade and Gerrodette, 1993).

[n] ETP; all *Mesoplodon* spp. (Wade and Gerrodette, 1993).

[o] Western North Pacific (Miyashita, 1993a).

[p] Whitebelly spinner dolphin in the ETP in 2000 (Gerrodette *et al.,* 2005 *in* Hammond *et al.,* 2008a).

[q] ETP (Gerrodette and Forcada 2002 *in* Hammond *et al.,* 2008b).

[r] North Pacific (Miyashita, 1993b).

[s] North Pacific (Buckland *et al.,* 1993).

[t] North Pacific, 2004–2005 (Gelatt and Lowry, 2008).

Refer to Section IV of L–DEO's application for detailed information regarding the status and distribution of these marine mammals and to Section III of the application for additional information regarding how L–DEO estimated the regional population size for the marine mammals in Shatsky Rise area.

Potential Effects on Marine Mammals

Summary of Potential Effects of Airgun Sounds

Level B harassment of cetaceans and pinnipeds has the potential to occur during the proposed seismic survey due to acoustic stimuli caused by the firing of a single airgun or the 36-airgun array which introduces sound into the marine environment. The effects of sounds from airguns might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. For a brief summary of the characteristics of airgun pulses, *see* Appendix B of L–DEO's application.

Several studies have also shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response (tolerance) (*see* Appendix B (3) LGL's Report). Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds usually seem to be more tolerant of exposure to airgun pulses than cetaceans, with the relative responsiveness of baleen and toothed whales being variable (*see* Appendix B (5) of LGL's Report).

Masking of Natural Sounds

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data on this. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (*e.g.,* Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (*e.g.,* Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; and Dunn *et al.,* 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Dolphins and porpoises commonly are heard calling while airguns are operating (*e.g.,* Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses. Masking effects on marine mammals are discussed further in Appendix B(4) of LGL's Report.

Behavioral Disturbance

Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead (*Balaena mysticetus*), and sperm whales. Less detailed data are available for some other species of baleen whales, small toothed whales, and sea otters (*Enhydra lutris*), but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B (5) of the LGL report, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of

migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re: 1 μPa seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4 to 15 km from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B (5) of the EA have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re: 1 μPa.

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16-airgun, 2,678-in^3 array, and to a single 20-in^3 airgun with source level 227 dB re: 1 μPa$_{(p-p)}$. McCauley *et al.* (1998) documented that avoidance reactions began at five to eight km from the array, and that those reactions kept most pods approximately three to four km from the operating seismic boat. McCauley *et al.* (2000a) noted localized displacement during migration of four to five km by traveling pods and seven to 12 km by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μPa for humpback pods containing females, and at the mean closest point of approach (CPA) distance the received level was 143 dB re: 1 μPa. The initial avoidance response generally occurred at distances of five to eight km from the airgun array and two km from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m, where the maximum received level was 179 dB re: 1 μPa.

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100-in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed "startled" at received levels of 150 to 169 dB re: 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re: 1 μPa.

Studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was no observable direct correlation between strandings and seismic surveys (IWC, 2007:236).

There are no data on reactions of right whales to seismic surveys, but results from the closely-related bowhead whale show that their responsiveness can be quite variable depending on their activity (migrating versus feeding). Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20 to 30 km from a medium-sized airgun source at received sound levels of around 120 to 130 dB re: 1 μPa (Miller *et al.,* 1999; Richardson *et al.,* 1999; *see* Appendix B (5) of LGL's report). However, more recent research on bowhead whales (Miller *et al.,* 2005; Harris *et al.,* 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing–respiration–dive cycles were evident upon statistical analysis (Richardson *et al.* 1986). In the summer, bowheads typically begin to show avoidance reactions at received levels of about 152 to 178 dB re: 1 μPa (Richardson *et al.,* 1986, 1995; Ljungblad *et al.,* 1988; Miller *et al.,* 2005).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100-in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re: 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re: 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a,b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (*e.g.,* McDonald *et al.,* 1995; Dunn *et al.,* 2009). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). In a study off of Nova Scotia, Moulton and Miller (2005) found little difference in sighting rates (after accounting for water depth) and initial sighting distances of balaenopterid whales when airguns were operating vs. silent. However, there were indications that these whales were more likely to be moving away when seen during airgun operations. Similarly, ship-based monitoring studies of blue, fin, sei and minke whales offshore of Newfoundland (Orphan Basin and Laurentian Sub-basin) found no more than small differences in sighting rates and swim directions during seismic versus non-seismic periods (Moulton *et al.,* 2005, 2006a,b).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years.

However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Angliss and Allen, 2009). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Angliss and Allen, 2009).

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above and (in more detail) in Appendix B of the LGL report have been reported for toothed whales. However, there are recent systematic studies on sperm whales (*e.g.,* Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009).

Seismic operators and marine mammal observers on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (*e.g.,* Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; *see* also Barkaszi *et al.,* 2009). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (*e.g.,* Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (*e.g.,* Stone and Tasker, 2006; Weir, 2008). In most cases the avoidance radii for delphinids appear to be small, on the order of one km less, and some individuals show no apparent avoidance. The beluga whale (*Delphinapterus leucas*) is a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys conducted in the southeastern Beaufort Sea during summer found that sighting rates of beluga whales were significantly lower at distances 10 to 20 km compared with 20 to 30 km from an operating airgun array, and observers on seismic boats in that area rarely see belugas (Miller *et al.,* 2005; Harris *et al.,* 2007).

Captive bottlenose dolphins (*Tursiops truncatus*) and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises (*Phocoena phocoena*) show stronger avoidance of seismic operations than do Dall's porpoises (*Phocoenoides dalli*) (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (*e.g.,* Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call (*see* Appendix B of the LGL report for review). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (*e.g.,* Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (*e.g.,* Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly.

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (*e.g.,* Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; *see* also the Strandings and Mortality subsection in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown (*see* the Strandings and Mortality subsection in this notice). Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents. Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (Appendix B of the LGL Report).

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. TTS has been demonstrated and studied in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, *i.e.,* permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

L–DEO has included exclusion (*i.e.,* shut-down) zones for the proposed

seismic survey on the Shatsky Rise to minimize the exposure of marine mammals to levels of sound associated with hearing impairment.

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airgun array, and to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment (*see* below this section). In addition, many cetaceans show some avoidance of the area where received levels of airgun sound are high enough such that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that might (in theory) occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (*i.e.,* beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong transient sounds. However, as discussed below this section, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. It is unlikely that any effects of these types would occur during the present project given the brief duration of exposure of any given mammal, the deep water in the study area, and the planned monitoring and mitigation measures. The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). The distances from the *Langseth's* airguns at which the received energy level (per pulse, flat-weighted) that would be expected to be greater than or equal to 180 dB re: 1 μPa are estimated in Table 1.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales (Southall *et al.,* 2007). For this proposed study, L–DEO expects no cases of TTS given three considerations: (1) The low abundance of baleen whales in the planned study area at the time of the survey; (2) the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for TTS to occur; and (3) the mitigation measures that are planned.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (*e.g.,* Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time—*see* Appendix B(6) of LGL's Report. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than six dB (Southall *et al.,* 2007).

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. The planned monitoring and mitigation measures, including visual monitoring, passive acoustic monitoring (PAM) to complement visual observations (if practicable), power downs, and shut downs of the airguns when mammals are seen within or approaching the "exclusion zones," will further reduce the probability of exposure of marine mammals to sounds strong enough to induce PTS.

Stranding and Mortality—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used for marine waters for commercial seismic surveys or (with rare exceptions) for seismic research; they have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar and, in one case, an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong "pulsed" sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (*e.g.,* Hildebrand, 2005; Southall *et al.,* 2007).

Appendix B(6) of the LGL report provides additional details.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) a change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) a physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues. Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are increasing indications that gas-bubble disease (analogous to the bends), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. The evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of two to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (*e.g.,* Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity "pulsed" sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, there was a stranding of two Cuvier's beaked whales (*Ziphius cavirostris*) in the Gulf of California, Mexico, when the L DEO vessel R/V *Maurice Ewing* was operating a 20-airgun (8,490 in ^{3}) in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels,

(2) the proposed monitoring and mitigation measures, and

(3) differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales and some odontocetes, are especially unlikely to incur non-auditory physical effects. Also, the planned mitigation measures (section XI of L–DEO's application), including shut downs of the airguns will reduce any such effects that might otherwise occur.

Potential Effects of Other Acoustic Devices

MBES

The Kongsberg EM 122 MBES will be operated from the source vessel during the planned study. Sounds from the MBES are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this MBES is at frequencies near 12 kHz, and the maximum source level is 242 dB re: 1 μPa. The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore–aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2-to-15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an MBES emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the MBES. The area of possible influence of the MBES is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During L–DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of an MBES on marine mammals are outlined below.

Masking—Marine mammal communications will not be masked appreciably by the MBES signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the MBES signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (*Globicephala melas*) (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz "whale-finding" sonar with a source level of 215 dB re: 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38-kHz echosounder and a 150-kHz acoustic Doppler current profiler were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1-s tonal signals at frequencies similar to those that will be emitted by the MBES used by L DEO, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an MBES.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (*see* above). However, the MBES proposed for use by L DEO is quite different than sonar used for navy operations. Pulse duration of the MBES is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the beam of the MBES for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the MBES rather drastically relative to that from naval sonar.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES is not likely to result in the harassment of marine mammals.

SBP

Sounds from the SBP are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the SBP is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the Langseth has a maximum source level of 204 dB re: 1 μPa.

Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for an SBP more powerful than that on the *Langseth*—if the animal was in the area, it would have to pass the transducer at close range and in order to be subjected to sound levels that could cause TTS.

Masking—Marine mammal communications will not be masked appreciably by the SBP signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the SBP signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the SBP are considerably weaker than those from the MBES. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of other sources would further reduce or eliminate any minor effects of the SBP.

OBS

The acoustic release transponder used to communicate with the OBSs uses frequencies of nine to 13 kHz. Once the OBS is ready to be retrieved, the crew will use an acoustic release transponder to interrogate (*i.e.,* send a signal) to the OBS at a frequency of nine to 11 kHz (source level is 190 dB re: 1 μPa). The acoustic release transponder will then receive a response at a frequency of nine to 13 kHz. The burn-wire release assembly activates and releases the OBS from the anchor to float to the surface.

An animal would have to pass by the OBS at close range when the signal is emitted in order to be exposed to any pulses at a source level of 190 dB re: 1 μPa. The sound is expected to undergo a spreading loss of approximately 40 dB in the first 100 m (328 ft). Thus, any animals located 100 m (328 ft) or more from the signal will be exposed to very weak signals (less than 150 dB) that are not expected to have any effects. The signal is used only for short intervals to interrogate and trigger the release of the OBS and consists of pulses rather than a continuous sound. Given the short duration use of this signal and rapid attenuation in seawater it is unlikely that the acoustic release signals would significantly affect marine mammals through masking, disturbance, or hearing impairment. L–DEO states that any effects likely would be negligible given the brief exposure at presumable low levels.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, including the food sources they use. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

The *Langseth* will deploy 28 OBS on the Shatsky Rise and the 23-kg OBS anchors will remain upon equipment recovery. Although OBS placement may disrupt a very small area of seafloor habitat and may disturb benthic invertebrates, the impacts are expected to be localized and transitory. The *Langseth* will deploy the OBS in such a way that creates the least disturbance to the area. Although OBS placement will disrupt a very small area of seafloor habitat and could disturb benthic invertebrates, L–DEO does not anticipate any significant impacts to the habitats used by the 34 species of marine mammals in the Shatsky Rise area.

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited (*see* Appendix D of the LGL Report). There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (*e.g.,* startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (*i.e.,* mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale. This makes drawing conclusions about impacts on fish problematic because, ultimately, the most important issues concern effects on marine fish populations, their viability, and their availability to fisheries.

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Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (*see* Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are then noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (*see* Appendix D of the LGL Report). For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (*e.g.,* predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as we know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of "pink snapper" (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) that received a sound exposure level of 177 dB re 1 $\mu Pa^2 \cdot s$ showed no hearing loss. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns [less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)] likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than two m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the "cutoff frequency") at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality)

zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus (*see* Appendix D of the LGL Report).

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (*e.g.,* Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp "startle" response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the "catchability" of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Løkkeborg, 1991; Skalski *et al.,* 1992; Engås *et al.,* 1996). In other airgun experiments, there was no change in catch per unit effort (CPUE) of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.,* 1994; La Bella *et al.,* 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish, *e.g.,* a change in vertical or horizontal distribution, as reported in Slotte *et al.* (2004).

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001; *see* also Appendix E of the LGL Report).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix E of the LGL Report.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Physiological Effects—Physiological effects refer mainly to biochemical

responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (*i.e.,* changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (*e.g.,* squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (*e.g.,* crustaceans in Christian *et al.,* 2003, 2004; DFO 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

L–DEO has based the mitigation measures described herein, to be implemented for the proposed seismic survey, on the following:

(1) Protocols used during previous L–DEO seismic research cruises as approved by NMFS;

(2) previous IHA applications and IHAs approved and authorized by NMFS; and

(3) recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones;

(2) power-down procedures;

(3) shutdown procedures, including procedures for species of concern such as emergency shut-down procedures for North Pacific right whales; and

(4) ramp-up procedures.

Proposed Exclusion Zones—During the proposed study, all proposed survey effort will take place in deep (greater than 1,000 m) water. L–DEO uses safety radii to designate exclusion zones and to estimate take (described in greater detail in Section VII of the application) for marine mammals. Table 1 shows the distances at which three sound levels (160-, 180-, and 190-dB) are expected to be received from the 36-airgun array and a single airgun. The 180- and 190-dB levels are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); and L–DEO used these levels to establish the EZs. If the protected species visual observer (PSVO) detects marine mammal(s) within or about to enter the appropriate EZ, the *Langseth* crew will immediately power down the airguns, or perform a shut down if necessary (*see* Shut-down Procedures).

Power-down Procedures—A power down involves decreasing the number of airguns in use such that the radius of the 180-dB zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, L–DEO will operate one airgun. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when the *Langseth* suspends all airgun activity.

If the PSVO detects a marine mammal (other than a north Pacific right whale—*see* Shut-down Procedures) outside the EZ, but it is likely to enter the EZ, L–DEO will power down the airguns before the animal is within the EZ. Likewise, if a mammal is already within the EZ, when first detected, L–DEO will power down the airguns immediately. During a power down of the airgun array, L–DEO will also operate the 40-in^3 airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), L–DEO will shut down the airgun (*see* next Section).

Following a power down, L–DEO will not resume airgun activity until the marine mammal has cleared the safety zone. *L–DEO will consider the animal to have cleared the EZ if*

- A PSVO has visually observed the animal leave the EZ, or
- A PSVO has not sighted the animal within the EZ for 15 min for small odontocetes (or pinnipeds), or 30 min for mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

During airgun operations following a power down (or shut down) whose duration has exceeded the time limits specified previously, L–DEO will ramp-up the airgun array gradually (*see* Shut-down Procedures).

Shut-down Procedures—L–DEO will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. L–DEO will implement a shut down:

(1) If an animal enters the EZ of the single airgun after L–DEO has initiated a power down, or (2) if a an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

L–DEO will not resume airgun activity until the marine mammal has cleared the EZ, or until the PSVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding section.

Considering the conservation status for North Pacific right whales, L–DEO will shut down the airgun(s) immediately in the unlikely event that this species is observed, regardless of the distance from the *Langseth.* L–DEO will only begin a ramp-up if the right whale has not been seen for 30 min.

Ramp-up Procedures—L–DEO will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a power down has exceeded that period. L–DEO proposes that, for the present cruise, this period would be approximately eight min. This period is based on the 180-dB radius (940 m, 3,084 ft) for the 36-airgun array towed at a depth of nine m in relation

to the minimum planned speed of the Langseth while shooting (7.4 km/h, 4.6 mi/hr). Similar periods (approximately eight to ten min) were used during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40-in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding six dB per five-minute period over a total duration of approximately 35 min. During ramp-up, the PSVOs will monitor the EZ, and if marine mammals are sighted, L–DEO will implement a power down or shut down as though the full airgun array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, L–DEO will not commence the ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped up from a complete shut down at night or in thick fog, because the outer part of the safety zone for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. L–DEO will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

L–DEO proposes to sponsor marine mammal monitoring during the present project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. L–DEO's proposed Monitoring Plan is described below this section. L–DEO understands that this monitoring plan will be subject to review by NMFS, and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. L–DEO is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-based Visual Monitoring

PSVOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the start of airgun operations after an extended shut down. When feasible, PSVOs will also observe during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with vs. without airgun operations. Based on PSVO observations, the airguns will be powered down or shut down when marine mammals are observed within or about to enter a designated EZ. The EZ is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations at the Shatsky Rise, five PSVOs will be based aboard the *Langseth*. L–DEO will appoint the PSVOs with NMFS' concurrence. At least one PSVO and when practical, two PSVOs will monitor marine mammals near the seismic vessel during ongoing daytime operations and nighttime start ups of the airguns. Use of two simultaneous observers will increase the effectiveness of detecting animals near the source vessel. PSVOs will be on duty in shifts of duration no longer than four hours. L–DEO will also instruct other crew to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, L–DEO will give the crew additional instruction regarding how to accomplish this task.

The *Langseth* is a suitable platform for marine mammal and turtle observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the observer will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

Passive Acoustic Monitoring

Passive Acoustic Monitoring (PAM) will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. L–DEO can use acoustical monitoring in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It will be monitored in real time so that the visual observers can be advised when

cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (*i.e.,* hydrophones) and software. The "wet end" of the system consists of a towed four-hydrophone array, two of which are monitored simultaneously; the active section of the array is approximately 30 m (98 ft) long. The array is attached to the vessel by a 250-m (820 ft) electromechanical lead-in cable and a 50-m (164 ft) long deck lead-in cable. However, not the entire length of lead-in cable is used; thus, the hydrophones are typically located 120 m (394 ft) behind the stern of the ship. The deck cable is connected from the array to a computer in the laboratory where signal conditioning and processing takes place. The digitized signal is then sent to the main laboratory, where the acoustic PSVO monitors the system. The hydrophone array is typically towed at depths less than 20 m (66 ft).

The towed hydrophones will ideally be monitored 24 hr/d while at the seismic survey area during airgun operations, and during most periods when the Langseth is underway while the airguns are not operating. One PSVO will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. PSVOs monitoring the acoustical data will be on shift for one to six hours at a time. Besides the visual PSVO, an additional PSVO with primary responsibility for PAM will also be aboard. All PSVOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the acoustic PSVO will contact the visual PSVO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to allow a power down or shut down to be initiated, if required. The information regarding the call will be entered into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (*e.g.,* unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.,* clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

PSVO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and power downs or shut downs will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shut down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals and turtles seen at times with and without seismic activity.

L–DEO will submit a report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals and turtles near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in "takes" of marine mammals by harassment or in other ways.

L–DEO will report all injured or dead marine mammals (regardless of cause) to NMFS as soon as practicable. The report should include the species or description of the animal, the condition of the animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Only take by Level B harassment is anticipated and authorized as a result of the proposed marine geophysical survey at the Shatsky Rise. Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array, may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 decibels (dB) or cause temporary, short-term changes in behavior. There is no evidence that the planned activities could result in injury or mortality within the specified geographic area for which L–DEO seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury or mortality.

The following sections describe L–DEO's methods to estimate take by

incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed geophysical survey. The estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the 36-airgun array to be used during approximately 3,160 km of seismic surveys at the Shatsky Rise.

L–DEO assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES and SBP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES and SBP given their characteristics (*e.g.,* narrow downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute "taking" (NMFS, 2001). Therefore, L–DEO provides no additional allowance for animals that could be affected by sound sources other than airguns.

Density data on 18 marine mammal species in the Shatsky Rise area are available from two sources using conventional line transect methods: Japanese sighting surveys conducted since the early 1980s, and fisheries observers in the high-seas driftnet fisheries during 1987–1990 (*see* Table 3 in L–DEO's application). For the 16 other marine mammal species that could be encountered in the proposed survey area, data from the western North Pacific right whale are not available (*see* Table 3 in L–DEO's application Table 3). L–DEO is not aware of any density estimates for three of those species—Hubb's (*Mesoplodon carlhubbsi*), Stejneger's (*Mesoplodon stejnegeri*), and gingko-toothed beaked whales (*Mesoplodon ginkgodens*). For the remaining 13 species (*see* Table 3 in L–DEO's application), density estimates are available from other areas of the Pacific: 11 species from the offshore stratum of the 2002 Hawaiian Islands survey (Barlow, 2006) and two species from surveys of the California Current ecosystem off the U.S. west coast between 1991 and 2005 (Barlow and Forney, 2007). Those estimates are based on standard line-transect protocols developed by NMFS' Southwest Fisheries Science Center (SWFSC).

Densities for 14 species are available from Japanese sighting surveys in the Shatsky Rise survey area. Miyashita (1993a) provided estimates for six dolphin species in this area that have been taken in the Japanese drive fisheries. The densities used here are Miyashita's (1993a) estimates for the 'Eastern offshore' survey area (30–42° N, 145°–180° E). Kato and Miyashita (1998) provided estimates for sperm whale densities from Japanese sightings data during 1982 to 1996 in the western North Pacific (20–50° N, 130°–180° E), and Hakamada *et al.* (2004) provided density estimates for sei whales during August through September in the JARPN II sub-areas 8 and 9 (35–50° N, 150–170° E excluding waters in the Exclusive Economic Zone of Russia) during 2002 and 2003. L–DEO used density estimates during 1994 through 2007 for minke whales at 35–40° N, 157–170° E from Hakamada *et al.* (2009), density estimates during 1998 through 2002 for Bryde's whales at 31–43° N, 145–165° E from Kitakado *et al.* (2008), and density estimates during 1994–2007 for blue, fin, humpback, and North Pacific right whales at 31–51° N, 140–170° E from Matsuoka *et al.* (2009).

For four species (northern fur seal, Dall's porpoise, Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right-whale dolphin (*Lissodelphis borealis*)), estimates of densities in the Shatsky Rise area are available from sightings data collected by observers in the high-seas driftnet fisheries during 1987 through 1990 (Buckland *et al.,* 1993). Those data were analyzed for 5° x 5° blocks, and the densities used here are from blocks for which available data overlap the proposed survey area. In general, those data represent the average annual density in the northern half of the Shatsky Rise survey area (35–40° N).

The densities mentioned above had been corrected by the original authors for detectability bias and, with the exception of Kitakado *et al.* (2008) and Hakamada *et al.* (2009), for availability bias. Detectability bias is associated with diminishing sightability with increasing lateral distance from the track line [$f(0)$]. Availability bias refers to the fact that there is less than a 100 percent probability of sighting an animal that is present along the survey track line, and it is measured by $g(0)$.

There is some uncertainty about the accuracy of the density data from the the Japanese Whale Research Program under Special Permit (JARPN/JARPN II). For example, densities in Miyashita (1993a) and Buckland *et al.* (1993) are from the 1980s and represent the best available information for the Shatsky Rise area at this time. To provide some allowance for these uncertainties, particularly underestimates of densities present and numbers of marine mammals potentially affected have been derived; L–DEO 's maximum estimates (precautionary estimates) are 1.5 times greater than the best estimates.

The estimated numbers of individuals potentially exposed are based on the 160-dB re 1 μPa · m_{rms} criterion for all cetaceans (*see* Table 3 in this notice). It is assumed that marine mammals exposed to airgun sounds that strong might change their behavior sufficiently to be considered "taken by harassment."

L–DEO estimates of exposures to various sound levels assume that the proposed surveys will be completed. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated exclusion zones will result in the power down or shut down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to sound levels of 160 re 1 μPa · m_{rms} are precautionary and probably overestimate the actual numbers of marine mammals that might be involved. These estimates also assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

Table 4 of L–DEO's application shows the best and maximum estimated number of exposures and the number of different individuals potentially exposed during the seismic survey if no animals moved away from the survey vessel. The requested take authorization, given in the far right column of Table 4 of L–DEO's application, is based on the maximum estimates rather than the best estimates of the numbers of individuals exposed, because of uncertainties associated with applying density data from one area to another.

The number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa · m_{rms} on one or more occasions was estimated by considering the total marine area that would be within the 160-dB radius around the operating airgun array on at least one occasion. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160-dB radius around the operating airguns, including areas of overlap. In the proposed survey, the seismic lines are widely spaced in the proposed survey area, so an individual mammal would most likely not be exposed

numerous times during the survey; the area including overlap is only 1.4 times the area excluding overlap. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey. The number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 μPa · m_{rms} was calculated by multiplying:

(1) The expected species density, either "mean" (*i.e.,* best estimate) or "maximum", times;

(2) The anticipated minimum area to be ensonified to that level during airgun operations including overlap (exposures); or

(3) The anticipated area to be ensonified to that level during airgun operations excluding overlap (individuals).

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo Geographic Information System (GIS), using the GIS to identify the relevant areas by "drawing" the applicable 160-dB buffer (*see* Table 1) around each seismic line, and then calculating the total area within the buffers. Areas of overlap were included only once when estimating the number of individuals exposed.

Applying the approach described above, approximately 20,831 square kilometers (km^2) would be within the 160-dB isopleth on one or more occasions during the survey, whereas 22,614 km^2 is the area ensonified to greater than or equal to 160 dB when overlap is included. Thus, an average individual marine mammal would be exposed only once during the survey. Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels.

Table 4 of L–DEO's application shows the best and maximum estimates of the number of exposures and the number of different individual cetaceans that potentially could be exposed to greater than or equal to 160 dB re: 1 μPa during the seismic survey if no animals moved away from the survey vessel.

The 'best estimate' of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during the proposed survey is 13,299 (*see* Table 3 below this section). That total includes 155 baleen whales, 87 of which are endangered: one North Pacific right whale or 0.6% of the regional population; 15 humpback whales (1.4%), 37 sei whales (0.4%), 22 fin whales (0.1%), and 12 blue whales (0.4%). In addition, 22 sperm whales (also listed as endangered under the ESA) or less than 0.1% of the regional population could be exposed during the survey, and 198 beaked whales including Cuvier's, Longman's, Baird's, Blainville's, and possibly ginkgo-toothed, Stejneger's, or Hubb's beaked whales. Most (96%) of the cetaceans potentially exposed are delphinids; short-beaked common, striped, pantropical spotted, and Pacific white-sided dolphins and melon-headed whales are estimated to be the most common species in the area, with best estimates of 6,444 (0.2% of the regional population), 2,480 (0.4%), 1,467 (0.3%), and 758 (0.1%) exposed to levels greater than or equal to 160 dB re: 1 μPa, respectively.

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS DURING L–DEO'S PROPOSED SEISMIC SURVEY AT SHATSKY RISE DURING JULY–SEPTEMBER, 2010

Species	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa (Best)	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa (Maximum)	Approximate percent of regional population (best)
North Pacific right whale	1	2	0.60
Humpback whale	15	22	1.43
Minke whale	57	85	0.23
Bryde's whale	11	16	0.05
Sei whale	37	56	0.37
Fin whale	22	34	0.14
Blue whale	12	18	0.35
Sperm whale	22	32	0.07
Pygmy sperm whale	66	100	<0.01
Dwarf sperm whale	163	244	<0.01
Cuvier's beaked whale	142	212	0.71
Baird's beaked whale	18	27	N.A.
Longman's beaked whale	9	14	N.A.
Blainville's beaked whale	27	40	0.11
Mesoplodon spp.	2	3	0.01
Rough-toothed dolphin	65	97	0.04
Bottlenose dolphin	500	750	0.21
Pantropical spotted dolphin	1,467	2,200	0.33
Spinner dolphin	17	26	<0.01
Striped dolphin	2,480	3,721	0.44
Fraser's dolphin	95	143	0.03
Short-beaked common dolphin	6,444	9,666	0.22
Pacific white-sided dolphin	758	1,137	0.08
Northern right whale dolphin	9	13	<0.01
Risso's dolphin	225	337	0.03
Melon-headed whale	27	41	0.06
Pygmy killer whale	0	0	0.00
False killer whale	43	64	0.27
Killer whale	3	5	0.04

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS DURING L–DEO'S PROPOSED SEISMIC SURVEY AT SHATSKY RISE DURING JULY–SEPTEMBER, 2010—Continued

Species	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa (Best)	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 μPa (Maximum)	Approximate percent of regional population (best)
Short-finned pilot whale	104	156	0.20
Dall's porpoise	457	686	0.03
Northern fur seal	37	56	<0.01

Best and maximum estimates and regional population size estimates are based on Table 3 in L–DEO's application.
N.A. means not available.
Mesoplodon spp. could include ginkgo-toothed, Stejneger's, or Hubb's beaked whales; density (not available) is an arbitrary low value.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers:

(1) The number of anticipated mortalities;

(2) the number and nature of anticipated injuries;

(3) the number, nature, and intensity, and duration of Level B harassment; and

(4) the context in which the takes occur.

As mentioned previously, NMFS estimates that 34 species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than two percent) relative to the population size.

No injuries or mortalities are anticipated to occur as a result of the L–DEO's planned marine geophysical survey, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities. No mortality or injury is expected to occur, and due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine geophysical survey at the Shatsky Rise in the northwest Pacific Ocean, July through September 2010, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short and sporadic duration of the research activities, have led NMFS to preliminarily determine that this action will have a negligible impact on the species in the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that L–DEO's planned research activities, will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine geophysical survey will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act

Of the 34 species of marine mammals that may occur in the proposed survey area, six are listed as endangered under the ESA, including the north Pacific right, humpback, sei, fin, blue, and sperm whales. Under Section 7 of the ESA, NSF has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. NMFS' Office of Protected Resources, Permits, Conservation and Education Division, has initiated formal consultation under Section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal Section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, L–DEO will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion issued to both NSF and NMFS' Office of Protected Resources.

National Environmental Policy Act (NEPA)

L–DEO has prepared an EA, and an associated environmental report that analyzes the direct, indirect and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The associated report, prepared by LGL on behalf of NSF and L–DEO is entitled, "Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* on the Shatsky Rise in the Northwest Pacific Ocean, July–September, 2010." Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of NSF's EA and associated Report, for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the NSF EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Preliminary Determinations

NMFS has preliminarily determined that the impact of conducting the specific seismic survey activities described in this notice and the IHA request in the specific geographic region

within the Shatsky Rise area in the northwest Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this proposed action.

For reasons stated previously in this document, the specified activities associated with the proposed survey are not likely to cause TTS, PTS or other non-auditory injury, serious injury, or death to affected marine mammals because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The fact that cetaceans would have to be closer than 940 m (0.6 mi) in deep water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing PTS;

(3) The fact that marine mammals would have to be closer than 3,850 m (2.4 mi) in deep water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS; and

(4) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel.

As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed monitoring and mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (*see* Table 3 above this section) is estimated to be small, less than two percent of any of the estimated population sizes based on the data disclosed in Table 2 of this notice, and has been mitigated to the lowest level practicable through incorporation of the monitoring and mitigation measures mentioned previously in this document.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L–DEO for conducting a marine geophysical survey at the Shatsky Rise area in the northwest Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (*see* **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 17, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–12296 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW03

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a letter of authorization (LOA) has been issued to the Naval Air Warfare Center Weapons Division, U.S. Navy (Navy), to take three species of seals and sea lions incidental to missile launch operations from San Nicolas Island (SNI), California, a military readiness activity.

DATES: Effective June 4, 2010, through June 3, 2011.

ADDRESSES: The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East West Highway, Silver Spring, MD 20910–3225 or by telephoning one of the contacts listed below (**FOR FURTHER INFORMATION CONTACT**). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, 301–713–2289, or Monica DeAngelis, NMFS, 562–980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the National Marine Fisheries Service (NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. However, for military readiness activities, the National Defense Authorization Act (Public Law 108–136) removed the "small numbers" and "specified geographical region" limitations. Under the MMPA, the term "take" means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals

(*Phoca vitulina richardsi*), and California sea lions (*Zalophus californianus*), by harassment, incidental to missile launch operations at SNI, were issued on June 2, 2009, and remain in effect until June 2, 2014 (74 FR 26580, June 3, 2009). For detailed information on this action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile launches at SNI.

Summary of Request

On April 19, 2010, NMFS received a request for an LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of pinnipeds, by harassment, incidental to missile launch operations from San Nicolas Island, CA.

Summary of Activity and Monitoring Conducted During 2009 and 2010

The Navy's monitoring report for June 2009 through December 2009 describes three single launches from SNI on three different days. These launches occurred at night during the Airborne Laser (ABL) testing program. A single Terrier-Lynx was launched on each of two days, June 6 and 13, 2009, and a single Terrier-Black Brant was launched on August 10, 2009. Vehicles were launched from the 807 Launch Complex located close to shore on the western end of SNI, 11 m above sea level. The launch azimuths caused the vehicles to pass over or near various pinniped monitoring and acoustic measurement sites where Autonomous Terrestrial Acoustic Recorders (ATARs) and video systems had been deployed. The video data were supplemented by direct visual scans of the haul-out groups several hours prior to the launches and following one of the launches. For each launch, the number, proportion, and (where determinable) ages of the individual pinnipeds that responded in various ways were extracted from the video, along with comparable data for those that did not respond overtly. Approximately 750 California sea lions, 60 Pacific harbor seals, and no northern elephant seals are estimated to have been harassed by launches during the June-December 2009 monitoring report. The authorized level of take was not exceeded and no evidence of injury or mortality was observed during or immediately succeeding the launches for the monitored pinniped species.

Description of 2010 Activities

This LOA is effective from June 4, 2010, through June 3, 2011, and authorizes the incidental take of the three pinniped species listed above that may result from the launching of up to 40 missiles from SNI per year. Up to 10 launches per year may occur at night. Nighttime launches will only occur when required by the test objectives, e.g., when testing the Airborne Laser system (ABL). Northern elephant seals, Pacific harbor seals, and California sea lions are found on various haul-out sites and rookeries on SNI.

Potential impacts of the planned missile launch operations from SNI on marine mammals involve both acoustic and non-acoustic effects. Acoustic effects relate to sound produced by the engines of all launch vehicles, and, in some cases, their booster rockets. Potential non-acoustic effects could result from the physical presence of personnel during placement of video and acoustical monitoring equipment. However, careful deployment of monitoring equipment is not expected to result in any disturbance to pinnipeds hauled out nearby. Any visual disturbance caused by passage of a vehicle overhead is likely to be minor and brief as the launch vehicles are relatively small and move at great speed. The noise generated by Navy activities may result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from missile launches may cause the animals to move towards or enter the water. This LOA authorizes the following numbers of pinnipeds to be incidentally taken by Level B harassment: 474 northern elephant seals; 467 Pacific harbor seals; and 1606 California sea lions.

Take of pinnipeds will be minimized through implementation of the following mitigation measures: (1) The Navy must avoid launch activities during harbor seal pupping season (February through April), unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives; (2) the Navy must limit launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives; (3) the Navy must not launch missiles from the Alpha Complex at low elevation (less than 305 m [1,000 ft]) on launch azimuths that pass close to pinniped haul-out site(s) when occupied; (4) the Navy must avoid multiple vehicle launches in quick succession over haul-out sites when occupied, especially when young pups are present, except when required by mission objectives; and (5) the Navy must limit launch activities during nighttime hours, except when required by mission objectives (e.g., up to 10 nighttime launches for ABL testing per year). Additionally, for 2 hours prior to, during, and approximately 30 minutes following each launch, personnel are not allowed near any of the pinniped haul-out beaches that are close to the flight track on the western end of SNI. Associated fixed-wing and rotary aircraft will maintain an altitude of at least 305 m (1,000 ft) when traveling near beaches on which pinnipeds are hauled out, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting, adverse weather conditions), which may require approaching pinniped haul-outs and rookeries closer than 305 m (1,000 ft). Additionally, plain monitoring methods will be reviewed by NMFS if post-launch surveys determine that an injurious or lethal take of a marine mammal occurred. The Navy will also use monitoring surveys and time-lapse video to monitor the animals before, during, and after missile launches. Reports will be submitted to NMFS after each LOA expires, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires. This LOA will be renewed annually based on review of the annual monitoring report.

Authorization

The Navy complied with the requirements of the 2009 LOA and NMFS has determined that there was no evidence of pinniped injuries or fatalities related to vehicle launches from SNI. The Navy's activities fell within the scope of the activities analyzed in the 2009 rule and the observed take did not exceed that authorized in the 2009 LOA. NMFS has determined that this action continues to have a negligible impact on the affected species or stocks of marine mammals on SNI. Accordingly, NMFS has issued a LOA to the Navy authorizing the take of marine mammals, by harassment, incidental to missile launch activities from SNI. The provision requiring that the activities not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: May 17, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–12294 Filed 5–20–10; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously provided by such agency.

Comments Must Be Received on or Before: 6/21/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Cap, Patrol, Multi-Cam

NSN: 8415–01–580–0091;
NSN: 8415–01–580–0097;
NSN: 8415–01–580–0109;
NSN: 8415–01–580–0113;
NSN: 8415–01–580–0126;
NSN: 8415–01–580–0127;
NSN: 8415–01–580–0128;
NSN: 8415–01–580–0129;
NSN: 8415–01–580–0130;
NSN: 8415–01–580–0132;
NSN: 8415–01–580–0133;
NSN: 8415–01–580–0135;
NSN: 8415–01–580–0241;
NSN: 8415–01–580–0247.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY.
Contracting Activity: Dept of the Army, XR W2DF RDECOM ACQ CTR NATICK, Natick, MA.
Coverage: C–List for 100% of the requirements of the Department of the Army as aggregated by the XR W2DF RDECOM ACQ CTR NATICK.
NSN: 7510–01–411–7000—Portfolio, Clear Front Report Cover.
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, PA.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A–List for the total government requirement as aggregated by the GSA/FSS OFC SUP CTR—Paper Products.
NSN: MR 823—Food Chopper.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale—Defense Commissary Agency, Fort Lee, VA.
Coverage: C–List for 100% of the requirements for military resale through the Defense Commissary Agency.
NSN: MR 824—Mandolin Slicer.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C–List for 100% of the requirements for military resale through the Defense Commissary Agency.
NSN: 9390–01–078–8660—Tape, Reflective.
NPA: Bestwork Industries for the Blind, Inc., Runnemede, NJ.
Contracting Activity: DEFENSE LOGISTICS AGENCY, DEFENSE SUPPLY CENTER PHILADELPHIA, PHILADELPHIA, PA.
Coverage: C–List for 100% of the requirements of the Department of Defense as aggregated by the DEFENSE SUPPLY CENTER PHILADELPHIA.

Services

Service Type/Locations:
Janitorial and Grounds Maintenance, Customs and Border Protection, Three Points Transport Base, 16434 W. Ajo Way, Robles Junction, AZ.
Customs and Border Protection, 41455 S. Sasabe Highway, Sasabe, AZ.
Customs and Border Protection, Vehicle Maintenance Facility, 9480 W. Adams Road, Eloy, AZ.
Customs and Border Protection, Papago Farms, FR 21, Sells, AZ.
Customs and Border Protection, Sonoita Checkpoint, Highway 83 MP 40.8, Sonoita, AZ.
Customs and Border Protection, Willcox Station Facilities, 200 W. Rex Allen Jr. Road, Willcox, AZ.
Customs and Border Protection, Willcox Checkpoint, Highway 80 MP 313, Willcox, AZ.
Customs and Border Protection, Equestrian Training, 3293 E. Kimsey Road, Willcox, AZ.
Customs and Border Protection, Willcox Highway 191 Checkpoint, Highway 191, MP 41, Willcox, AZ.
Customs and Border Protection, Intelligence and Operations Coordination Center, 2430 S. Swan Road, Tucson, AZ.
NPA: J.P. Industries, Inc., Tucson, AZ.
Contracting Activity: Dept of Homeland Security, Bureau of Customs and Border Protection, Office of Procurement, Washington, DC.
Service Type/Location: Laundry Service, Naval Hospital, 6000 West Hwy 98, Pensacola, FL.
NPA: Wiregrass Rehabilitation Center, Inc., Dothan, AL.
Contracting Activity: Dept of the Navy, FISC Jacksonville, Jacksonville, FL.
Service Type/Location: Laundry Service, Naval Hospital System, 2800 Child Street, Jacksonville, FL.
NPA: GINFL Services, Inc., Jacksonville, FL.
Contracting Activity: Dept of the Navy, FISC Jacksonville, Jacksonville, FL.
Service Type/Location: Food Service Attendants, CRTC Dining Facility, 1401 Robert B. Miller Jr. Drive, Garden City, GA.
NPA: Trace, Inc., Boise, ID.
Contracting Activity: Dept of The Air Force, FA6643 HQ AFRES LGC, Robins AFB, GA.
Service Type/Location: Recycling Services, Joint Base Andrews Naval Air Facility, Washington, DC.
NPA: Melwood Horticulture Training Center, Upper Marlboro, MD.
Contracting Activity: Department of the Air Force, 316 Contracting Squadron, Joint Base Andrews Naval Air Facility, Washington, DC.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Grounds Maintenance, National Advocacy Center, 1620 Pendleton Street, Columbia, SC.

NPA: The Genesis Center, Sumter, SC.

Contracting Activity: Dept of Justice, Federal Prison System, Terminal Island, FCI, Terminal Island, CA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–12219 Filed 5–20–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 6/21/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 3/26/2010 (75 FR 14575–14576), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN: 1670–01–523–7246—LCADS Low Cost Container.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.

Contracting Activity: DEPT OF THE ARMY, XR W6BA ACA NATICK, Natick, MA.

Coverage: C–List for 30% of the government requirements for the DEPT OF THE ARMY, ACA NATICK, Natick, MA.

Tape, Insulation, Electrical

NSN: 5970–00–240–0617.

NSN: 5970–00–685–9059.

NSN: 5970–01–560–5355 .

NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, NC.

Contracting Activity: Defense Logistics Agency, DES DSCR Contracting Services Ofc, Richmond, VA.

Coverage: C–List for 100% of the government requirements for the Defense Logistics Agency, DES DSCR Contracting Services Ofc, Richmond, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–12220 Filed 5–20–10; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Announcement of Federal Funding Opportunity (FFO)

AGENCY: Office of Economic Adjustment (OEA), DoD.

ACTION: Notice.

SUMMARY: This notice announces the opportunity to enter into a grant agreement with OEA for Brigade Basing Remediation-Support for Public Entities. OEA is authorized by Section 8041 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–118, to provide up to $40 million for public entities adversely affected by the reversal of the decision to locate a 5th brigade at Fort Stewart, Georgia. Awards may be provided under this announcement directly to a state or local government, a local education agency, or other public entity or to a public entity on behalf of other eligible public entities.

DATES: Completed proposals must be received by OEA within the solicitation period which is not later than thirty (30) days after the date this announcement is published in the **Federal Register**. Any proposal received after this time will be considered non-responsive and the respondent will not be invited to make a formal application for funding. OEA will invite the successful respondents to apply for funding under this announcement following its review of proposals and determination of eligible respondents, which will occur subsequent to the solicitation period identified above.

ADDRESSES: All interested respondents must submit a proposal within the solicitation period identified above (see **DATES**). Proposals may be submitted to OEA by email, hand delivery, facsimile, U.S. Mail, or private delivery service. Send submissions to the Director, OEA, by mail or hand delivery to 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, by facsimile to OEA at 703–604–5460, or electronically to *FFOsubmit@wso.whs.mil.*

FOR FURTHER INFORMATION CONTACT: For further information, contact: David F. Witschi, Associate Director, OEA, telephone: (703) 604–6020, e-mail: *david.witschi@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: *Federal Funding Opportunity Title:* Brigade Basing Remediation—Support for Public Entities.

Announcement Type: Federal Funding Opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 12.600.

I. Funding Opportunity Description

OEA, a DoD Field Activity, is authorized by Section 8041 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–118, to provide Brigade Basing Remediation-Support for Public Entities. These funds are to mitigate adverse consequences experienced by public entities affected by the reversal of the decision to locate a 5th brigade at Fort Stewart, Georgia. Forty million dollars is made available under this notice.

II. Award Information

OEA is accepting proposals for Brigade Basing Remediation-Support for Public Entities. OEA will invite one or more successful respondents to enter into grant agreements following its review of proposals and determination of eligible respondents which will occur subsequent to the solicitation period identified above. The amount of each award will be determined by OEA based on the relative merit of the proposal, subject to the availability of funds under this announcement. For administrative convenience, after the closing date of this Announcement OEA reserves the right to designate a public entity, which otherwise need not be an eligible respondent, to serve as a single grant awardee solely for the purpose of distribution of funds to successful respondents, who will be subawardees. Such recipient may have its administrative expenses paid from the grant. To ultimately receive an award, an eligible respondent must submit both a successful proposal and an acceptable grant application.

III. Eligibility Information

Eligible respondents include a state; a regional or local government; an Indian tribe; a board of education or other statutorily constituted local school authority having administrative control and direction of free public education in a county, township, independent school district, or other school district; or other public entity.

For the purpose of this announcement, "adversely affected by the reversal of the decision to locate a 5th brigade at Fort Stewart, Georgia" means adversely affected by the June 2, 2009, announcement by the Department of Defense to reverse the December 19, 2007, announcement to station a 5th brigade at Fort Stewart, Georgia.

Eligible activities are limited to financial reimbursement for claims of expenses incurred by public entities due to the reversal of the decision to locate a 5th brigade at Fort Stewart, Georgia.

IV. Application and Submission Information

The process requires each interested respondent to submit a proposal within the solicitation period identified above (*see* **DATES** and **ADDRESSES**). Each proposal submitted should include a cover or transmittal letter signed by the Authorizing Official on behalf of the interested respondent. The text of the proposal shall consist of no more than 10 pages (single-sided) which must include:

- A summary of the claim the financial assistance will remediate;
- Explanation of how the claim relates to the time period between the announcement of the basing decision (December 19, 2007) and its reversal (June 2, 2009);
- Documentation, such as formal meeting minutes, board resolutions, dated invoices, etc., supporting the respondent's assertion that the claim is due to the reversal of the brigade basing decision;
- Documentation supporting the amount of expense to be remediated;
- Documentation that the Authorizing Official is authorized by the respondent to submit a proposal and subsequently apply for assistance under this Notice; and
- A local point of contact.

Proposals must be provided to the Director, OEA (*see* **ADDRESSES**).

V. Application Review Information

1. *Selection Criteria*—Upon validating the eligibility of the interested respondent to apply for assistance, OEA evaluates proposal content conforming to this announcement as the basis for inviting a formal grant application.

2. *Review and Selection Process*—Each proposal will be reviewed by a panel of OEA staff, which may be augmented by other Federal or non-Federal representatives, as to the proposal's individual merit and the strength of supporting documentation. OEA will notify each respondent subsequent to the solicitation period identified above whether the respondent's proposal:

- Was successful and invite the successful respondent to submit a grant application directly to OEA. OEA will assign a Project Manager to advise and assist successful respondents in the completion of the grant application;
- Was successful and invite the successful respondent to apply through a public entity designated by OEA to serve as a single grant awardee for the administrative convenience of OEA;
- Was unsuccessful and state the reasons why; or
- Remains under consideration pending the receipt of additional information which OEA will identify.

VI. Award Administration Information

1. *Award Notices*—To the extent possible, successful applicants will be notified within fourteen (14) days of the receipt at OEA of a complete grant application whether or not they will receive an award. Upon notification of an award, applicants will receive an award agreement, signed by the Director of OEA on behalf of DoD. Awardees must review the award agreement and indicate their consent to its terms by signing and returning it to OEA.

2. *Administrative and National Policy Requirements*—The Awardee, and any subawardee or consultant/contractor, operating under the terms of a grant shall comply with all applicable Federal, state, and local laws including the following, where applicable: 32 CFR parts 21 thru 34, "Department of Defense Grant and Agreement Regulations"; OMB Circulars A–87, "Cost Principles for State and Local Governments" and the revised A–133, "Audits of States, Local Governments and Non-Profit Organizations"; OMB Circular A–21, "Cost Principles for Educational Institutions"; OMB Circular A–122, "Cost Principles for Non Profit Organizations"; and 2 CFR part 175, "Award Term for Trafficking in Persons."

3. *Reporting*—OEA requires interim performance reports and one final performance report for each award. The performance reports will contain information on the following:

- A comparison of actual accomplishments to the objectives established for the reporting period;
- Reasons for slippage if established objectives were not met;
- Additional pertinent information when appropriate;
- A comparison of actual and projected expenditures for the period;
- The amount of awarded funds on hand at the beginning and end of the reporting period.

The final performance report must contain a summary of activities for the entire award period. An SF 425, "Financial Status Report," must be submitted to OEA within ninety (90) days after the end date of the award.

OEA will provide a schedule for reporting periods and report due dates in the Award Agreement.

VII. Agency Contacts

For further information, to answer questions, or for help with problems, contact: David F. Witschi, Associate Director, OEA, telephone: (703) 604–6020, e-mail: *david.witschi@wso.whs.mil* or regular mail at 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704.

VIII. Other Information

The OEA Internet address is *http://www.oea.gov.*

Dated: May 18, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–12307 Filed 5–20–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Public Scoping Meetings for the Missouri River Authorized Purposes Study, Missouri River Basin, United States

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Public Scoping Meetings.

SUMMARY: In the April 16, 2010 **Federal Register** (75 FR 19948), the U.S. Army Corps of Engineers (USACE) Omaha and Kansas City Districts announced in a Notice of Intent (NOI) that it will prepare a comprehensive feasibility-type report with an integrated Environmental Impact Statement (EIS) for the Missouri River Authorized Purposes Study (MRAPS). The NOI did not include specific details of the public scoping meetings. This notice announces the locations, dates, times, and format of the public scoping meetings.

Public Law 111–8 authorizes the USACE to review the original project purposes within the Missouri River Basin based on the Flood Control Act of 1944, as amended, and other subsequent relevant legislation and judicial rulings to determine if changes to the authorized project purposes and existing federal water resource infrastructure may be warranted. The authorized Missouri River project purposes are: Flood control, navigation, irrigation, power, water supply, water quality, recreation, and fish and wildlife.

ADDRESSES: Written comments should be sent to: Missouri River Authorized Purposes Study; Department of the Army; Corps of Engineers, Omaha District; CENWO–PM–AA; 1616 Capitol Avenue; Omaha, NE 68102–4901. Comments can also be e-mailed to: *mraps@usace.army.mil.* Comments on the scope of the Missouri River Authorized Purposes Study must be postmarked, e-mailed, or otherwise submitted no later than September 20th, 2010.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the MRAPS, please contact Mr. Mark Harberg, Project Manager, by *telephone:* (402) 995–2554, *by mail:* 1616 Capitol Avenue, Omaha, NE 68102–4901, or by *e-mail: mark.c.harberg@usace.army.mil,* or Lamar Mckissack, Project Manager, by telephone (816) 389–3115, *by mail:* 601 East 12th Street, Kansas City, MO 64106, or by *e-mail: grady.l.mckissack@usace.army.mil.* For inquiries from the media, please contact the USACE Omaha District Public Affairs Officer (PAO), Mr. Paul Johnston by telephone: (402) 995–2416, *by mail:* 1616 Capitol Avenue, Omaha, NE 68102, or by *e-mail: paul.t.johnston@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Background. The 1944 Flood Control Act, as amended, and subsequent legislation have directed the USACE to allocate the River's resources among the authorized Missouri River project purposes; which are: Flood control, navigation, irrigation, power, water supply, water quality, recreation, and fish and wildlife.

Section 108 of the Energy and Water Development Section of the FY09 Omnibus Appropriations Act provides the USACE authorization to study the Missouri River projects located within the Missouri River Basin to review the original authorized project purposes to determine if changes to the project purposes and existing Federal water resource infrastructure may be warranted. The study authorized by Section 108 will be referred to as the Missouri River Authorized Purposes Study (MRAPS). The MRAPS is a broad-based multi-purpose study that is anticipated to culminate in a comprehensive feasibility-type report with an integrated EIS. The MRAPS will be conducted in accordance with NEPA and with the "Principles and Guidelines for Water and Related Land Resource Implementation Studies" (Water Resource Council, 1983).

2. Scoping. The Omaha and Kansas City Districts of the U.S. Army Corps of Engineers invites all interested entities including Tribal governments, Federal agencies, state and local governments, and the general public to comment on the scope of the Missouri River Authorized Purposes Study (MRAPS). The public scoping period began with the publication of the NOI in the **Federal Register** (75 FR 19948) on April 16, 2010 and will continue until September 20, 2010.

All public scoping meetings will use an open house format. Informational materials about the Missouri River Authorized Purposes Study and the eight authorized purposes will be located throughout the room for participant perusal throughout the evening. Corps representatives will be available to meet one-on-one with meeting participants. Written comments will be collected on comment cards and computer terminals, and a court reporter will be at the meeting for those who wish to make formal verbal comments. All forms of comment will be weighted equally. Input from the scoping meetings, along with comments received by other means (regular mail or e-mail), will be used to refine the scope of issues to be addressed by the Missouri River Authorized Purposes Study.

As part of the scoping process, The Corps has scheduled public meetings at the following locations:

1. *Tuesday, May 25:* Mobridge, South Dakota, Scherr Howe Arena, 212 N. Main St., Mobridge, SD 57601.
2. *Wednesday, May 26:* Pierre, South Dakota, AmericInn & Suites Conference Center, 312 Island Dr., Fort Pierre, SD 57532.
3. *Thursday, May 27:* Rapid City, South Dakota, Best Western Ramkota Rapid City Hotel and Conference Center, 2111 N. LaCrosse St., Rapid City, SD 57701.
4. *Tuesday, June 1:* Jefferson City, Missouri, Capitol Plaza Hotel & Conv Ctr, 415 W. McCarty St., Jefferson City, MO 65101.
5. *Wednesday, June 2:* Kansas City, Missouri, Kansas City Marriott Country Club Plaza, 4445 Main St., Kansas City, MO 64111.
6. *Thursday, June 3:* St. Joseph, Missouri, Ramada St. Joseph, 4016 Frederick Blvd., St. Joseph, MO 64506.
7. *Tuesday, June 15:* Fort Peck, Montana, Fort Peck Interpretive Center & Museum, Lower Yellowstone Rd., Fort Peck, MT 59223.
8. *Wednesday, June 16:* Williston, North Dakota, Williston Event Center, 3712 4th Ave W, Williston, ND 58801.

9. *Thursday, June 17:* Bismarck, North Dakota, Best Western Doublewood Inn, 1400 E. Interchange Ave., Bismarck, ND 58501.

10. *Friday, June 18:* Fargo, North Dakota, Holiday Inn of Fargo, 3803 13th Ave. South, Fargo, ND 58103.

11. *Tuesday, June 22:* Council Bluffs, Iowa, Mid-America Center, One Arena Way, Council Bluffs, IA 51501.

12. *Wednesday, June 23:* Nebraska City, Nebraska, Fraternal Order of Eagles, 600 1st Corso, Nebraska City, NE 68410.

13. *Thursday, June 24:* Lincoln, Nebraska, Holiday Inn Hotel Lincoln-Downtown, 141 N. 9th St., Lincoln, NE 68508.

14. *Wednesday, July 7:* New Orleans, Louisiana, Pontchartrain Center, 4545 Williams Blvd., Kenner, LA 70065.

15. *Thursday, July 8:* Memphis, Tennessee, Memphis Marriott East, 2625 Thousand Oaks Blvd., Memphis, TN 38118.

16. *Friday, July 9:* St. Louis, Missouri, Doubletree Hotel St. Louis at Westport, 1973 Craigshire, St. Louis, MO 63146.

17. *Tuesday, July 13:* Topeka, Kansas, Holiday Inn Holidome (Topeka West), 605 SW Fairlawn Rd., Topeka, KS 66606.

18. *Wednesday, July 14:* Salina, Kansas, Ramada Conference Center, 1616 W. Crawford, Salina, KS 67401.

19. *Thursday, July 15:* Manhattan, Kansas, Holiday Inn at the Campus, 1641 Anderson Ave., Manhattan, KS 66502.

20. *Tuesday, July 27:* Rock Island, Illinois, Holiday Inn Hotel & Conference Center, 226 17th St., Rock Island, IL 61201.

21. *Wednesday, July 28:* Des Moines, Iowa, Holiday Inn Hotel Des Moines-Airport/Conference Center, 6111 Fleur Dr., Des Moines, IA 50321.

22. *Thursday, July 29:* Sioux City, Iowa, Stoney Creek Inn & Conference Center, 300 3rd St., Sioux City, IA 51101.

23. *Friday, July 30:* Yankton, South Dakota, Riverfront Event Center, 121 W. 3rd St. (3rd and Walnut), Yankton, SD 57078.

24. *Tuesday, Aug. 3:* Cheyenne, Wyoming, Holiday Inn Cheyenne I–80, 204 West Fox Farm Rd., Cheyenne, WY 82007.

25. *Wednesday, Aug. 4:* North Platte, Nebraska, Sandhills Convention Center at Quality Inn & Suites, 2102 South Jeffers, North Platte, NE 69101.

26. *Thursday, Aug. 5:* Denver, Colorado, Doubletree Hotel Denver-Southeast, 13696 East Iliff Place, Aurora, CO 80014.

27. *Tuesday, Aug. 17:* Helena, Montana, Red Lion Colonial Hotel-Helena, 2301 Colonial Dr., Helena, MT 59601.

28. *Wednesday, Aug. 18:* Billings, Montana, Holiday Inn Hotel The Grand Montana-Billings, 5500 Midland Rd., Billings, MT 59101.

29. *Thursday, Aug. 19:* Thermopolis, Wyoming, Days Inn Thermopolis Hot Springs Convention Center, 115 E. Park St., Thermopolis, WY 82443.

30. *Friday, Aug. 20:* Casper, Wyoming, Best Western Ramkota Hotel & Conference Center, 800 N. Poplar, Casper, WY 82601.

In addition to the above scoping meetings, tribal focused scoping meetings will be held. Although tribal issues will be the emphasis of these meetings, the general public is welcome to attend. All tribal focused scoping meetings will be held from 11 a.m. to 1 p.m. The USACE has scheduled tribal focused scoping meetings at the following locations:

1. *Wednesday, May 26:* Pierre, South Dakota, Wakpa Sica Historical Society, 709 Ft. Chouteau Road, Fort Pierre, SD 57532.

2. *Thursday, May 27:* Rapid City, South Dakota, South Dakota School of Mines and Technology, Bump Lounge, 501 East Saint Street, Rapid City, SD 57701.

3. *Tuesday, June 15:* Fort Peck, Montana, Fort Peck State Fish Hatchery, PO Box 167, Fort Peck, MT 59223.

4. *Wednesday, June 16:* Williston, North Dakota, Williston College Alumni Center, 1410 University Avenue, Williston, ND 58801.

5. *Thursday, June 17:* Bismarck, North Dakota, United Tribes Technical College, Wellness Center, 3315 University Drive, Bismarck, ND 58504.

6. *Friday, June 18:* Fargo, North Dakota, North Dakota State University Alumni Center, 1241 North, University Drive, Box 5144, Fargo, ND 58104.

7. *Tuesday, July 13:* Lawrence, Kansas, Haskell Indian National University, 155 East Indian Avenue, Lawrence, KS 66046.

8. *Friday, July 30:* Vermillion, South Dakota, University of South Dakota Native American Cultural Center, 414 E Clark, Vermillion, SD 57069.

9. *Tuesday, August 17:* Helena, Montana, Montana's Museum, PO Box 201201, 225 North Roberts, Helena, MT 59620–1201.

10. *Wednesday, August 18:* Billings, Montana State University Billings, 1500 University Drive, Billings, MT 57101.

11. *Thursday, August 19:* Central Wyoming College, 2660 Peck Avenue, Riverton, WY 82501.

If you require assistance under the Americans for Disabilities Act please send your name and phone via e-mail to *Lois@djcase.com* at least three days prior to the meeting you plan to attend. Persons who use a telecommunications service for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, seven days a week to relay this same information. For more information about the Missouri River Authorized Purposes Study, please visit *www.mraps.org.*

Dated: May 14, 2010.

Kayla Eckert Uptmor,

Chief Planning Branch, Omaha District.

[FR Doc. 2010–12223 Filed 5–20–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board on Coastal Engineering Research.

Date of Meeting: June 22–24, 2010.

Place: Hudson Ballroom, Hyatt Regency Jersey City on the Hudson, 2 Exchange Place, Jersey City, NJ 07302.

Time:

8 a.m. to 5 p.m. (June 22, 2010).
8 a.m. to 3:15 p.m. (June 23, 2010).
8 a.m. to 12 p.m. (June 24, 2010).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to COL Gary E. Johnston, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION:

The Board provides broad policy guidance and review of plans and fund requirements for the conduct of research and development of research projects in consonance with the needs of the coastal engineering field and the objectives of the Chief of Engineers.

Proposed Agenda: The goal of the meeting is to explore and provide recommendations regarding the implications of projected Climate Change scenarios to U.S. Army Corps of Engineers (USACE) mission, assets, and responsibilities in the coastal and estuarine system. Panel presentations

dealing with the Science of Climate Change on Tuesday morning, June 22, will include Is Sea Level Accelerating along U.S. Coastlines?, Past and Present Sea-Level Changes along the U.S. Atlantic Coast, Atlantic Region Coastal Storms, Overview of Climatic Variation Effects on Extratropical and Tropical Storms, Evidence for a Changing North Pacific Wave Climate as a Result of Global Climate Change, Coastal Change and Vulnerability: Sea-Level Rise and other Climate Change Effects, Declining Arctic Ice Cover and Its Impacts, and Coastal Wetlands Ecological Impacts. The afternoon session begins with a Keynote address from the Assistant Secretary of the Army for Civil Works entitled "New Initiatives within the Current Administration." Panel presentations follow from the Federal Emergency Management Agency, the National Oceanic and Atmospheric Administration's National Climate Service, and the Department of Transportation Committee on Marine Transportation System dealing with the Impacts of Climate Change. Panel presentations also include Marine and Coastal Ecosystems: Adaptation in the Age of Climate Change, Developing the Corps Adaptation Strategy to Climate Change, Science and Technology Implications of Climate Change to USACE, and a presentation on the Strategic Environmental Research and Development Program.

The presentations on Wednesday morning, June 23, 2010, include an Overview of State Climate Change Policies and Actions, and panel presentations pertaining to Regional Government Perspectives from the States of New Jersey, New York, Connecticut, Rhode Island, and Massachusetts, and panel presentations pertaining to Regional Specific Studies that include the Delaware Bay Region, Climate Change and the Chesapeake Bay, and Adapting to Climate Change Challenges—Learning from the New York City Experience. Wednesday afternoon presentations include Division Climate Change Research Needs from the South Pacific, Northwestern, South Atlantic, North Atlantic, and Great Lakes and Ohio River Divisions. A Harbor Inspection will conclude the day.

The Board will meet in Executive Session to discuss ongoing initiatives and actions on Thursday morning, June 24.

These meetings are open to the public. Participation by the public is scheduled for 2 p.m. on Wednesday, June 23.

The entire meeting and harbor inspection are open to the public, but since seating capacity is limited, advance notice of attendance is required. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Gary E. Johnston,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 2010–12225 Filed 5–20–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[CFDA Number 84.295A]

Ready-to-Learn Television Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; Correction.

SUMMARY: On March 22, 2010, we published in the **Federal Register** (75 FR 13515) a notice inviting applications for new awards for FY 2010 for the Ready-to-Learn Television Program. We have extended the deadline for transmittal of applications and removed the paragraph on maximum award amount.

SUPPLEMENTARY INFORMATION: This notice extends the deadline for transmittal of applications and eliminates the maximum award amount originally established for applicants by removing the paragraph that establishes a maximum award amount. We are taking this action because the maximum award amount was established as the result of an administrative error and unduly restricts applicant flexibility. These changes affect three pages of the March 22nd notice, as follows:

Correction

(1) On page 13515, in the first column, after the words *Deadline for Transmittal of Applications,* replace the date "May 21, 2010" with the date "June 22, 2010."

(2) On page 13517, in the third column, the *Maximum Award* paragraph is removed.

(3) On page 13518, in the second column, after the words *Deadline for Transmittal of Applications,* replace the date "May 21, 2010" with the date "June 22, 2010."

FOR FURTHER INFORMATION CONTACT: The Ready-to-Learn Television Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W414, Washington, DC 20202 or by *e-mail: readytolearn@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service, 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: *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.*

Dated: May 18, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–12308 Filed 5–21–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: Election Assistance Commission.

ACTION: Notice of Public Meeting Agenda.

DATE & TIME: *Thursday, May 27, 2010:* 10 a.m.–12 p.m. EDT (Morning Session). 1–3 p.m. EDT (Afternoon Session).

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005 (*Metro Stop: Metro Center*).

AGENDA: The Commission will hold a public meeting to consider and vote on a Maintenance of Expenditure (MOE) policy. Commissioners will hold a discussion on the following three topics: A discussion on a clearinghouse policy; a discussion on the process for updating the National Voter Registration Act (NVRA) regulations; and a discussion on Election Management Guidelines (EMG) chapters on accessibility, election office administration, and technology in elections. Commissioners will consider other administrative matters.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras

requires advance notice to and coordination with the Commission's Communications Office.*

* View *EAC Regulations Implementing Government in the Sunshine Act.*

This meeting and hearing will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. 2010–12332 Filed 5–19–10; 11:15 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2842–041]

City of Idaho Falls; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 14, 2010.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 2842–041.

c. *Date Filed:* August 3, 2009, January 19, 2010, March 31, 2010.

d. *Applicant:* City of Idaho Falls.

e. *Name of Project:* Idaho Falls Hydroelectric Project.

f. *Location:* The proposed non-project use is in Idaho Falls, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Richard Malloy, Compliance Manager, Idaho Falls Power, P.O. Box 50220, Idaho Falls, Idaho 83404, (208) 612–8428.

i. *FERC Contact:* Jade Alvey at (202) 502–6864 or *Jade.Alvey@ferc.gov*.

j. *Deadline for Filing Comments:* June 14, 2010.

Comments may be filed electronically via the Internet, see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov.filing-comments.asp*.

Please include the project number (P–2842–041) on any comments.

k. *Description of Request:* The City of Idaho Falls, dba Idaho Falls Power, filed an application seeking Commission authorization to permit the construction of a new substation on a parcel of land that is owned by the U.S. Bureau of Land Management, but has been turned over to the project licensee for management purposes. The application is for a substation and the associated transmission line. The filing includes maps, a description of the areas to be impacted by construction of the substation and associated facilities, aerial photographs, and public meeting information.

l. *Locations of the Filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12236 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1984–177]

Wisconsin Power River Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 14, 2010.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 1984–177.

c. *Date Filed:* November 16, 2009, February 10, 2010.

d. *Applicant:* Wisconsin Power River Company.

e. *Name of Project:* Petenwell and Castle Rock Project.

f. *Location:* The proposed non-project use is in Adam County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Shawn Puzen, Wisconsin Power River Company, P.O. Box 19001, Green Bay, Wisconsin 54307, (920) 433–1094.

i. *FERC Contact:* Jade Alvey at (202) 502–6864 or *Jade.Alvey@ferc.gov.*

j. *Deadline for filing comments:* June 14, 2010.

Comments may be filed electronically via the Internet, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov.filing-comments.asp.*

Please include the project number (P–1984–177) on any comments.

k. *Description of Request:* The Wisconsin River Power Company filed an application seeking Commission authorization for the approval of an existing marina exceeding ten boat slips, and approval of upgrades to the existing

marina. The marina is located on project lands. The filing includes documentation of consultation, a description of the areas impacted by the marina facilities, maps, and photographs.

l. *Locations of the Filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12238 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12704–004]

Tidewalker Associates; Notice of Preliminary Permit Application Accepted For Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 17, 2010.

On April 12, 2010, Tidewalker Associates filed a successive preliminary permit application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Half-Moon Cove Tidal Power Project, to be located in Cobscook and Passamaquoddy Bay, Washington County, Maine.

The proposed project would consist of: (1) A new 1,200-foot-long rock-filled barrage with a crest elevation of approximately 27 feet above mean sea level (msl); (2) a new 30-foot-wide, 15-foot-high filling and emptying gated section; (3) the 850-acre Half-Moon Cove with a surface elevation of 13.0 feet above msl; (4) a new powerhouse with four turbine generating units with a total capacity of 9.0 megawatts; and (5) a new 34.5 kilovolt, 7.1-mile-long transmission line. The project would produce an estimated average annual generation of about 45,000 megawatt-hours.

Applicant Contact: Normand Laberge, Tidewalker Associates, 46 Place Cove Road, Trescott, Maine 04652, 207–733–5513.

FERC Contact: Tom Dean, 202–502–6041.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12704) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12242 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13680–000]

Bryant Mountain LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 17, 2010.

On March 1, 2010, Bryant Mountain LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Bryant Mountain Hydroelectric Pumped Storage Project. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following developments:

Upper Reservoir

(1) An enlargement of the existing Pope Reservoir having a surface area of 550 acres and a storage capacity of 60,00075 acre-feet and normal water surface elevation of 5500 feet mean sea level; (2) an earthen dam approximately 4,000 feet long and 310 feet high at its maximum section; (3) an overflow spillway and outlet facility to release water into the stream below the dam; and (4) intake facilities for the power tunnel with facilities to store additional water to provide black start capability.

Lower Reservoir

(1) Will have a surface area of 1,480 acres and a storage capacity of 110,000 acre-feet and normal water surface elevation of 4,220 feet mean sea level; (2) an earthen dam approximately 21,500 feet long and 135 feet high at its maximum section.

Powerhouse

(1) A partial or entirely subterranean structure adjacent to the lower reservoir; and (2) will contain five 250 MW pump-turbine units.

Power Tunnels

(1) A low pressure power tunnel; (2) a surge shaft; (3) a power shaft; and (4) and a high pressure tunnel.

Transmission Lines

(1) 230 kV or 550 kV transmission lines with interconnect with the Pacific Northwest—California Intertie at the Main Substation.

Applicant Contact: David W. O'Keefe, Project Manager, 1325 Gwinn Street E., Monmouth, OR 97361–1575 (503) 606–0347.

FERC Contact: Kelly Wolcott, 202–502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13680) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12241 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12687–003]

Public Utility District No. 1 of Snohomish County; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 14, 2010.

On March 2, 2010, and supplemented on April 29, 2010, and May 4, 2010, Public Utility District No. 1 of Snohomish County, Washington (Snohomish PUD) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Deception Pass Tidal Energy Project (project). The project would be located in Puget Sound within Deception Pass, between Whidbey Island and Fidalgo Island, in Skagit and Island Counties, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Four approximately 66-foot-diameter, 1.6-megawatt horizontal axis tidal energy turbine/generator units, each mounted approximately 25 feet above the sea bed; (2) an approximately 1-mile-long subsea transmission cable, which may be buried as it approaches shore at Miller Bay; (3) a cable termination vault on shore; (4) either an approximately 6.5-mile long above ground transmission line connecting with Puget Sound Energy's existing March Point substation, or an above ground transmission line and new substation connecting with an existing 115-kilovolt line, the location of which is yet to be determined; and (5) appurtenant facilities. The project is estimated to have average annual generation of 20.7 gigawatt-hours, which would be distributed by the Snohomish PUD.

Applicant Contact: Steven J. Klein, General Manager, Public Utility District No. 1 of Snohomish County, P.O. Box 1107, 2320 California Street, Everett, WA 98206–1107, phone: (425) 783–1000.

FERC Contact: Jennifer Harper, 202–502–6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12687) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12239 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2354–109]

Georgia Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 14, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request to remove lands from the project boundary.

b. *Project No:* 2354–109.

c. *Date Filed:* March 23, 2010, supplemented May 7, 2010.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* North Georgia Hydroelectric Project.

f. *Location:* The project is located in the Savannah River System, on the Tallulah, Chattooga, and Tugalo Rivers in Rabun, Habersham, and Stephens Counties, Georgia, and Oconee County, South Carolina. The lands proposed for removal from the project boundary are located on the project's Tallulah Falls development in Rabun County, Georgia.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Joseph Charles, Hydro License Coordinator, Georgia Power Company, Bin 10151, 241 Ralph McGill Boulevard NE., Atlanta, GA 30308–3374; telephone: (404) 506–2337.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments and or motions:* June 14, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2354–109) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee proposes to remove 4.26 acres of land and an existing building from the project boundary to enable the donation of the parcel to the Rabun County Convention and Visitors Bureau Authority, who would use the building and parcel for a Creative Economies Center that includes retail space, visitor information, and permanent and rotating exhibitions.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits (P–2354) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12237 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–427–000]

Williston Basin Interstate Pipeline Company; Notice of Application

May 17, 2010.

On May 11, 2010, Williston Basin Interstate Pipeline Company (Williston Basin) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(b) of the Natural Gas Act and section 157.18 of the Commission's Regulations for authority to abandon in place certain natural gas compressor units and appurtenant facilities at its Elk Basin Compressor Station located in Park County, Wyoming, as more fully detailed in the Application.

Questions concerning this application may be directed to Keith A. Tiggelaar, Director of Regulatory Affairs for Williston Basin, 1250 West Century Avenue, Bismarck, North Dakota 58503, or by calling 701–530–1560 or by e-mailing *keith.tiggelaar@wbip.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18

CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 14, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12235 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–16–002]

Acacia Natural Gas Corporation; Notice of Baseline Filing

May 13, 2010.

Take notice that on May 11, 2010, Acacia Natural Gas Corporation (Acacia) submitted a corrected baseline filing of its Statement of Operating Conditions for the interruptible transportation services provided under section 311(a)(2) of the Natural Gas Policy Act of 1978 ("NGPA").

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Thursday, May 20, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12232 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 11, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–64–000.

Applicants: New Developments Holdings, LLC.

Description: New Development Holdings, LLC *et al.* submits Joint Application for approval under Section 203 of the Federal Power Act and request for expedited treatment and shortened comment period.

Filed Date: 05/06/2010.

Accession Number: 20100510–0014.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: EC10–67–000.

Applicants: BHE Holdings Inc., Maine & Maritimes Corporation.

Description: Application of BHE Holdings Inc. and Maine & Maritimes Corp. under FPA Section 203.

Filed Date: 05/11/2010.

Accession Number: 20100511–5097.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1214–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Small Generator Interconnection Agreement Facilities Maintenance Agreement with California Public Power Authority.

Filed Date: 05/10/2010.

Accession Number: 20100510–0217.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1216–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Engineering and Procurement Agreement dated 4/22/10 between PacifiCorp Transmission Services *et al.* to be designated as Service Agreement 648 under their Seventh Revised Volume 11 Open Access Transmission Tariff.

Filed Date: 05/10/2010.

Accession Number: 20100510–0216.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1217–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Populus Joint Ownership and Operating Agreement with Idaho Power Company to be designated as their Rate Schedule FERC No 659.
Filed Date: 05/10/2010.
Accession Number: 20100510–0215.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1218–000.
Applicants: American Electric Power Service Corporation.
Description: Indiana Michigan Power Company submits eighth revised Interconnection and Local Delivery Service Agreement 1262 with Wabash Valley Power Association, Inc.
Filed Date: 05/10/2010.
Accession Number: 20100510–0214.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1220–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits Hemingway Joint Ownership and Operating Agreement designated as Rate Schedule FERC No. 154.
Filed Date: 05/10/2010.
Accession Number: 20100511–0201.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1221–000.
Applicants: American Transmission Systems, Incorporated.
Description: American Transmission Systems, Incorporated submits tariff filing per 35.12: Open Access Transmission Tariff to be effective 5/11/2010.
Filed Date: 05/11/2010.
Accession Number: 20100511–5035.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1222–000.
Applicants: DTE East China, LLC.
Description: DTE East China, LLC submits tariff filing per 35.12: DTE East China—Baseline Filing to be effective 5/14/2010.
Filed Date: 05/11/2010.
Accession Number: 20100511–5060.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1223–000.
Applicants: DTE Energy Trading, Inc.
Description: DTE Energy Trading, Inc. submits tariff filing per 35.12: DTE Energy Trading—Baseline Filing to be effective 5/14/2010.
Filed Date: 05/11/2010.
Accession Number: 20100511–5061.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1224–000.
Applicants: The Cleveland Electric Illuminating Comp, City of Cleveland, Ohio.
Description: Cleveland Electric Illuminating Company submits notice of cancellation of Rate Schedule FERC No 12.
Filed Date: 05/11/2010.
Accession Number: 20100511–0205.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1225–000.
Applicants: FirstEnergy Service Company, City of Cleveland, Ohio, American Transmission Systems, Inc., Midwest Independent Transmission System.
Description: American Transmission Systems, Inc submits Original Service Agreement No 2190 to FERC Electric Tariff, Fourth Volume No 1.
Filed Date: 05/11/2010.
Accession Number: 20100511–0206.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1226–000.
Applicants: FirstEnergy Solutions Corp.
Description: FirstEnergy Solutions Corp. submits tariff filing per 35.12: Tariff for Sales of Ancillary Service to be effective 5/11/2010.
Filed Date: 05/11/2010.
Accession Number: 20100511–5087.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Docket Numbers: ER10–1227–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits letter agreement with Solar Millennium, LLC.
Filed Date: 05/11/2010.
Accession Number: 20100511–0211.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 01, 2010.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Quarterly Land Acquisition Report of Pacific Gas and Electric Company.
Filed Date: 04/26/2010.
Accession Number: 20100426–5025.
Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: MS Utilities submits a Report on Sites for New Generation Capacity Development.
Filed Date: 04/28/2010.
Accession Number: 20100428–5019.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 19, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: ECP Energy I, LLC *et al.* Land Acquisition Report (1Q 2010).
Filed Date: 04/29/2010.
Accession Number: 20100429–5094.
Comment Date: 5 p.m. Eastern Time on Thursday, May 20, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: NRG Power Marketing Inc., *et al.* Order 697–C Compliance Filing Regarding Site Control.
Filed Date: 04/30/2010.
Accession Number: 20100430–5067.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Quarterly Land Acquisition Report of ALABAMA ELECTRIC MARKETING, LLC, *et al.*
Filed Date: 04/30/2010.
Accession Number: 20100430–5158.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Land Acquisition Report of CPV Keenan II Renewable Energy Company, LLC and CPV Liberty, LLC, *et al.*
Filed Date: 04/30/2010.
Accession Number: 20100430–5213.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Xcel Energy Services Inc. Order 697–C Quarterly Non-Material Change in Status Report Compliance Filing on behalf of Northern States Power Company, Public Service Company of Colorado, and Southwestern Public Service Company.
Filed Date: 04/30/2010.
Accession Number: 20100430–5244.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Notice of Non-Material Change in Status.
Filed Date: 04/30/2010.
Accession Number: 20100430–5507.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.

Description: Quarterly Report of First Wind Public Utilities.
Filed Date: 04/30/2010.
Accession Number: 20100430–5050.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Quarterly Land Acquisition report of Astoria Generating Company, L.P., *et al.*
Filed Date: 04/30/2010.
Accession Number: 20100430–5108.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Quarterly Land Acquisition Report of Arlington Valley, LLC, *et al.*
Filed Date: 04/30/2010.
Accession Number: 20100430–5332.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Report/Form of San Diego Gas & Electric Company.
Filed Date: 04/30/2010.
Accession Number: 20100430–5280.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Quarterly Report of Exelon Corporation.
Filed Date: 04/30/2010.
Accession Number: 20100430–5261.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Munnsville Wind Farm LLC *et al.* Notice per 18 CFR 35.42(d).
Filed Date: 04/30/2010.
Accession Number: 20100430–5248.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: The Shaw Parties submit Notification of Change in Status/ Quarterly Report for First Quarter 2010.
Filed Date: 04/30/2010.
Accession Number: 20100430–5237.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Change in Status Report of Edison International MBR Affiliates.
Filed Date: 04/28/2010.
Accession Number: 20100428–5016.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 19, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Change in Fact Notice Site Report 2010 First Quarter of Spring Canyon Energy LLC, *et al.*
Filed Date: 04/30/2010.
Accession Number: 20100430–5141.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Endure Energy, L.L.C. Notification of Change in Status/ Quarterly Report for First Quarter 2010.
Filed Date: 04/30/2010.
Accession Number: 20100430–5236.
Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: LA10–1–000.
Applicants: Order 697–C 2010 1st Qtr Site Acquisition Report.
Description: Iberdrola Renewables, Inc. *et al.* Land Acquisition Report (1Q 2010).
Filed Date: 04/29/2010.
Accession Number: 20100429–5093.
Comment Date: 5 p.m. Eastern Time on Thursday, May 20, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–12244 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–4–001]

Cranberry Pipeline Corporation; Notice of Compliance Filing

May 13, 2010.

Take notice that on April 27, 2010, and May 4, 2010, Cranberry Pipeline Corporation (Cranberry), filed its Statement of Operating Conditions in compliance with the March 30, 2010 Letter Order and pursuant to section 284.123(e) of the Commission's regulations. Cranberry states that it made revisions to the SOC, including stand-alone statement of rates, as required by the March 30th Letter Order.

Any person desiring to participate in this proceeding must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing

an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Thursday, May 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12229 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–30–003]

Corning Natural Gas Corporation; Notice of Compliance Filing

May 17, 2010.

Take notice that on May 10, 2010, Corning Natural Gas Corporation, (Corning) filed a corrected rate sheet to replace the rate sheet filed with its Statement of section 311 Operating Conditions filed May 3, 2010, to comply with the March 23, 2010 Letter Order approving a Stipulation and Agreement of Settlement and pursuant to section 284.123(e) of the Commission's regulations.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, May 24, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12240 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–2–001]

PELICO Pipeline, LLC; Notice of Compliance Filing

May 13, 2010.

Take notice that on April 26, 2010, PELICO Pipeline, LLC (PELICO), filed its Statement of Operating Conditions (SOC) in compliance with the March 23, 2010 Letter Order and pursuant to section 284.123(e) of the Commission's regulations. PELICO states that it made revisions to the SOC including a stand-alone statement of rates and incorporating the Settlement terms as required by the March 23rd Order.

Any person desiring to participate in this proceeding must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Thursday, May 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12233 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–40–000]

Bully Camp Gas Storage Project; Notice of Availability of the Environmental Assessment for the Proposed Bully Camp Gas Storage Project

May 14, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Bully Camp Gas Storage Project proposed by BCR Holdings, Inc. (BCR) in the above referenced docket. BCR requests authorization to construct and operate a new natural gas storage facility

in a solution-mined salt dome in Lafourche Parish, Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the Bully Camp Gas Storage Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers (COE) participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The project would require a permit from the COE pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

The proposed Bully Camp Gas Storage Project includes the following facilities:

- Two salt storage caverns (each with a working capacity of 7.5 billion cubic feet), wells, and well pads;
- An 18,940-horsepower compressor station;
- Four meter stations and interconnection facilities (for Gulf South Pipeline Company, LP; Discovery Gas Transmission, LLC; Bridgeline Holdings, LP; and Texas Eastern Transmission Corporation);
- Four sections of natural gas pipeline totaling about 6.1 miles (ranging from 10 inches to 20 inches in diameter); and
- Six sections of various diameter water and brine pipeline totaling about 19.5 miles (ranging from 3 inches to 24 inches in diameter).

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before June 14, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP10–40–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "*Sign up*" or "*eRegister*." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP10–40). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12243 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12775–001]

City of Spearfish, South Dakota; Notice of Availability of Draft Environmental Assessment

May 13, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) part 380 (Order No. 486, 52 **Federal Register** (FR) 47897), the Office of Energy Projects has reviewed the city of Spearfish's application for license for the Spearfish

Hydroelectric Project (FERC Project No. 12775–001), located on Spearfish Creek near the city of Spearfish, in Lawrence County, South Dakota. The existing, but unlicensed project occupies a total of 57.26 acres of federal lands within the Black Hills National Forest managed by the U.S. Forest Service.

Staff prepared a draft environmental assessment (EA), which analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice. Comments may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text-only comments, click on "Quick Comment." For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filings, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 12775–001 to all comments.

For further information, contact Steve Hocking by telephone at (202) 502–8753 or by e-mail at *steve.hocking@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12231 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–66–000]

Southern California Edison Company; Pacific Gas and Electric Company; San Diego Gas & Electric Company; Notice of Petition for Declaratory Order

May 13, 2010.

Take notice that on May 11, 2010, pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207 (2010), Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company filed a Petition for Declaratory Order, seeking the Commission to rule that the California Public Utilities Commission's (CPUC) Decision 09–12–042 violates the Federal Power Act, 16 U.S.C. 824, *et seq.,* and the Supremacy Clause of the United States Constitution insofar as it sets the rate for electric energy that is sold at wholesale in interstate commerce by public utilities, and does so outside the CPUC's authority under the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824–a–1, *et seq.*

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 10, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12234 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–67–000]

The United Illuminating Company; Notice of Petition for Declaratory Order

May 13, 2010.

Take notice that on May 12, 2010, pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207 (2010), The United Illuminating Company filed a Petition for Declaratory Order, requesting the Commission to issue an order declaring that the provision of electric energy to Elm Electric Cooperative, Inc. for resale to its members is a transaction at wholesale subject to the jurisdiction of the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the

"eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 11, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12230 Filed 5–20–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0381; FRL–9143–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Pharmaceutical Production (Renewal), EPA ICR Number 1781.05, OMB Control Number 2060–0358

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 21, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0381 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: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 *FR* 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0381, 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, to access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Pharmaceutical Production (Renewal).

ICR Numbers: EPA ICR Number 1781.05, OMB Control Number 2060–0358.

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: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pharmaceutical Production (40 CFR part 63, subpart GGG) were proposed on April 2, 1997, and promulgated on September 21, 1998. These standards apply to the facilities in pharmaceutical production that are major sources of hazardous air pollutants (HAP). The affected facility is all pharmaceutical manufacturing operation, which includes process vents, storage tanks, equipment components, and wastewater systems commencing construction or reconstruction after the date of the proposal. In general, all NESHAP require initial notifications, performance tests, and periodic reports.

Owners/operators of affected pharmaceutical production are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are essential in determining compliance and, in general, are required of all sources subject to NESHAP. Semiannual reports are also required.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the records for at least five years following the date of such measurements, maintenance reports, and records. Performance tests reports are required as this is the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart GGG, as

authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average 178 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose, and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Pharmaceutical production facilities.

Estimated Number of Respondents: 27.

Frequency of Response: Initially, quarterly, semiannually, and occasionally.

Estimated Total Annual Hour Burden: 44,246.

Estimated Total Annual Cost: $4,297,480 which includes $4,185,214 in labor costs, no capital/startup costs, and $112,266 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment in the labor hours in this ICR, compared to the previous ICR. The labor burden is decreased compared to the most recently approved ICR due to a reduction in the number of sources. The reduction was caused by a number of sources becoming synthetic area minor sources before the compliance date. All of the sources subject to the standard are major sources.

There is a decrease in the capital/startup and operations and maintenance (O&M) costs from the previous ICR due to the decrease in the number of sources.

Dated: May 17, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–12273 Filed 5–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0534; FRL–9153–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Off-Site Waste and Recovery Operations (Renewal), EPA ICR Number 1717.07, OMB Control Number 2060–0313

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 21, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0534, 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. of the Office of Compliance, 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–2009–0534, 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: NESHAP for Off-Site Waste and Recovery Operations (Renewal).

ICR Numbers: EPA ICR Number 1717.07, OMB Control Number 2060–0313.

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: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations were proposed on October 13, 1994, and promulgated on July 1, 1996.

The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart DD. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 219 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: Offsite waste and recovery operations.

Estimated Number of Respondents: 236.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 155,212.

Estimated Total Annual Cost: $14,686,728, which includes $14,681,368 in labor costs, $0 in capital/startup costs, and $5,360 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the calculation methodology for labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative or non-existent. There is, however, an apparent increase of 906 hours in respondent labor hours, due to a math error in the previous ICR.

Also, there is an increase in both respondent and Agency costs resulting from labor rate increases from 2003 to 2009. In this ICR, the labor burden and cost calculations in Tables 1 and 2 of this ICR were expanded to include managerial and clerical labor rates, and the previous ICR only provided a technical labor rate for 2003. This ICR has been updated to present the most recent available labor rates for each of the three labor categories.

Dated: May 17, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–12284 Filed 5–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0392; FRL–9153–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations (Renewal), EPA ICR Number 1666.08, OMB Control Number 2060–0283

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 21, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0392, to (1) EPA online using www.regulations.gov (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr. of the Office of Compliance, 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 8, 2009 (74 *FR* 32581), 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–2009–0392, 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 *www.regulations.gov*.

Title: NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations (Renewal).

ICR Numbers: EPA ICR Number 1666.08, OMB Control Number 2060–0283.

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: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart O. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 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: Commercial ethylene oxide sterilization and fumigation operations.

Estimated Number of Respondents: 119.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 8,662.

Estimated Total Annual Cost: $1,467,301, which includes $819,301 in labor costs, $65,000 in capital/startup costs, and $583,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours to respondents in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent. Therefore, the labor hours in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR.

The increase in labor cost to the respondents and the Agency is due to the updating of labor rates to reflect current cost figures.

Dated: May 17, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–12276 Filed 5–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0411; FRL–8826–7]

Calcium Hydroxide; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request from the Hawaii Department of Agriculture to use the pesticide calcium hydroxide (CAS No. 1305–62–0) to treat up to 1,000 acres of outdoor potted and field–grown ornamental plants, groundcover/floors, and perimeters of commercial nurseries to control *Eleutherodactylus* frogs. The applicant proposes the use of a new chemical which has not been registered by EPA.

EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before *15 days after date of publication in the* **Federal Register**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0411, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on–line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0411. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is

not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Stacey Groce, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–2505; fax number: (703) 605–0781; e-mail address: *groce.stacey@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Hawaii Department of Agriculture has requested the Administrator to issue a quarantine exemption for the use of calcium hydroxide on outdoor potted and field-grown ornamental plants, groundcover/floors, and perimeters of commercial nurseries to control *Eleutherodactylus* frogs. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Hawaii Department of Agriculture asserts that calcium hydroxide is necessary to control the tropical frogs, *Eleutherodactylus coqui* and *E. planirostris*, two relatively new species accidentally introduced to Hawaii from infested nursery plants. These species are native to the Caribbean, although one or both species is established on the continental United States in Florida, Louisiana, and Alabama. *E. coqui* is now firmly established on Maui, and the island of Hawaii with smaller populations on Kauai and Oahu; *E. planirostris* is also found on Kauai, Oahu, Maui, and the island of Hawaii. The sites where they are established include commercial plant nurseries, residential areas, resorts and hotels, forest habitats, and natural areas. The *Eleutherodactylus coqui* and *E. planirostris* species are spread to additional sites primarily through the transportation of infested plant materials to uninfested areas.

Further, the applicant asserts, that there is great concern that these tropical frogs pose a threat to the native Hawaiian forest ecosystem, including many endangered species. In particular, *Eleutherodactylus* frogs have the potential to be a serious threat to native endangered bird species. The *E. coqui* may exert predation pressure on a wide variety of native anthropods, many of which are already stressed because of the establishment of other alien predators and parasitoids. In addition, these frog species will compete for insect food sources with native birds, the majority of which are partially or completely insectivorous. The Hawaiian hoary bat and many anthropod species also depend upon insects and spiders as food sources. According to the quarantine exemption application, another concern is that the rapid increase in the populations of these frog species could provide a food source and increase the already large populations of

introduced predators, such as rats and mongooses.

EPA granted the Hawaii Department of Agriculture a quarantine exemption in 2005 for use of calcium hydroxide to control *Eleutherodactylus* frogs. This quarantine exemption program expired on April 26, 2008. The applicant withdrew a subsequent request in 2008 for use of calcium hydroxide on 4,000 acres of outdoor plant nurseries, residential areas, resorts and hotels, parks, forest habitats, and natural areas throughout the entire state of Hawaii.

In this request, the Hawaii Department of Agriculture's projected acreage for 2010–2012 is 1,000 acres on outdoor potted and field-grown ornamental plants, groundcover/floors, and perimeters of commercial nurseries throughout the state of Hawaii in the following counties: Honolulu, Maui, Kauai, and Hawaii. According to the current submission, use of calcium hydroxide is proposed for application as follows:

1. For dust application at 500 pounds per acre (485 lbs. active ingredient (a.i.) per acre).

2. For foliar applications on potted or field-grown outdoor ornamental plants at 250 pounds of product per acre (242.5 lbs. a.i. per acre) at a 3% dilution.

3. For foliar applications on vegetation of nursery perimeters or as a soil drench at 500 pounds per acre (485 lbs. a.i. per acre) at a 6% dilution. A maximum of twelve applications may be made per site per year. Therefore, a total maximum of 18,000,000 lbs. (9,000 tons) of product or 17,280,000 lbs. (8,640 tons) of a.i. of calcium hydroxide can be applied to treated areas under this request.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a quarantine exemption proposing use of calcium hydroxide which has not been registered by EPA.

The notice provides an opportunity for public comment on this proposed application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the quarantine exemption requested by the Hawaii Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 12, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–12100 Filed 5–20–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9154–2; Docket ID No. EPA–HQ–ORD–2010–0395]

Draft EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period.

SUMMARY: EPA is announcing a 90-day public comment period for the external review draft entitled, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments" (EPA/600/R–10/038A). This draft report responds to the key recommendations and comments included in the National Academy of Sciences (NAS) 2006 report. In addition, it includes new analyses on potential human effects that may result from exposure to 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD). These analyses have not been in previous versions of draft reports related to EPA's dioxin reassessment activity. This draft report is now considered to be under EPA's Integrated Risk Information System (IRIS) program, and thus, the new IRIS process announced in May 2009 (*http://www.epa.gov/iris/process/*) is being followed. Per the May 2009 process, this draft report is beginning Step 4—independent external peer review and public review and comment. This draft dioxin report was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD).

The draft document, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments," is also being provided to EPA's Science Advisory Board (SAB), a body established under the Federal Advisory Committee Act, for independent external peer review. The SAB will convene an expert panel composed of scientists knowledgeable about technical issues related to dioxins and risk assessment. The SAB is expected to hold a public teleconference on or about June 24, 2010, and a public panel meeting on July 13–15, 2010. The SAB peer review meetings will be announced by the SAB staff office in a separate **Federal Register** Notice. EPA intends to forward all public comments submitted before July 7, 2010, in response to this notice to the SAB peer review panel for their consideration. Members of the public who wish to ensure that their technical comments are provided to the SAB expert panel before each meeting should also e-mail their comments separately to Thomas Armitage, the SAB Designated Federal Officer at *armitage.thomas@epa.gov,* following the procedures in the **Federal Register** Notice announcing the SAB public meetings. When completing this draft dioxin report, EPA will consider any written public comments that EPA receives in accordance with the detailed instructions provided below under **SUPPLEMENTARY INFORMATION**. The public comment period and SAB external peer review are independent processes that provide separate opportunities for all interested parties to comment on the draft report.

EPA is releasing this draft report solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft report 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 21, 2010, and ends August 19, 2010. Comments should be in writing and must be received by EPA by August 19, 2010.

Due to the timing of the SAB's peer review meeting, EPA can only guarantee that those comments received by July 7, 2010, in response to this **Federal Register** notice will be provided to the SAB panel prior to the SAB meeting. Comments received after July 7, will still be provided to the SAB panel and will also inform the Agency's revision of the draft report.

ADDRESSES: The external review draft titled, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments" (EPA/600/R–10/038A) is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8561; facsimile: 703–347–8691). If you request a paper copy,

please provide your name, mailing address, and the assessment title.

Comments may be submitted electronically via *http://www.regulations.gov,* by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the docket, regulations.gov or public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For information on the draft report, please contact Linda C. Tuxen, National Center for Environmental Assessment (8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8609; facsimile: 703–347–8699; or e-mail: *tuxen.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Draft Report, "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments"

In 2003, EPA, along with other federal agencies, asked the NAS to review aspects of the science in EPA's draft dioxin reassessment entitled, "Exposure and Human Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds," and, in 2004, EPA sent a 2003 external review draft dioxin reassessment to the NAS for their peer review. The NAS held several public meetings during their review of the draft reassessment and on July 11, 2006, released the final report of their review entitled, "Health Risks from Dioxin and Related Compounds: Evaluation of the EPA Reassessment."

The NAS identified three key areas in the 2003 draft reassessment that required substantial improvement to support a more scientifically robust risk characterization. These three areas were: (1) Justification of approaches to dose-response modeling for cancer and non-cancer endpoints; (2) transparency and clarity in selection of key data sets for analysis; and (3) transparency, thoroughness, and clarity in quantitative uncertainty analysis. The NAS provided EPA with recommendations to address their key concerns.

EPA's draft dioxin report, which is being provided for public review and comment, includes significant new analyses on both the potential cancer and noncancer human health effects that may result from exposures to TCDD. For instance, this draft report addresses the explicit recommendation of the NAS to develop a quantitative risk estimate for noncancer effects that may result from long-term (chronic) oral exposure to dioxins. Thus, this draft dioxin report includes an oral reference dose (RfD) for TCDD—the most well-studied and considered to be among the most toxic of the dioxin-like compounds. An RfD was not in the 2003 draft dioxin reassessment.

In addition, in 2003, EPA and other federal agencies developed a set of questions and answers related to dioxins, which have been updated about every year and a half. These materials have again been updated to include more recent information. These questions and answers provide general information on dioxins such as what they are, where they can be found, and major sources of dioxins. They also discuss possible effects of dioxin exposure in humans, include advice about consumption of food that might contain dioxins, and explain the review process for the dioxin reassessment. For additional information on dioxins and on EPA's overall dioxin assessment activity, these questions and answers may be accessed at: *http://www.fda.gov/Food/FoodSafety/FoodContaminantsAdulteration/ChemicalContaminants/DioxinsPCBs/ucm077524.htm.*

II. How To Submit Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2010–0395, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0395. 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 comments include 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 comments. If you send e-mail comments directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although

listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: May 17, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–12280 Filed 5–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8990–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 05/10/2010 Through 05/14/2010 Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100174, Final EIS, USFS, 00, Wallowa-Whitman National Forest Invasive Plants Treatment Project, To Protect Native Vegetation by Controlling, Containing, or Eradicating Invasive Plant, Wallowa, Baker, Malheur and Grant Counties, OR and Adams and Nez Perce Counties, ID, *Wait Period Ends:* 06/21/2010, *Contact:* Robert W. Rock 541–523–1242.

EIS No. 20100175, Draft EIS, USN, 00, United States Marine Corps Joint Strike Fighter F–35B West Coast Basing, To Efficiently and Effectively Maintain Combat Capability and Mission Readiness, CA and AZ, *Comment Period Ends:* 07/05/2010, *Contact:* Adrianne Saboya 619–532–4742.

EIS No. 20100176, Final EIS, USN, WA, Naval Sea Systems Command (NAVSEA). Naval Undersea Warfare Center (NUWC), Keyport Complex Extension, Propose to Extend the Operational Areas, Three Distinct Range Sites: Keyport Range Site; Dabob Bay Range Complex (DBRC) Site, Quinault Underwater Tracking Range Site, Gray Harbor, Jefferson, Kitsap and Mason Counties, WA, *Wait Period Ends:* 06/21/2010, *Contact:* Kimberly Kler 360–396–0927.

EIS No. 20100177, Draft EIS, USFS, MN, Tracks Project, Proposing Forest Vegetation Management and Related Transportation System Activities, Superior National Forest, St. Louis and Lake Counties, MN, *Comment Period Ends:* 07/05/2010, *Contact:* Susan Duffy 218–365–2097.

EIS No. 20100178, Draft EIS, USACE, LA, Medium Diversion at White Ditch, Integrated Feasibility Study, Louisiana Coastal Area (LCA) Ecosystem Restoration, Implementation, Plaquemines Parish, LA, *Comment Period Ends:* 07/05/2010, *Contact:* Dr. Nathan Dayan 504–862–2530.

EIS No. 20100179, Final EIS, TVA, AL, Bellefonte Site Single Nuclear Unit Project, Proposes to Complete or Construct and Operate a Single 1,100–1, 200 MW Nuclear Generation Unit, Jackson County, AL, *Wait Period Ends:* 06/21/2010, *Contact:* Ruth Horton 865–632–3719.

EIS No. 20100180, Draft EIS, USACE, LA, Convey Atchafalaya River Water to Northern Terrebonne Marshes and Multipurpose Operation of Houma Navigation Lock, Integrated Feasibility Study, Louisiana Coastal Area (LCA) Implementation, Lafourche, Terrebonne, St. Mary Parish, LA, *Comment Period Ends:* 07/05/2010, *Contact:* Dr. Nathan Dayan 504–862–2530.

EIS No. 20100181, Final EIS, DOE, MS, Kemper County Integrated Gasification Combined-Cycle (IGCC) Project, Construction and Operation of Advanced Power Generation Plant, U.S. Army COE Section 404 Permit, Kemper County, MS, *Wait Period Ends:* 06/21/2010, *Contact:* Richard A. Hargis, Jr. 888–322–7426 Ext. 6065.

EIS No. 20100182, Draft EIS, USACE, LA, Small Diversion at Convent/Blind River, Proposes to construct a Freshwater Diversion Project, Integrated Feasibility Study, Louisiana Coastal Area, St. James Parish, LA, *Comment Period Ends:* 07/05/2010, *Contact:* Dr. William P. Klein, Jr. 504–862–2540.

EIS No. 20100183, Draft EIS, USACE, LA, Amite River Diversion Canal Modification Element of the Section 7006(E)(3) Ecosystem Restoration Project, Feasibility Study, Louisiana Coastal Area (LCA) Ascension and Livingston Parishes, LA, *Comment Period Ends:* 07/05/2010, *Contact:* Dr. William P. Klein, Jr. 504–862–2540.

Dated: May 18, 2010.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–12262 Filed 5–20–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the "agencies") 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 Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a

proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), all of which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before July 20, 2010.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to "Consolidated Reports of Condition and Income (FFIEC 031 and 041)" or "Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S)," by any of the following methods:

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

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 3064–0052," by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov.* Include "Consolidated Reports of Condition and Income, 3064–0052" in the subject line of the message.
- *Mail:* Gary A. Kuiper, (202) 898–3877, Counsel, Attn: Comments, Room F–1072, 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 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by "1550–0023 (TFR: Schedule DI Revisions)," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov.* Please include "1550–0023 (TFR: Schedule DI Revisions)" in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: "1550–0023 (TFR: Schedule DI Revisions)."
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: "1550–0023 (TFR: Schedule DI Revisions)."

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002,

and FFIEC 002S forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*). Copies of the TFR can be obtained from the OTS's Web site (*http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, the TFR, the FFIEC 002, and the FFIEC 002S, which are currently approved collections of information.

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,512 national banks.

Estimated Time per Response: 49.64 burden hours.

Estimated Total Annual Burden: 300,223 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 843 State member banks.

Estimated Time per Response: 55.04 burden hours.

Estimated Total Annual Burden: 185,595 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 4,880 insured State nonmember banks.

Estimated Time per Response: 39.68 burden hours.

Estimated Total Annual Burden: 774,554 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 655 hours per quarter, depending on an individual institution's circumstances.

2. *Report Title:* Thrift Financial Report (TFR).

Form Number: OTS 1313 (for savings associations).

Frequency of Response: Quarterly; Annually.

Affected Public: Business or other for-profit.

OTS

OMB Number: 1550–0023.

Estimated Number of Respondents: 771 savings associations.

Estimated Time per Response: 37.5 burden hours.

Estimated Total Annual Burden: 185,158 burden hours.

3. *Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

Board

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: FFIEC 002—240; FFIEC 002S—60.

Estimated Time per Response: FFIEC 002—25.05 hours; FFIEC 002S—6 hours.

Estimated Total Annual Burden: FFIEC 002—24,048 hours; FFIEC 002S—1,440 hours.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for State member banks), 12 U.S.C. 1817 (for insured State nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). Except for selected data items, the Call Report, the TFR, and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstracts

Call Report and TFR: Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data are also used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

FFIEC 002 and FFIEC 002S: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions (including but not limited to decisions with regard to lending or asset management or funding or liability management) or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S.

markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

Current Actions

In October 2008, the FDIC Board of Directors adopted the Temporary Liquidity Guarantee Program (TLGP) following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board. The TLGP is part of an ongoing and coordinated effort by the FDIC, the U.S. Department of the Treasury, and the Board to address unprecedented disruptions in the financial markets and preserve confidence in the American economy.

To facilitate the FDIC's administration of the TLGP, the FDIC Board approved an interim rule on October 23, 2008,[1] and a final rule on November 21, 2008.[2] The TLGP comprises two distinct components: the Debt Guarantee Program (DGP), pursuant to which the FDIC guarantees certain senior unsecured debt issued by entities participating in the TLGP, and the Transaction Account Guarantee (TAG) program, pursuant to which the FDIC guarantees all funds held at participating insured depository institutions (beyond the maximum deposit insurance limit) in qualifying noninterest-bearing transaction accounts. The November 2008 final rule included certain qualifying NOW accounts, among other accounts, as a type of noninterest-bearing transaction account guaranteed by the FDIC pursuant to the TAG program.

The TAG program originally was set to expire on December 31, 2009. The FDIC Board recognized that the TAG program was contributing significantly to improvements in the financial sector, and also noted that many parts of the country were still suffering from the effects of economic turmoil. As a result, on August 26, 2009, following a public notice and comment period, the FDIC Board extended the TAG program through June 30, 2010, with certain modifications to the program.[3]

The TAG program continues to provide essential support to the banking industry, particularly as community banks remain distressed. Nearly 6,400 insured depository institutions, representing approximately 80 percent of the industry, continue to participate in the TAG program and benefit from the guarantee provided by the FDIC. These institutions held an estimated $340 billion of deposits in accounts currently subject to the FDIC's guarantee as of the end of 2009. Of these, $266 billion represented amounts above the insured deposit limit and guaranteed by the FDIC through its TAG program.

To provide additional stability for participating insured depository institutions and enhance the likelihood of a continuing and sustainable economic recovery in the financial sector, on April 13, 2010, the FDIC Board adopted an interim rule (with a request for comment) extending the TAG program for six months through December 31, 2010, with the possibility of an additional 12-month extension, through December 31, 2011, without further rulemaking upon a determination by the FDIC Board that continuing economic difficulties warrant such an extension.[4] Although the April 2010 interim rule proposes no increase in fees for continued participation in the TAG program, it modifies the basis upon which a participating institution's assessment is calculated to reflect a change from quarter-end reporting to average daily balance reporting for TAG-related accounts. In addition, in order to align NOW accounts covered by the TAG program with current market rates and to ensure that the program is not used inappropriately by institutions to attract interest-rate-sensitive deposits to fund risky activities, the April 2010 interim rule reduces the interest rate on NOW accounts eligible for the FDIC's guarantee from a maximum of 0.50 percent to a maximum of 0.25 percent. Because the April 2010 interim rule modifies the existing regulatory requirements placed on institutions participating in the TAG program, the rule provides an irrevocable, one-time opportunity for currently participating institutions to opt out of the extended TAG program.

At present, institutions participating in the TAG program report the amount and number of qualifying noninterest-bearing transaction accounts of more than $250,000 as of the quarter-end report date in Call Report Schedule RC–O, Memorandum items 4.a and 4.b; TFR Schedule DI, items DI570 and DI575; and FFIEC 002 Schedule O, Memorandum items 4.a and 4.b. By the very nature of these transaction accounts, the account balances are volatile, fluctuating greatly on any given day due to the operational nature of the deposits, such as for payrolls, and withdrawals made by typical business customers. Therefore, in response to the April 2010 interim rule's modification of the basis upon which a participating institution's assessment is calculated from quarter-end reporting to average daily balance reporting for TAG program-related accounts, the agencies are proposing to change the basis for reporting in the items identified above. Accordingly, the agencies are proposing that the total dollar amount of TAG program-qualifying accounts and the total number of such accounts would be reported as an average daily balance rather than as a quarter-end amount beginning with the September 30, 2010, report date for the Call Report, the TFR, and the FFIEC 002. The amounts to be reported as daily averages would be the total dollar amount of the noninterest-bearing transactions accounts, as defined in the April 2010 interim rule, of more than $250,000 for each calendar day during the quarter divided by the number of calendar days in the quarter. For days that an office of the reporting institution is closed (*e.g.,* Saturdays, Sundays, or holidays), the amounts outstanding from the previous business day would be used. The total number of accounts to be reported would be calculated on the same basis. Thus, all insured depository institutions that do not opt out of the extension of the TAG program must establish procedures to gather the necessary daily data beginning July 1, 2010.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

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

[1] 73 FR 64179, October 29, 2008. The FDIC amended the interim rule effective November 4, 2008. 73 FR 66160, November 7, 2008.

[2] 73 FR 72244, November 26, 2008.

[3] 74 FR 45093, September 1, 2009.

[4] 75 FR 20257, April 19, 2010.

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: May 15, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Dated: May 14, 2010.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC this 7th day of May 2010.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: May 14, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–12320 Filed 5–20–10; 8:45 am]

BILLING CODE 6714–01–P; 4810–33–P; 6210–01–P; 6720–01–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 June 4, 2010.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Hensley Family Limited Partnership, and its general partners, Jack L. Hensley and Connie D. Hensley, all of Kalispell, Montana; to retain control of Valley Bancshares, Inc., and thereby indirectly retain control of Valley Bank of Kalispell, both of Kalispell, Montana.

Board of Governors of the Federal Reserve System, May 17, 2010.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2010–12134 Filed 5–20–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 2010.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Commonwealth Bank of Australia, Sydney, Australia; to acquire approximately 8.9 percent of the voting shares of Air Lease Corporation, Los Angeles, California, and thereby engage *de novo* in leasing activities, pursuant to section 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, May 17, 2010.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2010–12133 Filed 5–20–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 091 0135]

Agilent Technologies, Inc.; Analysis of the Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before June 17, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to"Agilent Technologies, File No. 091 0135" to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential

treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/agilent*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://public.commentworks.com/ftc/agilent*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Agilent Technologies, File No. 091 0135" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Lisa De Marchi Sleigh (202-326-2535), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 14, 2010), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted from Agilent Technologies, Inc. ("Agilent"), subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement"), which is designed to remedy the anticompetitive effects resulting from Agilent's proposed acquisition of Varian, Inc. ("Varian"). Under the terms of the Consent Agreement, Agilent will: (1) divest the assets of its Micro Gas Chromatography ("Micro GC") instruments business to Inficon Group ("Inficon"), a subsidiary of Inficon Holding AG; and (2) divest the assets of Varian's Triple Quadrupole Gas Chromatography-Mass Spectrometry ("3Q GC-MS") and Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") instruments businesses to Bruker Corp. ("Bruker"), within ten days of closing its acquisition of Varian.

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

Pursuant to an Agreement and Plan of Merger dated July 26, 2009, Agilent plans to acquire Varian for approximately $1.5 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by lessening competition in the markets for Micro GC, 3Q GC-MS and ICP-MS instruments ("the Products").

II. The Parties

Agilent, headquartered in Santa Clara, California, is a global supplier of scientific measurement instruments and related products and services. Agilent's broad range of products and services includes equipment used to test cell phones and communications equipment, machines that determine the contents of human tissue and environmental samples, and microarrays that are used to analyze gene expression, which are commonly used in cancer research.

Varian is headquartered in Palo Alto, California, and supplies scientific instruments and chemical analysis technologies to customers worldwide. Varian's products, which employ various analytical techniques to test samples of many types, are used by academic researchers, forensics laboratories, food safety and agriculture laboratories, pharmaceutical companies, and chemical and oil and gas firms. Varian also offers a line of vacuum pumps, which are important components in a variety of scientific instruments and industrial processes.

III. The Products and Structure of the Markets

Micro GCs are portable gas chromatography instruments that are used primarily in the oil, mining, and waste disposal industries to detect the presence of toxins in the air or in emissions. Micro GC instruments are designed for field use and, accordingly, must be small and light enough to be

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

portable and sufficiently robust to withstand travel and use in a variety of environments. Because Micro GC customers strongly value portability, they would not switch to any other analytical technique or product if the price of Micro GCs were to increase by five to ten percent. In the United States, Agilent and Varian are the sole competitors in the market for Micro GC instruments. Agilent and Varian account for approximately 75 percent and 25 percent of the market by revenue, respectively, and directly compete for sales on the basis of price, service, and product innovation.

3Q GC-MS instruments combine a front-end gas chromatograph with a triple quadrupole mass spectrometer. 3Q GC-MSs offer extraordinarily high sensitivity and are used to identify and quantify trace amounts of substances in a wide variety of samples, such as performance-enhancing drugs in blood and pesticides in food. Less sensitive GC-MSs are widely available, and substantially less expensive, but they are not substitutes for 3Q GC-MSs because they lack the capability to detect compounds at very low concentrations and cannot differentiate among structurally-similar compounds. Where the significantly greater performance of a 3Q GC-MS is required, customers would not switch to other instruments or technologies even if the price of 3Q GC-MSs increased by five to ten percent. In the United States, there are four competitors supplying 3Q GC-MS instruments. Post-acquisition, the combined Agilent and Varian would have in excess of a 48 percent share of the U.S. market by revenue. The other two competitors, Thermo Fisher Scientific, Inc. ("Thermo") and Waters Corp., have market shares of approximately 36 percent and 16 percent, respectively.

ICP-MS instruments combine inductively coupled plasma technology and mass spectrometry technology and are used for the analysis of inorganic materials. The most common application for ICP-MS is testing water samples, such as drinking, ground or waste water, for the presence of toxic metals, like arsenic, mercury, or lead. ICP-MS is the only technology approved by the Environmental Protection Agency for testing drinking water. Because customers require the sensitivity provided by ICP-MS, and because many customers perform tests pursuant to regulatory guidelines, they would not switch to any other technique or device if the price of ICP-MS instruments were to increase by five to ten percent. In the United States, there are only four suppliers of ICP-MS instruments. Agilent accounts for 40 percent of the ICP-MS market by revenue, and a combined Agilent and Varian would have in excess of a 48 percent share of the U.S. market. The other two competitors, Thermo and PerkinElmer, Inc. have market shares of approximately 14 percent and 37 percent, respectively.

The relevant geographic area in which to evaluate the markets for Micro GC, 3Q GC-MS, and ICP-MS instruments is the United States. Because Micro GC, 3Q GC-MS, and ICP-MS customers require local sales, service, and support, a supplier that lacks the local infrastructure necessary to provide these services is not a viable alternative for U.S. customers.

IV. Entry

Neither new entry nor repositioning and expansion sufficient to deter or counteract the anticompetitive effects of the proposed acquisition is likely to occur within two years. A new entrant to the Micro GC, 3Q GC-MS, or ICP-MS instrument markets would face significant barriers to entry. A new entrant would have to design, develop, and test a product, and would have to establish a service and support infrastructure in the United States. Perhaps most importantly, a new entrant would have to develop a reputation for quality and reliability, and it would take at least several years to acquire a reputation on par with the current Micro GC, 3Q GC-MS, and ICP-MS suppliers. Accordingly, new entry by a domestic or foreign firm would not be timely, likely, or sufficient to counteract the anticompetitive effects that would arise as a result of the acquisition.

V. Effects of the Acquisition

Agilent and Varian are the only two competitors in the market for Micro GC instruments. By creating a monopoly and eliminating the substantial competition between Agilent and Varian, the proposed acquisition would cause the purchasers of Micro GC instruments to pay higher prices and experience reduced levels of service and slower innovation rates.

With only four suppliers, the market for 3Q GC-MS instruments is highly concentrated. 3Q GC-MSs are generally purchased through a competitive evaluation process, which fosters competition for features, reliability, performance, price, and service. Agilent and Varian's 3Q GC-MSs are positioned similarly in terms of their features, price, and performance. The elimination of the direct competition between the Agilent and Varian 3Q GC-MS products would allow Agilent to increase prices, slow the pace of innovation, and/or decrease service levels. In addition, the fact that there would be only three suppliers after the proposed acquisition leads to an increased likelihood of coordination among the remaining competitors.

The market for ICP-MS instruments is also highly concentrated, and Agilent's acquisition of Varian would leave only three suppliers. The ICP-MS instruments of the various suppliers compete on the basis of reliability, price, product features, performance, and service. Because Agilent and Varian directly compete with each other for many sales, and because Varian is frequently the low-priced competitor, Agilent would have a strong post-acquisition incentive to increase ICP-MS prices. The transaction would also facilitate coordination among the three remaining firms.

VI. The Consent Agreement

The proposed Consent Agreement eliminates the competitive concerns raised by Agilent's proposed acquisition of Varian by requiring the divestiture of Agilent's assets relating to the manufacture and sale of Micro GC instruments and Varian's assets relating to the manufacture and sale of 3Q GC-MS and ICP-MS instruments. Agilent and Varian have reached agreements to sell the Micro GC assets to Inficon and the 3Q GC-MS and ICP-MS assets to Bruker, within ten days of closing the acquisition.

Inficon possesses the resources and capability to acquire the Micro GC assets and replace Agilent as an effective competitor in the Micro GC market. Inficon, headquartered in Switzerland, manufactures analytical instruments for gas analysis, measurement, and control. Inficon currently supplies several products complementary to Micro GC instruments, including portable GC-MS analyzers. Inficon has an existing worldwide infrastructure for the marketing and sales of its analyzers, and therefore is well-positioned to replace the competition that will be lost as a result of the proposed transaction.

Headquartered in Billerica, Massachusetts, Bruker is a global provider of life-sciences scientific instruments, as well as solutions for molecular and materials research and industrial and applied analysis. Bruker's acquisition of the Varian 3Q GC-MS and ICP-MS product lines will complement Bruker's existing strengths in the analytical instruments market. Bruker manufactures a variety of high-performance mass spectrometry

instruments, including product lines adjacent to the 3Q GC-MS and ICP-MS businesses. As a result, Bruker has a significant existing global infrastructure that will enable it to quickly support additional business expansion and replace the loss of competition posed by Agilent's acquisition of Varian.

Pursuant to the Consent Agreement, Inficon will receive the assets necessary to replicate Agilent's Micro GC instrument business, and Bruker will receive the assets necessary to replicate Varian's 3Q GC-MS and ICP-MS instrument businesses. In addition to ensuring that the employees of the relevant businesses will continue their employment with the acquirers, the Consent Agreement requires Agilent to provide Inficon and Bruker with access to additional Agilent employees who may be needed to facilitate the transition of the assets associated with each of the Products. The Consent Agreement also requires Agilent to transfer all relevant intellectual property and all contracts and confidential business information associated with each of the Products. Combined, these provisions ensure that Inficon and Bruker fully and immediately restore the competition that will be eliminated by the acquisition.

The Commission may appoint an interim monitor to oversee the divestiture of the Products at any time after the Consent Agreement has been signed. In order to ensure that the Commission remains informed about the status of the proposed divestitures, the proposed Consent Agreement requires the parties to file periodic reports with the Commission until the divestiture is accomplished. If the Commission determines that Agilent has not fully complied with its obligations under the Decision and Order within ten days after the date the Decision and Order becomes final, the Commission may appoint a divestiture trustee to divest the Micro GC, 3Q GC-MS, and ICP-MS assets to a Commission-approved acquirer.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2010–12183 Filed 5–20–10; 11:55 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood Safety and Availability (ACBSA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will take place Thursday, June 10 and Friday, June 11, 2010, from 8:30 a.m. to 5 p.m.

ADDRESSES: The Universities at Shady Grove, 9630 Gudelsky Drive, Rockville, Maryland 20850, Phone: 301–738–6000.

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, PhD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (240) 453–8803, FAX (240) 453–8456, e-mail *ACBSA@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Blood Safety and Availability (ACBSA) provides advice to the Secretary and the Assistant Secretary for Health on a range of policy issues that impact (1) Definition of public health parameters around safety and availability of the blood supply and blood products, (2) broad public health, ethical and legal issues related to transfusion and transplantation safety, and (3) the implications for safety and the availability of various economic factors affecting product cost and supply.

Current Food and Drug Administration (FDA) policy recommends that men who have had sex with another man (MSM) even one time since 1977 should be deferred indefinitely from donating blood. The deferral of MSM began prior to the availability of tests for HIV in early 1985. The deferral has existed in its current form since September 1985. This and other related FDA policies are designed to address the major sources of known risk to the blood supply as well as the theoretical risk of emerging infectious disease (EID) transmission. FDA has reviewed the policy periodically, most recently at a meeting of the FDA Blood Products Advisory Committee in 2000 and in an FDA-sponsored public scientific workshop in 2006. After considering both public discussions FDA retained its policy. FDA has noted its commitment to continue to review its donor deferral recommendations.

Data from the Centers for Disease Control and Prevention (CDC) indicate that HIV and other blood borne pathogens are not randomly distributed in the population, but are concentrated within specific subgroups, including those whose sex partners have risk behavior(s) associated with a higher prevalence of transfusion transmitted diseases (TTDs). MSM have an increased incidence and prevalence of several currently recognized transfusion-transmitted diseases (*e.g.* HBV, HIV, syphilis, and CMV). There is a theoretical concern that MSM populations may also be at increased risk for other unrecognized transfusion-transmitted agents.

Although today's blood supply is screened using highly sensitive tests, screening tests can be falsely negative during the "window period," defined as the interval between the time when an infected individual may transmit the disease and the time when screening tests become positive. A period of deferral is needed after high-risk exposure to prevent false negative tests from "window period" collections. Deferral of donors with high-risk exposure depends upon reliable responses to a donor questionnaire, which are never 100 percent accurate. Therefore, despite highly sensitive testing and current deferral policies, failures to identify infected donors may occur.

In addition, unsuitable blood may be released inadvertently through inventory control errors. This increased risk is believed to be primarily related to human errors resulting in the release of infected units from quarantine. This is based on the assumption that due to higher infectious disease prevalence in MSM, greater numbers of infected units would be collected, leading to a small overall increase in quarantine release errors. These quarantine release errors would likely be reduced if computerized inventory controls were in place in all blood facilities.

At the June 10–11, 2010 meeting, the HHS ACBSA will hear presentations and engage in deliberations on the current MSM deferral policy. Specifically, the ACBSA will be asked to discuss the following: what are the most important factors (*e.g.* societal, scientific, and economic) to consider in making a policy change; is the currently available scientific information including risk assessments sufficient to support a policy change at this time;

what studies, if any, are needed before implementing a policy change; what monitoring tools or surveillance activities would need to be in place before implementing a policy change; what additional safety measures, if any, are needed to assure blood safety under a revised deferral policy?

The public will have opportunity to present their views to the Committee on the second day. A public comment session has been scheduled for June 11, 2010. Comments will be limited to five minutes per speaker and must be pertinent to the discussion. Pre-registration is required for participation in the public comment session. Any member of the public who would like to participate in this session should contact the Executive Secretary no later than June 8, 2010. It is requested that those who wish to have printed material distributed to the Committee provide thirty (30) copies of the document to be distributed to the Executive Secretary, ACBSA, prior to close of business June 8, 2010. If it is not possible to provide 30 copies of the material to be distributed, then individuals are requested to provide at a minimum one (1) copy of the document(s) to be distributed prior to the close of business June 8, 2010. It also is requested that any member of the public who wishes to provide comments to the Committee utilizing electronic data projection submit the necessary material to the Executive Secretary prior to close of business June 8, 2010. Electronic comments must adhere to disability accessibility guidelines (Section 508 compliance).

Dated: May 4, 2010.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 2010–12326 Filed 5–20–10; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–10–10BT]

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

National Quitline Data Warehouse—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use remains the leading preventable cause of disease and death in the United States, resulting in approximately 440,000 deaths annually and contributing to $92 billion annually in lost worker productivity. Although the prevalence of current smoking among adults decreased significantly since its peak in the 1960s, overall smoking prevalence among U.S. adults has remained virtually unchanged during the past five years. Large disparities in smoking prevalence continue to exist among members of racial/ethnic minority groups and individuals of low socioeconomic status.

The National Tobacco Control Program (NTCP) was established by CDC to help reduce tobacco-related disease, disability, and death. The NTCP provides funding for state Quitlines, which provide telephone-based tobacco cessation services to help tobacco users quit. Quitlines overcome many of the barriers to tobacco cessation classes and traditional clinics because they are free and available at the caller's convenience. Quitline services in all states can be accessed through a toll-free national portal number at 1–800–QUIT–NOW. According to CDC's Best Practices for Comprehensive Tobacco Control, approximately six to eight percent of tobacco users potentially can be reached successfully by Quitlines; however, currently, only one to two percent of tobacco users contact Quitlines.

With funding authorized by the American Recovery and Reinvestment Act of 2009 (ARRA), CDC has provided additional support for the expansion of tobacco Quitline services. CDC is therefore requesting OMB approval to establish a National Quitline Data Warehouse (NDQW), and to collect information from the 50 states, the District of Columbia, Puerto Rico, and Guam. The principal information collection will be based on a uniform Minimum Data Set (MDS) developed collaboratively by the North American Quitline Consortium and other tobacco control organizations.

Quitline service providers will use a common interview instrument to collect information from all callers. A one-minute interview will be conducted with callers who contact the Quitline to obtain information on another person's behalf. Callers who contact the Quitline to obtain information or services for themselves will be asked to participate in a 10-minute interview. A random sample of callers who receive a Quitline service will be asked to participate in a short, voluntary follow-up interview seven months after intake.

In addition, to monitor and evaluate the expenditure of Recovery Act funding, CDC will collect a quarterly report about each Quitline program from the designated Tobacco Control Manager. These reports will be used to quantify improvements in the capacity of the Quitlines to assist tobacco users over time.

The information collected in the NQDW will be used to determine the role Quitlines play in promoting tobacco use cessation, measure the number of tobacco users being served by state Quitlines, determine reach of Quitlines to high-risk populations (*e.g.,* racial and ethnic minorities and the medically underserved), measure the number using each state Quitline who quit, determine whether some combinations of services contribute to higher quit rates than others, and improve the timeliness, access to, and quality of data collected by Quitlines.

Information will be collected electronically for a two-year period. There are no costs to respondents other than their time. The total estimated annualized burden hours are 90,563.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Caller who contacts the Quitline on behalf of someone else.	Intake Questionnaire	230,000	1	1/60
Caller who contacts the Quitline for personal use.		500,000	1	10/60
Quitline caller who received a Quitline service	Follow-up Questionnaire	28,900	1	7/60
Tobacco Control Manager	Quitline Services Questionnaire	53	4	7/60

Dated: May 13, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–12181 Filed 5–20–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10DE]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Creation of state and metropolitan area-based surveillance projects for Amyotrophic Lateral Sclerosis (ALS)—New—Agency for Toxic Substances and Disease Registry (ATSDR), Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On October 10, 2008, President Bush signed S. 1382: ALS Registry Act which amended the Public Health Service Act to provide for the establishment of an Amyotrophic Lateral Sclerosis (ALS) Registry. The activities described are part of the effort to create the National ALS Registry. The purpose of the registry is to: (1) Better describe the incidence and prevalence of ALS in the United States; (2) examine appropriate factors, such as environmental and occupational, that might be associated with the disease; (3) better outline key demographic factors (such as age, race or ethnicity, gender, and family history) associated with the disease; and (4) better examine the connection between ALS and other motor neuron disorders that can be confused with ALS, misdiagnosed as ALS, and in some cases progress to ALS. The registry will collect personal health information that may provide a basis for further scientific studies of potential risks for developing ALS.

This project purposes to collect information specific data related to ALS. The objective of this project is to develop state-based and metropolitan area-based surveillance projects for ALS. The primary goal of the state-based and metropolitan area-based surveillance project is to use these data to evaluate the completeness of the National ALS Registry. The secondary goal of the surveillance project is to obtain reliable and timely information on the incidence and prevalence of ALS and to better describe the demographic characteristics (*e.g.,* age, race, sex, and geographic location) of those with ALS.

Neurologists or their staff will complete an ALS Case Reporting Form on each of their ALS patients. This will be transmitted to the state or metropolitan health department. Approval is being requested for a 3-year period; it is estimated that there will be approximately 6,750 cases of ALS reported in the state and metropolitan areas during this 3-year period. An ALS Medical Record Verification Form will be collected on a subset of cases reported.

Surveillance items to be collected include information to make sure that there are no duplicates such as full name, address, date of birth, and last five digits of the Social Security number.

There are no costs to the neurologist respondents reporting the cases other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Neurologists	Case Reporting Form	2,250	5/60	188
Neurologists	Case Verification Form	540	20/60	180
Total				368

Dated: May 13, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–12182 Filed 5–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Conducting Public Health Research in Kenya (U01)(Panel A), Funding Opportunity Announcement (FOA) GH10–003, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

TIME AND DATE: 1 p.m.–5 p.m., June 29, 2010 (Closed).

PLACE: Teleconference.

STATUS: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

MATTERS TO BE DISCUSSED: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Conducting Public Health Research in Kenya (U01)(Panel A)," FOA GH10–003.

CONTACT PERSON FOR MORE INFORMATION: Susan Stanton, D.D.S., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop D74, Atlanta, GA 30333, Telephone: (404) 639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 6, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–12174 Filed 5–20–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0247]

FDA Transparency Initiative: Draft Proposals for Public Comment Regarding Disclosure Policies of the U.S. Food and Drug Administration; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: As part of the second phase of the Transparency Initiative, the Food and Drug Administration (FDA) is announcing the availability of a report entitled "FDA Transparency Initiative: Draft Proposals for Public Comment Regarding Disclosure Policies of the U.S. Food and Drug Administration." The report includes 21 draft proposals about expanding disclosure of information by the agency while maintaining confidentiality of trade secrets and individually identifiable patient information. FDA is seeking public comment on the draft proposals, as well as on which draft proposals should be given priority. Some of the draft proposals may require extensive resources to implement, and some may require changes to regulations or legislation.

DATES: Submit either electronic or written comments by July 20, 2010.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov* or on the FDA Web site, *www.fda.gov/transparency*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets at the heading of this document.

FOR FURTHER INFORMATION CONTACT: Afia Asamoah, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg 1, rm. 2220, Silver Spring, MD 20993, 301–796–4625, FAX: 301–847–3531, e-mail: *Afia.Asamoah@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Every day, the U.S. Food and Drug Administration (FDA) makes important health and safety decisions about foods, drugs, medical devices, cosmetics, and other widely used consumer products. Transparency in FDA's activities and decisionmaking allows the public to better understand the agency's decisions, increasing credibility and promoting accountability. Transparency helps the agency to more effectively protect and promote the public health.

In January 2009, President Obama issued a memorandum on Transparency and Open Government calling for an "unprecedented level of openness in Government" and directing the Director of the Office of Management and Budget (OMB) to issue an Open Government Directive instructing executive departments and agencies to take specific actions to implement the principles of transparent, collaborative, and participatory government. The Open Government Directive was issued in December. Under the leadership of Secretary Kathleen Sebelius, the U.S. Department of Health and Human Services has also prioritized transparency and openness. In June 2009, FDA Commissioner Dr. Margaret Hamburg launched FDA's Transparency Initiative to implement these efforts at FDA.

The initiative is overseen by a Task Force representing key leaders of FDA. The internal task force is chaired by the Principal Deputy Commissioner of the FDA and includes five of the agency's center directors, the Chief Counsel, the Associate Commissioner of Regulatory Affairs, and the Chief Scientist. The Task Force is charged with submitting a written report to the Commissioner on the Task Force's findings and recommendations.

Over the last 11 months, the Task Force has held two public meetings, launched an online blog (*http://fdatransparencyblog.fda.gov/*), and opened a docket. The online blog and the docket have received over 1,500 comments.

The Task Force is proceeding with the Transparency Initiative in three phases:

- Phase I: FDA Basics
- Phase II: Public Disclosure
- Phase III: Transparency to Regulated Industry

Phase I is intended to provide the public with basic information about FDA and how the agency does its work. This phase was unveiled in early January 2010 with the launch of a web-based resource called FDA Basics (*www.fda.gov/fdabasics*). The resource now includes (1) 126 questions and answers about FDA and the products that the agency regulates, (2) 9 short videos that explain various FDA activities, and (3) 10 conversations with FDA officials about the work of their Offices. Each month, senior officials from FDA product centers and offices host online sessions about a specific topic and answer questions from the

public about that topic. FDA uses the feedback provided by the public to update this resource.

Phase II is the subject of this document and is described in more detail in section II of this document.

Phase III of the Transparency Initiative will address ways FDA can become more transparent to regulated industry, to foster a more efficient and cost-effective regulatory process. The Task Force solicited comments from the public on this topic in March 2010 (75 FR 11893, March 12, 2010) and draft proposals from this phase are expected in the summer of 2010.

II. Phase II: Public Disclosure

The second phase of the Transparency Initiative relates to FDA's policies on disclosure of information to the public about FDA activities. FDA is releasing a report that contains 21 draft proposals that we are issuing for public comment. The draft proposals, along with background material, can be found on the FDA Web site at *www.fda.gov/transparency*. FDA is accepting comments from the public on the draft proposals on the FDA Web site as well as through the docket (see section III of this notice).

The Task Force solicited comments from the public about information FDA should provide to the public about what FDA is doing, the bases for the agency's decisions, and the processes used to make agency decisions. The Task Force reviewed and considered all the comments received from a range of stakeholders. The Task Force also identified on its own initiative ways to improve transparency that are reflected in the report.

In the report, the Task Force makes available for public comment 21 draft proposals for changes in policy related to the disclosure of information FDA has in its possession, while supporting the redaction of trade secrets and individually identifiable patient information from all documents proposed for disclosure. Other topics on which FDA plans to make changes or on which the Task Force is not proposing policy changes at this time are discussed in the "Other Areas of Public Comment" section of the report.

After considering public comment on the draft proposals, the Task Force will recommend specific proposals to the Commissioner for consideration, and then FDA will announce which of the proposals it will implement, and the projected timeframe for implementation. Some of the draft proposals may require extensive resources to implement, and some may require changes to regulations or legislation. Therefore, in addition to input on the content of the proposals and whether the Task Force has struck the right balance with respect to the draft proposals, FDA is seeking input on how the agency should prioritize the proposals, if it decided to implement them. The Task Force will consider feasibility and priority, considering other agency priorities that require resources, when developing its specific recommendations for the Commissioner.

III. Request for Comments

FDA is interested in receiving comments from the public about the content of the draft proposals as well as on which draft proposals should be given priority. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify the draft proposal which your comment addresses by the number assigned to that proposal. Identify comments 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. Comments can also be submitted on each draft proposal via the FDA Web site, *www.fda.gov/transparency*.

Dated: May 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–12314 Filed 5–19–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) National Advisory Council will meet on June 9, 2010 from 1 p.m. to 4 p.m. via teleconference.

The meeting will include discussion and evaluation of grant applications reviewed by Initial Review Groups. Therefore, the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of Committee members may be obtained either by accessing the SAMHSA Committee's Web site at *https://www.samhsa.gov/council/csap/csapnac.aspx* as soon as possible after the meeting, or by contacting CSAP National Advisory Council's Designated Federal Official, Ms. Tia Haynes (*see* contact information below).

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: June 9, 2010, 1 p.m. to 4 p.m.: Closed.

Place: 1 Choke Cherry Road, Conference Room 4–1058, Rockville, Maryland 20857.

Contact: Tia Haynes, Designated Federal Official, SAMHSA/CSAP National Advisory Council, 1 Choke Cherry Road, Room 4–1066, Rockville, MD 20857, Telephone: (240) 276–2436; FAX: (240) 276–2430. E-mail: *tia.haynes@samhsa.hhs.gov*.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2010–12208 Filed 5–20–10; 8:45 am]

BILLING CODE 4162–20–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, Member Conflict: Brain Function and Structure.

Date: June 8, 2010.

Time: 9 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kevin Walton, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kevin.walton@nih.hhs.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA RM09–002: National Centers for Biomedical Computing.

Date: June 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Amy L. Rubinstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 5152, MSC 7844, Bethesda, MD 20892, 301–435–1159, *rubinsteinal@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.

Date: June 14–15, 2010.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Chicago O'Hare Airport, O'Hare International Airport, Chicago, IL 60666.

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2172, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Gastrointestinal Mucosal Pathobiology Study Section.

Date: June 14–15, 2010.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Tumor Microenvironment Study Section.

Date: June 14–15, 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: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Hepatobiliary Pathophysiology Study Section.

Date: June 14–15, 2010.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Magnificent Mile Downtown, 165 E. Ontario Street, Chicago, IL 60611.

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: June 14, 2010.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Najma Begum, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Musculoskeletal Tissue Engineering Study Section.

Date: June 14–15, 2010.

Time: 8 a.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: Jean D. Sipe, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301–435–1743, *sipej@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Motor Function, Speech and Rehabilitation Study Section.

Date: June 14, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Biology and Diseases of the Posterior Eye Study Section.

Date: June 14–15, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pregnancy and Reproduction.

Date: June 14–15, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gary Hunnicutt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Biophysical and Physiological Neuroscience.

Date: June 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Eugene Carstea, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation: Electron Microscopy.

Date: June 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *byrnesn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARRA: Color Vision.

Date: June 14–15, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Trans IRG Review of Cancer Imaging Proposals.

Date: June 14, 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: Eileen W Bradley, DSC, Chief, SBIB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group, Aging Systems and Geriatrics Study Section.

Date: June 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: James P. Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

Date: June 14, 2010.

Time: 8 a.m. to 6 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: Sooja K Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.

Date: June 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Diane L. Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Pathobiology of Kidney Disease Study Section.

Date: June 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Chicago O'Hare Airport, O'Hare International Airport, Chicago, IL 60666.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Clinical Oncology Study Section.

Date: June 14–15, 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: Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20817, (301) 806–2515, *chatterm@csr.nih.gov*.

Name of Committee: Oncology 1–Basic Translational Integrated Review Group, Cancer Etiology Study Section.

Date: June 14–15, 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: Cathleen L Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–443–4512, *cooperc@csr.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group, Vascular Cell and Molecular Biology Study Section.

Date: June 14–15, 2010.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR10–082: Shared Equipment for Macromolecular X-ray and Light Scattering.

Date: June 14–15, 2010.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David R. Jollie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical and Research Ethics.

Date: June 14–15, 2010.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

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: Motor Function, Speech and Rehabilitation Competitive Revisions.

Date: June 14, 2010.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@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 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–12154 Filed 5–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Assessment of Post-Treatment Lyme Disease Syndrome, Funding Opportunity Announcement (FOA) CK10–004, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12:30 p.m.–4:30 p.m., June 23, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Assessment of Post-Treatment Lyme Disease Syndrome," FOA CK10–004.

Contact Person for More Information: Maurine Goodman, MA, MPH, Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–4737.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 6, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–12169 Filed 5–20–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

Time and Date: 9:30 a.m.–5 p.m., June 8, 2010.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018, Telephone: (859) 334–4611, Fax: (859) 334–4619.

Status: Open to the public, but without a public comment period. To access by conference call dial the following information: (866) 659–0537, Participant Pass Code 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

Purpose: The ABRWH is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor.

Matters to be Discussed: The agenda for the Subcommittee meeting includes: discussion of a draft prototype document for informing the public on completed Subcommittee procedure reviews; discussion of the following ORAU & OCAS procedures: PER–012 ("Evaluation of Highly Insoluble Plutonium Compounds"), OTIB–013 ("Special External Dose Reconstruction Considerations for Mallinckrodt Workers"), OTIB–014 ("Rocky Flats Internal Dosimetry Co-Worker Extension"), OTIB–019 ("Analysis of Coworker Bioassay Data for Internal Dose Assignment"), OTIB–0029 ("Internal Dosimetry Coworker Data for Y–12"), OTIB–0049 ("Estimating Doses for Plutonium Strongly Retained in the Lung"), OTIB–0047 (External Radiation Monitoring at the Y–12 Facility During the 1948–1949 Period"), OTIB–0047 ("Estimating Doses for Plutonium Strongly Retained in the Lung"), OTIB–0051 ("Effect of Threshold Energy and Angular Response of NTA Film on Missed Neutron Dose at the Oak Ridge Y–12 Facility"), OTIB–0054 ("Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses"), OTIB–0054 ("External Radiation Dose Estimates For Individuals Near the 1958 Criticality Accident at the Oak Ridge Y–12 Plant"), OTIB–0070 ("Dose Reconstruction During Residual Radioactivity Periods at Atomic Weapons Employer Facilities"), and TBD 6000 ("Site Profile for Atomic Weapons Employers that Worked Uranium and Thorium Metals"); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without a public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone: (513) 533–6800, Toll Free: 1 (800) CDC–INFO, E-mail *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 14, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–12306 Filed 5–20–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Projects (SIPs): SIP 10–029, Pilot Study—Cancer Survivorship Care Planning & SIP 10–030, Evaluating Special Events as a Recruitment Strategy for Cancer Screening, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

TIME AND DATE: 8:30 a.m.–6 p.m., June 9, 2010 (Closed).

PLACE: W Hotel—Buckhead, 3377 Peachtree Road NE., Atlanta, GA 30326, (678) 500–3100.

STATUS: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

MATTERS TO BE DISCUSSED: The meeting will include the initial review, discussion, and evaluation of applications received in response to "SIP 10–029, Pilot Study—Cancer Survivorship Care Planning & SIP 10–030, Evaluating Special Events as a Recruitment Strategy for Cancer Screening."

CONTACT PERSON FOR MORE INFORMATION: Michelle Mathieson, Public Health Analyst, National Center for Chronic Disease and Health Promotion, Office of the Director, Extramural Research Program Office, CDC, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, *Telephone:* (770) 488–3068, *E-mail: mth8@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 14, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–12212 Filed 5–20–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3309–EM; Docket ID FEMA–2010–0002]

North Dakota; Amendment No. 1 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 North Dakota (FEMA–3309–EM), dated March 14, 2010, and related determinations.

DATES: *Effective Date:* April 30, 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 the incident period for this emergency is closed effective April 30, 2010.

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. 2010–12191 Filed 5–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1884–DR; Docket ID FEMA–2010–0002]

California 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 California (FEMA–1884–DR), dated March 8, 2010, and related determinations.

DATES: *Effective Date:* April 18, 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, Sandy Coachman, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael H. Smith 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. 2010–12198 Filed 5–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1912–DR; Docket ID FEMA–2010–0002]

Kentucky; 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 Commonwealth of Kentucky (FEMA–1912–DR), dated May 11, 2010, and related determinations.

DATES: *Effective Date:* May 17, 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 Commonwealth of Kentucky 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 11, 2010.

Adair, Bath, Boyd, Carter, Franklin, Greenup, Madison, Marion, and Mercer Counties for Individual Assistance.

Adair, Barren, Bath, Boyle, Carter, Cumberland, Edmonson, Garrard, Grayson,

Jessamine, Madison, Marion, Menifee, Nelson, Simpson, Warren, and Washington Counties for Public Assistance.

Casey, Lincoln, Rowan, and Woodford Counties for Public 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. 2010–12201 Filed 5–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1908–DR; Docket ID FEMA–2010–0002]

Alabama; 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 Alabama (FEMA–1908–DR), dated May 3, 2010, and related determinations.

DATES: *Effective Date:* May 7, 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 Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 3, 2010.

Walker County for Individual Assistance and Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–12200 Filed 5–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1875–DR; Docket ID FEMA–2010–0002]

Maryland; 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 Maryland (FEMA–1875–DR), dated February 19, 2010, and related determinations.

DATES: *Effective Date:* May 7, 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 Maryland is hereby amended to include the Hazard Mitigation Grant Program for 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 February 19, 2010.

All jurisdictions in the State of Maryland 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. 2010–12196 Filed 5–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1897–DR; Docket ID FEMA–2010–0002]

New Jersey; 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 New Jersey (FEMA–1897–DR), dated April 2, 2010, and related determinations.

DATES: *Effective Date:* May 7, 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 New Jersey 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 2, 2010.

Burlington County for Individual Assistance.

Cumberland and Ocean Counties for Individual Assistance and Public Assistance.

Gloucester County for Public Assistance (already designated for Individual Assistance).

Hunterdon County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–12195 Filed 5–20–10; 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. 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 Tennessee (FEMA–1909–DR), dated May 4, 2010, and related determinations.

DATES: *Effective Date:* May 7, 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.

Robertson, Smith, and Wilson Counties for Individual Assistance.

Robertson, Smith, and Wilson 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. 2010–12202 Filed 5–20–10; 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. 6 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 8, 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.

Chester, Clay, DeKalb, Hardin, Jackson, Lauderdale, Lawrence, Lewis, Macon, Stewart, Trousdale, and Wayne Counties for Individual Assistance.

Chester, Clay, DeKalb, Hardin, Jackson, Lauderdale, Lawrence, Lewis, Macon, Stewart, Trousdale, and Wayne 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. 2010–12194 Filed 5–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1908–DR; Docket ID FEMA–2010–0002]

Alabama; 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 Alabama (FEMA–1908–DR), 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 a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms, tornadoes, straight-line winds, and flooding during the period April 24–25, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Alabama.

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 Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is

supplemental, any Federal funds provided under the Stafford Act for Public Assistance, 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, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

DeKalb and Marshall Counties for Individual Assistance.

DeKalb and Marshall Counties for Public Assistance.

All counties within the State of Alabama 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. 2010–12197 Filed 5–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1911–DR; Docket ID FEMA–2010–0002]

California; 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 California (FEMA–1911–DR), dated May 7, 2010, and related determinations.

DATES: *Effective Date:* May 7, 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 7, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of California resulting from an earthquake beginning on April 4, 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 California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. 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 and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Sandy Coachman, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following area of the State of California has been designated as adversely affected by this major disaster:

Imperial County for Public Assistance. Direct Federal Assistance is authorized.

All counties within the State of California 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. 2010–12193 Filed 5–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1910–DR; Docket ID FEMA–2010–0002]

Maryland; 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 Maryland (FEMA–1910–DR), dated May 6, 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: Notice is hereby given that, in a letter dated May 6, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Maryland resulting from severe winter storms and snowstorms during the period of February 5–11, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. For the authorized areas, the time period for emergency protective measures, including snow assistance, under the Public Assistance program is extended from 48 hours to 72 hours. This assistance excludes regular time costs for the sub-grantees' regular employees.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maryland have been designated as adversely affected by this major disaster:

Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Saint Mary's, Talbot, Washington, and Wicomico Counties and the Independent City of Baltimore for Public Assistance.

Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Charles, Dorchester, Frederick, Garrett, Harford, Montgomery, Prince George's, Queen Anne's, Saint Mary's, Washington, and Wicomico Counties and the Independent City of Baltimore for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

Cecil, Howard, Kent, and Talbot Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 72-hour period during or proximate to the incident period.

All counties within the State of Maryland 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. 2010–12192 Filed 5–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–39]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Indian Housing Block Grant (IHBG) Program (Combined and Simplified Indian Housing Plan and Annual Performance Reporting Requirements)

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal, to assure better understanding of the reporting requirements and consistency in the submission of data.

DATES: June 4, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *OIRA_Submission @omb.eop.gov;* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202–402–8048, (this is not a toll-free number) or e-mail Mr. McKinney at *Leroy.McKinneyJr@hud.gov* for a copy of the proposed forms, or other available information. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection that combines and simplifies reporting for the Indian Housing Plan and Annual Performance Report and reduces the estimated annual burden hours for preparing the combined report.

Recipients of IHBG funds are required to submit an annual *Indian Housing Plan* (IHP) (HUD–52735) that provides a series of goals and objectives for the recipient to accomplish with the IHBG funds to provide affordable housing for its low- to moderate-income tribal members (Native American Housing Assistance and Self-Determination Act (NAHASDA), § 102).

At the end of each 1-year period the recipient is to submit an *Annual Performance Report* (APR) (HUD–52735–AS) to (1) Describe the use of grant funds; (2) compare relationship of grant fund use to the IHP goals and objectives; (3) discuss program accomplishments; and (4) describe how the recipient would change its program delivery and implementation based upon the recipient's experience (NAHASDA § 404).

IHBG recipients (tribes and tribally designated housing entities) are required to submit information annually to demonstrate compliance with eligibility and other requirements of NAHASDA and for HUD's annual report to Congress. The information collected enables HUD to maintain its databases in order to monitor a recipient's performance and determine program compliance.

The proposal to create a combined IHP/APR reporting form is necessary for improving the quality of reported data and reducing the burden hours to complete the forms. HUD anticipates that the simplification of the IHP will reduce the average estimated hours to complete the IHP section of the IHP/APR. The simplification of the APR and combining it with the IHP enables recipients to avoid unnecessary data entry while eliminating the need to

report on multiple open grants in each APR, thereby improving data quality and reducing reporting burden. In compliance with requirements of 5 CFR 1320.13, the agency cannot reasonably comply with the normal clearance procedures under this part because the statutory changes accelerate the submission of the IHP starting in fiscal year 2011. With implementation of the statutory changes, the IHP is due 75 days prior to the beginning of the grantee's fiscal year. For grantees with a fiscal year beginning in October 1, 2010, the revised IHP will be due July 16, 2010.

Title of Proposed Notice: Indian Housing Block Grant Program (Combined Indian Housing Plan and Annual Performance Reporting Requirements).

Description of Information Collection: This is a revision of a previously approved information collection. The Department of Housing and Urban Development is seeking emergency review of the Paperwork Reduction Act requirements associated with HUD's proposed combined IHP/APR. The combined reporting format will simplify the reporting process, improve the quality of data submitted annually, and reduce the annual burden for recipients IHBG funds. As a result, HUD will receive improved reporting data for monitoring a recipient's performance and determining program compliance.

OMB Control Number: 2577–0218.

Agency Form Numbers: HUD–52735, HUD–52735–AS. (This revision modifies and combines both the HUD–52735 and 52735–AS and requests that the revised combined form be assigned a new form number or letter designation. Prior editions of the HUD–52735 should become obsolete. The HUD–52735–AS will need to be used for approximately three more years.)

Members of Affected Public: Tribes and tribally designated housing entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: The estimated number of respondents is 366; the frequency of response is once per year; and the total reporting burden will reduce significantly from the current total reporting time of 93,308 hours to 52,941 hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 17, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–12221 Filed 5–20–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5397–N–01]

RIN 2502–ZA05

Federal Housing Administration (FHA)—Temporary Exemption From Compliance With FHA's Regulation on Property Flipping

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces that FHA has waived its regulation that prohibits the use of FHA financing to purchase properties that are being resold within 90 days of the previous acquisition. Prior to the waiver of this regulation, which took effect for all sales contracts executed on or after February 1, 2010, a mortgage was not eligible for FHA insurance if the contract of sale for the purchase of the property that is the subject of the mortgage is executed within 90 days of the prior acquisition by the seller and the seller does not come under any of the exemptions to this 90-day period that are specified in the regulation. During this period of high foreclosures, FHA seeks to encourage investors that specialize in acquiring and renovating properties to renovate foreclosed and abandoned homes with the objective of increasing the availability of affordable homes for first-time and other purchasers and helping to stabilize real estate prices as well as neighborhoods and communities where foreclosure activity has been high. While the waiver is granted for the purpose of stimulating rehabilitation of foreclosed and abandoned homes, the waiver is applicable to all properties being resold within the 90-day period after prior acquisition, and is not limited to foreclosed properties.

The waiver, however, has conditions, and eligible mortgages must meet the conditions specified in this notice. Additionally, the waiver is not applicable to mortgages insured under HUD's Home Equity Conversion Mortgage (HECM) Program.

Although the waiver is currently in effect, HUD seeks comments from industry, potential purchasers, and other interested members of the public on the conditions which must be met for the waiver to be provided. Comments will be taken into consideration in determining whether any modifications should be made to the waiver eligibility conditions.

DATES: *Effective Date:* February 1, 2010 through February 1, 2011.

Comment Due Date. June 21, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing

impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 203.37a(b)(2) of HUD's regulations (24 CFR 203.37a(b)(2)) establishes FHA's rule on property flipping and this section provides that FHA will not insure a mortgage for a property if the contract of sale is executed within 90 days of the acquisition of the property by the seller. Section 203.37a(c) lists the sales transactions that are exempt from this rule. The exempt transactions include, for example, sales by HUD of real estate-owned (REO) properties under HUD's regulations in 24 CFR part 291, sales by another federal agency of REO properties, sales of properties by nonprofit organizations that have been approved to purchase and resell HUD REO properties, and sales by state- and federally-charted financial institutions and government sponsored enterprises, to name a few.

Property "flipping" refers to the practice whereby a property recently acquired is resold for a considerable profit with an artificially inflated value, often the result of a lender's collusion with the appraiser. Most property flipping occurs within a matter of days after acquisition, and usually with only minor cosmetic improvements, if any. In an effort to preclude this predatory lending practice with respect to mortgages insured by FHA, HUD issued a final rule on May 1, 2003 (68 FR 23370) that provides in 24 CFR 203.37a that FHA will not insure a mortgage if the contract of sale for the purchase of the property that is the subject of the mortgage is executed within 90 days of the prior acquisition by the seller and the seller does not come under any of the exemptions to this 90-day period that are specified in § 203.37a(c). In a final rule published on June 7, 2006 (71 FR 33138), HUD expanded the exceptions contained in § 203.37a(c) to the 90-day time restrictions to include such transactions as sales of single family properties by government-sponsored enterprises (GSEs), state- and federally-chartered financial institutions, nonprofits organizations approved to purchase HUD Real Estate-Owned (REO) single family properties at a discount with resale restrictions, local and state governments and their instrumentalities, and, upon announcement by HUD through issuance of a notice, sales of properties in areas designated by the President as federal disaster areas.

The downturn in the housing market over the last two years has seen a rapid rise of homeowners defaulting on mortgages and consequently a rise in foreclosed homes. A variety of measures to avoid foreclosures have been initiated at the federal, state and local level, most notably the Administration's Home Affordable Modification Program. Despite these efforts to keep families in their homes, foreclosures remain high and not only do foreclosures affect the families that lost their homes, but they affect neighborhoods and communities. While HUD continues its efforts to help homeowners remain in their homes, through waiver of its regulation on property flipping, HUD seeks to help stabilize neighborhoods and communities.

HUD undertook similar waiver action in a narrower context in 2009, regarding HUD's Neighborhood Stabilization Program (NSP). NSP, a temporary program authorized by the Housing and Economic Recovery Act 2008 (Pub. L. 110–289, approved July 30, 2008), was established for the purpose of stabilizing communities that have suffered from foreclosures and abandonment, by allocating funds through a formula to States and units of general local government, for the purchase and redevelopment of foreclosed and abandoned homes and residential properties. HUD's waiver of its regulation on property flipping for NSP removed an impediment to the purchase of affordable homes that had been rehabilitated and sold under this program. With the home foreclosure rate remaining high across the nation, HUD has determined that a temporary waiver of this regulation on a nationwide basis, subject to certain conditions, may contribute to stabilizing real estate prices and neighborhoods that have been heavily impacted by foreclosures. The waiver of the regulation may facilitate the sale and occupancy of foreclosed homes that have been rehabilitated by making the mortgages of such homes eligible for FHA mortgage insurance. Again, however, while the waiver is granted for the purpose of stimulating rehabilitation of foreclosed and abandoned homes, the waiver is applicable to all properties being resold within the 90-day period after prior acquisition. The waiver is not limited to the resale of foreclosed properties.

II. Eligibility for Waiver of 24 CFR 203.37a(b)(2)

To be eligible for the waiver of the Property Flipping Rule, an FHA-approved mortgagee must meet the following conditions:

1. All transactions must be arms-length, with no identity of interest between the buyer and seller or other parties participating in the sales transaction. Some ways that the lender can ensure that there is no inappropriate collusion or agreement between parties, are to assess and determine the following:

a. The seller holds title to the property;

b. Limited liability companies, corporations, or trusts that are serving as sellers were established and are operated in accordance with applicable state and federal law;

c. No pattern of previous flipping activity exists for the subject property as evidenced by multiple title transfers within a 12 month time frame (chain of title information for the subject property can be found in the appraisal report);

d. The property was marketed openly and fairly, through a multiple listing service (MLS), auction, for sale by owner offering, or developer marketing (any sales contracts that refer to an "assignment of contract of sale," which represents a special arrangement between seller and buyer may be a red flag).

2. In cases in which the sales of the property is greater than 20 percent above the seller's acquisition cost, an FHA-approved mortgagee is eligible for the waiver only if, the mortgagee:

a. Justifies the increase in value by retaining in the loan file supporting documentation and/or a second appraisal, which verifies that the seller has completed sufficient legitimate renovation, repair, and rehabilitation work on the subject property to substantiate the increase in value or, in cases where no such work is performed, the appraiser provides appropriate explanation of the increase in property value since the prior title transfer; and

b. Orders a property inspection and provides the inspection report to the purchaser before closing. The mortgagee may charge the borrower for this inspection. The use of FHA-approved inspectors or 203(k) consultants is not

required. The inspector must have no interest in the property or relationship with the seller, and must not receive compensation for the inspection for any party other than the mortgagee. Additionally, the inspector may not: compensate anyone for the referral of the inspection; receive any compensation for referring or recommending contractors to perform any repairs recommended by the inspection; or be involved with performing any repairs recommended by the inspection. At a minimum, the inspection must include:

i. The property structure, including the foundation, floor, ceiling, walls and roof;

ii. The exterior, including siding, doors, windows, appurtenant structures such as decks and balconies, walkways and driveways.

iii The roofing, plumbing systems, electrical systems, heating and air conditioning systems;

iv. All interiors; and

v. All insulation and ventilation systems, as well as fireplaces and solid fuel-burning appliances.

3. Only forward mortgages are eligible for the waiver. Mortgages insured under HUD's HECM program are ineligible for the waiver.

III. Compliance With the Paperwork Reduction Act

The information collection requirements applicable to this waiver have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control No. 2502–0059. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

IV. Period of Waiver Eligibility

This waiver announced by this notice became effective February 1, 2010, and shall expire for all sales contract entered into after February 1, 2011, unless extended or withdrawn by HUD. By notice, HUD shall notify the public of any extension or withdrawal of this waiver. If as a result of this waiver, there is a significant increase in defaults on FHA-insured mortgages and an increase in mortgage insurance claims that are attributable to mortgages insured as a result of exercise of this waiver authority, HUD may withdraw this waiver immediately.

V. Solicitation of Public Comments

HUD welcomes comments on the conditions specified in this notice for eligibility for waiver of its regulation on property flipping. As stated in the Summary, comments will be taken into consideration in determining whether any modifications should be made to the waiver eligibility conditions.

Dated: May 12, 2010.

David H. Stevens,

Assistant Secretary for Housing— Federal Housing Commissioner.

[FR Doc. 2010-12148 Filed 5-20-10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for

review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mr. Albert Johnson, Director, Department of the Navy, Asset Management Div., Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (these are not toll-free numbers).

Dated: May 13, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 05/21/2010

Suitable/Available Properties

Building

California

Former SSA Bldg. 1230 12th Street
Modesto CA 95354
Landholding Agency: GSA
Property Number: 54201020002
Status: Surplus
GSA Number: 9–G–CA–1610
Comments: 11,957 sq. ft., needs rehab/seismic retrofit work, potential groundwater contamination below site, potential flooding

Suitable/Unavailable Properties

Land

Virginia

1 acre
Marine Corps Base
Quantico VA
Landholding Agency: Navy
Property Number: 77201020014
Status: Underutilized
Comments: land encumbered

Unsuitable Properties

Building

Arizona

Waddell Canal Water Site
Hwy 74
Peoria AZ 85383
Landholding Agency: GSA
Property Number: 54201020001
Status: Excess
GSA Number: 9–I–AZ–0857
Reasons: Other—landlocked

California

Bldg. 050D
Lawrence Berkeley Natl Lab
Berkeley CA 94720
Landholding Agency: Energy
Property Number: 41201020002
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 1578
Lawrence Livermore Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41201020003
Status: Excess
Reasons: Secured Area

Florida

14 Bldgs.
Naval Air Station
Jacksonville FL
Landholding Agency: Navy
Property Number: 77201020007
Status: Unutilized
Directions: 12, 127, 127E, 127F, 127I,640, 640B, 640C, 640D, 640E, 640F, 1913, 1960, 1964
Reasons: Secured Area and Extensive deterioration

Hawaii

13 Bldgs.
Marine Corps Base
Kaneohe HI 96863
Landholding Agency: Navy
Property Number: 77201020008
Status: Excess
Directions: 1056, 1059, 1060, 1082, 1152, 1161, 1162, 1164, 1638, 3001, 3053, 3074, 5020
Reasons: Extensive deterioration

Bldgs. 5378, 469
Ford Island Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77201020009
Status: Underutilized
Reasons: Secured Area

New Mexico

28 Bldgs.
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201020004 Status: Unutilized
Directions: 03–0406, 03–0480, 03–1524, 03–1525, 03–1526, 03–1530, 03–1540, 03–1541, 03–1736, 03–1737, 03–1738, 03–1903, 18–0184, 49–0135,55–0043, 57–0115, 59–0029, 59–0030, 59–0031, 59–0032, 59–0033, 59–0034, 50–0035, 59–0036, 59–0037, 59–0118, 59–0119, 59–0123
Reasons: Secured Area

22 Bldgs.
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201020005
Status: Unutilized
Directions: 16–0280, 16–0281, 16–0283, 16–0285, 16–0286, 16–0460, 16–0462, 16–0463, 16–1477, 16–1481, 16–1488, 18–0030, 18–0032, 18–0116, 18–0119, 18–0122, 18–0127, 18–0138, 18–0187, 18–0188, 18–0190, 18–0256
Reasons: Secured Area

New York

Bldg. 0051
Brookhaven National Lab
Upton NY 11973
Landholding Agency: Energy
Property Number: 41201020006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Ohio

Federal Building
201 Cleveland Ave.
Canton OH 44702
Landholding Agency: GSA
Property Number: 54201010018
Status: Excess
GSA Number: 1–G–OH–840
Directions: Redetermination
Reasons: Within 2000 ft. of flammable or explosive material

South Carolina

4 Bldgs.
Naval Weapon Station
Goose Creek SC 29445
Landholding Agency: Navy
Property Number: 77201020010
Status: Unutilized
Directions: 40, 72, 81, 85A, various miscellaneous properties
Reasons: Secured Area and Extensive deterioration

Texas

Facility 38
Naval Air Station
Ft. Worth TX
Landholding Agency: Navy
Property Number: 77201020011
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 4151, 1809
Naval Air Station

Ft. Worth TX
Landholding Agency: Navy
Property Number: 77201020012
Status: Unutilized
Reasons: Secured Area

Bldg. 1428
Naval Air Station
Ft. Worth TX 76127
Landholding Agency: Navy
Property Number: 77201020013
Status: Unutilized
Reasons: Secured Area and Extensive deterioration

Virginia

2 Fiberglass Huts
USCG Training Center
Yorktown VA
Landholding Agency: Coast Guard
Property Number: 88201020001
Status: Excess
Reasons: Secured Area

Land

California

Parcel C–1, Right of Way
APN199064–15
Seal Beach CA
Landholding Agency: GSA
Property Number: 54201020003
Status: Surplus
GSA Number: 9–N–CA–1508–AD
Reasons: Other—legal constraints/encroachment

Parcel E, Right of Way
APN19906615
Seal Beach CA 90740
Landholding Agency: GSA
Property Number: 54201020004
Status: Surplus
GSA Number: 9–N–CA–1508–AE
Reasons: Other—legal constraints/encroachment

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N060; 80221–1113–0000–C4]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of 34 Species in California and Nevada; Availability of 96 Completed 5-Year Reviews in California and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of 5-year reviews; availability of completed 5-year reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year reviews for 34 species under the Endangered Species Act of 1973, as amended (Act). We request any new information on these species that may have a bearing on their classification as endangered or threatened. Based on the results of these 5-year reviews, we will make a finding on whether these species are properly classified under the Act. We also announce in this notice 96 completed 5-year reviews for species in California and Nevada in Fiscal Year (FY) 2009 and early (FY) 2010.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than July 20, 2010. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review the information that we receive on these species, see "Request for New Information."

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate person listed under "Request for New Information." For contact information about completed 5-year reviews, see "Completed 5-Year Reviews." Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why do we conduct a 5-year review?

Under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), we maintain a List of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for animals) and 17.12 (for plants) (List). We amend the List by publishing final rules in the **Federal Register**. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Section 4(c)(2)(B) requires that we determine (1) Whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species listed as endangered more properly meets the definition of threatened and should be reclassified to threatened; or (3) whether a species listed as threatened more properly meets the definition of endangered and should be reclassified to endangered. Using the best scientific and commercial data available, we will consider a species for delisting if the data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification requires a separate rulemaking process. We are requesting submission of any new information (best scientific and commercial data) on these species since they were originally listed or since the species' most recent status review.

Our regulations in the Code of Federal Regulations (CFR) at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under review. This notice announces initiation of our active review of 34 species in California, and Nevada (Table 1).

TABLE 1—SUMMARY OF LISTING INFORMATION, 16 ANIMAL SPECIES AND 18 PLANT SPECIES IN CALIFORNIA AND NEVADA

Common name	Scientific name	Status	Where listed	Final listing rule
ANIMALS				
Buena Vista Lake ornate shrew.	*Sorex ornatus relictus*	Endangered	U.S.A. (CA)	67 FR 10101; 3/6/2002.
California clapper rail	*Rallus longirostris obsoletus.*	Endangered	U.S.A. (CA)	35 FR 16047; 10/13/1970.
California least tern	*Sternula (Sterna) antillarum browni.*	Endangered	U.S.A. (CA)	35 FR 8495; 06/02/1970.
California tiger salamander	*Ambystoma californiense*	Endangered	U.S.A. (CA—Sonoma County).	FR 63 13497; 3/19/2003.
Cui-ui	*Chasmistes cujus*	Endangered	U.S.A. (NV)	32 FR 4001; 03/11/1967.

TABLE 1—SUMMARY OF LISTING INFORMATION, 16 ANIMAL SPECIES AND 18 PLANT SPECIES IN CALIFORNIA AND NEVADA—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
Island night lizard	*Xantusia riversiana*	Threatened	U.S.A. (CA)	42 FR 40685; 08/11/1977.
Least Bell's vireo	*Vireo bellii pusillus*	Endangered	U.S.A. (CA)	51 FR 16482; 05/02/1986.
Little Kern golden trout	*Oncorhynchus aguabonita whitei.*	Threatened	U.S.A. (CA)	43 FR 15427; 4/13/1978.
Morro Bay kangaroo rat	*Dipodomys heermanni morroensis.*	Endangered	U.S.A. (CA)	35 FR 16047, 10/13/1970.
Mountain yellow-legged frog.	*Rana muscosa*	Endangered	U.S.A. (CA)	67 FR 44382; 07/02/2002.
Riparian brush rabbit	*Sylvilagus bachmani riparius.*	Endangered	U.S.A. (CA)	65 FR 8881; 2/23/2000.
Riparian woodrat (=San Joaquin Valley).	*Neotoma fuscipes riparia*	Endangered	U.S.A. (CA)	65 FR 8881; 2/23/2000.
Santa Catalina Island fox	*Urocyon littoralis catalinae*	Endangered	U.S.A. (CA)	69 FR 10335; 3/5/2004.
Santa Cruz Island fox	*Urocyon littoralis santacruzae.*	Endangered	U.S.A. (CA)	69 FR 10335, 3/5/2004.
San Miguel Island fox	*Urocyon littoralis littoralis*	Endangered	U.S.A. (CA)	69 FR 10335, 3/5/2004.
Santa Rosa Island fox	*Urocyon littoralis santarosae.*	Endangered	U.S.A. (CA)	69 FR 10335, 3/5/2004.
PLANTS				
Ash Meadows sunray	*Enceliopsis nudicaulis* var. *corrugata.*	Threatened	U.S.A. (NV)	50 FR 20777 20794; 05/20/1985.
Baker's larkspur	*Delphinium bakeri*	Endangered	U.S.A. (CA)	65 FR 4162; 1/26/2000.
Hidden Lake bluecurls	*Trichostema austromontanum* ssp. *compactum.*	Endangered	U.S.A. (CA)	63 FR 49006; 09/14/1998.
Gaviota tarplant	*Deinandra increscens* ssp. *villosa.*	Endangered	U.S.A. (CA)	65 FR 14888, 3/20/2000.
Island malacothrix	*Malacothrix squalida*	Endangered	U.S.A. (CA)	61 FR 40954, 7/31/1997.
La Graciosa thistle	*Cirsium loncholepis*	Endangered	U.S.A. (CA)	65 FR 14888, 3/20/2000.
Lompoc yerba santa	*Eriodictyon capitatum*	Endangered	U.S.A. (CA)	65 FR 14888, 3/20/2000.
Presidio manzanita	*Arctostaphylos hookeri* var. *ravenii.*	Endangered	U.S.A. (CA)	44 FR 61911; 11/26/1979.
San Clemente Island bush mallow.	*Malacothamnus clementinus.*	Endangered	U.S.A. (CA)	42 FR 40682; 08/11/1977.
San Clemente Island Indian paintbrush.	*Castilleja grisea*	Endangered	U.S.A. (CA)	42 FR 40682; 08/11/1977.
San Clemente Island larkspur.	*Delphinium variegatum* ssp. *kinkiense.*	Endangered	U.S.A. (CA)	42 FR 40682; 08/11/1977.
San Clemente Island lotus (broom).	*Lotus dendroideus* var. *traskiae.*	Endangered	U.S.A. (CA)	42 FR 40682; 08/11/1977.
San Clemente Island woodland star.	*Lithophragma maximum*	Endangered	U.S.A. (CA)	62 FR 42692; 08/08/1997.
Santa Cruz Island malacothrix.	*Malacothrix indecora*	Endangered	U.S.A. (CA)	61 FR 40954, 7/31/1997.
Santa Cruz Island rockcress.	*Sibara filifola*	Endangered	U.S.A. (CA)	62 FR 42692; 08/08/1997.
Santa Cruz tarplant	*Holocarpha macradenia*	Threatened	U.S.A. (CA)	65 FR 14898, 3/20/2000.
San Francisco lessingia	*Lessingia germanorum (=L.g.* var. *germanorum).*	Endangered	U.S.A. (CA)	62 FR 33373; 6/19/1997.
Yellow larkspur	*Delphinium luteum*	Endangered	U.S.A. (CA)	65 FR 4162; 1/26/2000.

What information do we consider in the review?

In our 5-year review, we consider all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that has become available since the current listing determination or the most recent status review, such as—(A) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (B) Habitat conditions including, but not limited to, amount, distribution, and suitability; (C) Conservation measures that have been implemented that benefit the species; (D) Threat status and trends (see the five factors under the heading "How Do We Determine Whether a Species is Endangered or Threatened?"); and (E) Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Request for New Information

We request any new information concerning the status of these wildlife and plant species. See "What Information Do We Consider in Our Review?" for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. We specifically request information regarding data from any

systematic surveys, as well as any studies or analysis of data that may show population size or trends; information pertaining to the biology or ecology of these species; information regarding the effects of current land management on population distribution and abundance; information on the current condition of habitat; and recent information regarding conservation measures that have been implemented to benefit the species. Additionally, we specifically request information regarding the current distribution of populations and evaluation of threats faced by the species in relation to the five listing factors (as defined in section 4(a)(1) of the Act) and the species' listed status as judged against the definition of threatened or endangered. Finally, we request recommendations pertaining to the development of, or potential updates to, recovery plans and additional actions or studies that would benefit these species in the future.

Our practice is to make information, including names and home addresses of respondents, available for public review. Before including your address, telephone number, e-mail address, or other personal identifying information in your response, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. While you can ask us in your response to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

Please mail or hand-deliver information on the following species to the U.S. Fish and Wildlife Service at the corresponding address below. You my also view information we receive in response to this notice, as well as other documentation in our files, at the following locations by appointment, during normal business hours.

For the California least tern, Island night lizard, Least Bell's vireo, Mountain yellow-legged frog, Santa Catalina Island fox, Hidden Lake bluecurls, San Clemente Island bush mallow, San Clemente Island Indian paintbrush, San Clemente Island larkspur, San Clemente Island lotus (broom), San Clemente Island woodland star, and Santa Cruz Island rock-cress, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011. Information may also be submitted electronically at *fw8cfwocomments@fws.gov.* To obtain further information, contact Scott Sobiech at the Carlsbad Fish and Wildlife Office at (760) 431–9440.

For the Buena Vista Lake ornate shrew, California clapper rail, California tiger salamander, Little Kern golden trout, Riparian brush rabbit, Riparian woodrat (San Joaquin Valley), Baker's larkspur, Presidio manzanita, San Francisco lessingia, and Yellow larkspur, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. Information may also be submitted electronically at *fw1sfo5year@fws.gov.* To obtain further information, contact Kirsten Tarp at the Sacramento Fish and Wildlife Office at (916) 414–6600.

For the Morro Bay Kangaroo rat, Santa Cruz Island fox, San Miguel Island fox, Santa Rosa Island fox, Gaviota tarplant, Island malacothrix, La Graciosa thistle, Lompoc Yerba Santa, Santa Cruz Island malacothrix, and Santa Cruz tarplant, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Information may also be submitted electronically at *fw1vfwo5year@fws.gov.* To obtain further information on the animal species, contact Mike McCrary at the Ventura Fish and Wildlife Office at (805) 644–1766. To obtain further information on the plant species, contact Connie Rutherford at the Ventura Fish and Wildlife Office at (805) 644–1766.

For the Cui-ui, and Ash Meadows sunray, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, Nevada 89502–7147. Information may also be submitted electronically at *fw1nfwo_5yr@fws.gov.* To obtain further information on the Cui-ui, contact Selena Werdon at the Nevada Fish and Wildlife Office at (775) 861–6300. To obtain further information on the Ash Meadows sunray, contact Steve Caicco at the Nevada Fish and Wildlife Office at (775) 861–6300.

All electronic information must be submitted in Text format or Rich Text format. Include the following identifier in the subject line of the e-mail: Information on 5-year review for [NAME OF SPECIES], and include your name and return address in the body of your message.

How are these species currently listed?

The current listing status of each species for which we are initiating 5-year reviews in this notice is in Table 1 above. The current status may also be found on the List, which covers all endangered and threatened species, and which is available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species.*

Definitions

To help you submit information about the species we are reviewing, we provide the following definitions:

Species includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature.

Endangered species means any species that is in danger of extinction throughout all or a significant portion of its range.

Threatened species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Experimental population means any population (including any offspring arising solely therefrom) authorized by the Secretary of the Interior for release outside the current range of nonexperimental populations of the same species, but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species. Each member of a nonessential experimental population shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4 of the Endangered Species Act.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of

existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Section 4(b)(1)(A) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What could happen as a result of our review?

For each species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered (uplist); (b) reclassify the species from endangered to threatened (downlist); or (c) remove the species from the List (delist). If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Completed 5-Year Reviews

We also take this opportunity to inform the public of 96 5-year reviews that we completed in FY 2009 and early FY 2010 for species in California and Nevada (Table 2). These 96 reviews can be found at *http://www.fws.gov/cno/es/5yr.html.* Any recommended change in listing status resulting from these completed reviews will require a separate rulemaking process.

TABLE 2—SUMMARY OF 96 SPECIES IN CALIFORNIA AND NEVADA FOR WHICH 5-YEAR REVIEWS WERE COMPLETED IN FY 2009 AND EARLY FY 2010

Common name	Scientific name	Recommendation	Lead fish and wildlife office	Contact
ANIMALS				
Ash Meadows Amargosa Pupfish	*Cyprinodon nevadensis mionectes*	No status change	Nevada	Jeannie Stafford; (775) 861–6300.
Arroyo toad	*Bufo californicus (=microscaphus)*	Downlist	Ventura	Lois Grunwald; (805) 644–1766.
Amargosa vole	*Microtus californicus scirpensis*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Bay checkerspot butterfly	*Euphydryas editha bayensis*	Uplist	Sacramento	Al Donner; (916) 414–6600.
Blunt-nosed leopard lizard	*Gambelia silus*	No status change	Sacramento	Al Donner; (916) 414–6600.
Callippe silverspot butterfly	*Speyeria callippe callippe*	No status change	Sacramento	Al Donner; (916) 414–6600.
Delta green ground beetle	*Elaphrus viridis*	No status change	Sacramento	Al Donner; (916) 414–6600.
Desert slender salamander	*Batrachoseps aridus*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Fresno kangaroo rat	*Dipodomys nitratoides exilis*	No status change	Sacramento	Al Donner; (916) 414–6600.
Giant kangaroo rat	*Dipodomys ingens*	No status change	Sacramento	Al Donner; (916) 414–6600.
Lahontan cutthroat trout	*Oncorhynchus clarkii henshawi*	No status change	Nevada	Jeannie Stafford; (775) 861–6300.
Light-footed clapper rail	*Rallus longirostris levipes*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Mission blue butterfly	*Icaricia icarioides missionensis*	No status change	Sacramento	Al Donner; (916) 414–6600.
Modoc sucker	*Catostomus microps*	Downlist	Klamath	Matt Baun; (530) 842–5763.
Mohave tui chub	*Gila bicolor mohavensis*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Mount Hermon June beetle	*Polyphylla barbata*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Myrtle's silverspot butterfly	*Speyeria zerene myrtleae*	No status change	Sacramento	Al Donner; (916) 414–6600.
Ohlone tiger beetle	*Cicindela ohlone*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Owens pupfish	*Cyprinodon radiosus*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Owens tui chub	*Siphateles bicolor snyderi (=Gila bicolor snyderi).*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Point Arena mountain beaver	*Aplodontia rufa nigra*	No status change	Arcata	Matt Baun; (530) 842–5763.
Quino checkerspot butterfly	*Euphydryas editha quino*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Railroad valley springfish	*Crenicthys nevadae*	No status change	Nevada	Jeannie Stafford; (775) 861–6300.
Salt marsh harvest mouse	*Reithrodontomys raviventris*	No status change	Sacramento	Al Donner; (916) 414–6600.
San Bernardino Merriam's kangaroo rat.	*Dipodomys merriami parvus*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
San Bruno elfin butterfly	*Callophrys mossii bayensis*	No status change	Sacramento	Al Donner; (916) 414–6600.
San Clemente sage sparrow	*Amphispiza belli clementeae*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.

TABLE 2—SUMMARY OF 96 SPECIES IN CALIFORNIA AND NEVADA FOR WHICH 5-YEAR REVIEWS WERE COMPLETED IN FY 2009 AND EARLY FY 2010—Continued

Common name	Scientific name	Recommendation	Lead fish and wildlife office	Contact
San Joaquin kit fox	*Vulpes macrotis mutica*	No status change	Sacramento	Al Donner; (916) 414–6600.
Santa Barbara County DPS of California tiger salamander.	*Ambystoma californiense*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Santa Cruz long-toed salamander	*Ambystoma macrodactylum croceum*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Shasta crayfish	*Pacifastacus fortis*	No status change	Sacramento	Al Donner; (916) 414–6600.
Tipton kangaroo rat	*Dipodomys nitratoides nitratoides*	No status change	Sacramento	Al Donner; (916) 414–6600.
White River spinedace	*Lepidomeda albivallis*	No status change	Nevada	Jeannie Stafford; (775) 861–6300.
Unarmored threespine stickleback	*Gasterosteus aculeatus williamsoni*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Zayante band-winged grasshopper	*Trimerotropis infantilis*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
PLANTS				
Applegate's milk-vetch	*Astragalus applegatei*	No status change	Klamath	Matt Baun; (530) 842–5763.
Ash Meadows milk-vetch	*Astragalus phoenix*	No status change	Nevada	Jeannie Stafford; (775) 861–6300.
Braunton's milk-vetch	*Astragalus brauntonii*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
California sea-blite	*Suaeda californica*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Calistoga allocaraya	*Plagiobothrys strictus*	No status change	Sacramento	Al Donner; (916) 414–6600.
Clara Hunt's milk-vetch	*Astragalus clarianus*	No status change	Sacramento	Al Donner; (916) 414–6600.
Clover lupine	*Lupinus tidestromii*	No status change	Sacramento	Al Donner; (916) 414–6600.
Coachella Valley milk-vetch	*Astragalus lentiginosus* var. *coachellae.*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Coastal dunes milk-vetch	*Astragalus tener* var. *titi*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Conejo dudleya	*Dudleya abramsii* ssp. *parva (=Dudleya parva).*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Cushenbury buckwheat	*Eriogonum ovalifolium* var. *vineum*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Cushenbury milk-vetch	*Astragalus albens*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Cushenbury oxytheca	*Oxytheca parishii* var. *goodmaniana (=Acanthoscyphus parishii* var. *goodmaniana).*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Fish slough milk-vetch	*Astragalus lentiginosus* var. *piscinensis.*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Hairy orcutt grass	*Orcuttia pilosa*	No status change	Sacramento	Al Donner; (916) 414–6600.
Hickman's potentilla	*Potentilla hickmanii*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Hoffmann's slender-flowered gilia	*Gilia tennuiflora* ssp. *hoffmannii*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Hoover's spurge	*Chamaesyce hooveri*	No status change	Sacramento	Al Donner; (916) 414–6600.
Indian Knob mountainbalm	*Eriodictyon altissimum*	Downlist	Ventura	Lois Grunwald; (805) 644–1766.
Island bedstraw	*Galium buxifolium*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Kenwood Marsh checkermallow	*Sidalcea oregana* ssp. *valida*	No status change	Sacramento	Al Donner; (916) 414–6600.
Lake County stonecrop	*Parvisedum leiocarpum (=Sedella leiocarpa).*	No status change	Sacramento	Al Donner; (916) 414–6600.
Large-flowered fiddleneck	*Amsinckia grandiflora*	No status change	Sacramento	Al Donner; (916) 414–6600.
Loch Lomond coyote thistle	*Eryngium constancei*	No status change	Sacramento	Al Donner; (916) 414–6600.
Many-flowered navarretia	*Navarretia leucocephala* ssp. *Plieantha.*	No status change	Sacramento	Al Donner; (916) 414–6600.

TABLE 2—SUMMARY OF 96 SPECIES IN CALIFORNIA AND NEVADA FOR WHICH 5-YEAR REVIEWS WERE COMPLETED IN FY 2009 AND EARLY FY 2010—Continued

Common name	Scientific name	Recommendation	Lead fish and wildlife office	Contact
Marcescent dudleya	*Dudleya cymosa* ssp. *marcescens*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Mexican flannelbush	*Fremontodendron mexicanum*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Monterey clover	*Trifolium trichocalyx*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Monterey spineflower	*Chorizanthe pungens* var. *pungens*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Napa bluegrass	*Poa napensis*	No status change	Sacramento	Al Donner; (916) 414–6600.
Nevin's barberry	*Berberis nevinii*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Nipomo lupine	*Lupinus nipomensis*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Palmate-bracted bird's-beak	*Cordylanthus palmatus (=Chloropyron palmatum).*	No status change	Sacramento	Al Donner; (916) 414–6600.
Parish's daisy	*Erigeron parishii*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Pismo clarkia	*Clarkia speciosa* ssp. *immaculata*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Pitkin Marsh lily	*Lilium pardalinum* ssp. *pitkinense*	No status change	Sacramento	Al Donner; (916) 414–6600.
Robust spineflower	*Chorizanthe robusta*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Salt marsh bird's-beak	*Chloropyron maritimum* ssp. *maritimum. (Cordylanthus maritimus* ssp. *maritimus).*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
San Benito evening-primrose	*Camissonia benitensis*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
San Bernadino Mountains bladderpod.	*Physaria (Lesquerella) kingii* ssp. *bernardina*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
San Diego thornmint	*Acanthomintha ilicifolia*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Santa Cruz cypress	*Cupressus abramsiana (=Callitropsis abramsiana).*	Downlist	Ventura	Lois Grunwald; (805) 644–1766.
Santa Cruz Island dudleya	*Dudleya nesiotica*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Santa Cruz Island fringepod	*Thysanocarpus conchuliferus*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Santa Monica Mountains dudleya	*Dudleya cymosa* ssp. *ovatifolia*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Scotts Valley polygonum	*Polygonum hickmanii*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Scotts Valley spineflower	*Chorizanthe robusta* var. *hartwegii*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Slender orcutt grass	*Orcuttia tenuis*	No status change	Sacramento	Al Donner; (916) 414–6600.
Spreading navarretia	*Navarretia fossalis*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Spring-loving centaury	*Centaurium namophilum*	No status change	Nevada	Jeannie Stafford; (775) 861–6300.
Springville clarkia	*Clarkia springvillensis*	No status change	Sacramento	Al Donner; (916) 414–6600.
Soft bird's-beak	*Cordylanthus mollis* ssp. *mollis*	No status change	Sacramento	Al Donner; (916) 414–6600.
Solano grass	*Orcuttia mucronata (=Tuctoria mucronata).*	No status change	Sacramento	Al Donner; (916) 414–6600.
Steamboat buckwheat	(*Eriogonum ovalifolium* var. *williamsiae.*	No status change	Nevada	Jeannie Stafford; (775) 861–6300.
Suisun thistle	*Cirsium hydrophilum* var. *hydrophilum.*	No status change	Sacramento	Al Donner; (916) 414–6600.
Thread-leaved brodiaea	*Brodiaea filifolia*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Triple-ribbed milk-vetch	*Astragalus tricarinatus*	No status change	Carlsbad	Jane Hendron; (760) 431–9440.
Verity's dudleya	*Dudleya verityi*	No status change	Ventura	Lois Grunwald; (805) 644–1766.
Western lily	*Lilium occidentale*	No status change	Arcata	Matt Baun; (530) 842–5763.

TABLE 2—SUMMARY OF 96 SPECIES IN CALIFORNIA AND NEVADA FOR WHICH 5-YEAR REVIEWS WERE COMPLETED IN FY 2009 AND EARLY FY 2010—Continued

Common name	Scientific name	Recommendation	Lead fish and wildlife office	Contact
White sedge	*Carex albida*	No status change	Sacramento	Al Donner; (916) 414–6600.
Yadon's piperia	*Piperia yadonii*	No status change	Ventura	Lois Grunwald; (805) 644–1766.

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 14, 2010.

Alexandra Pitts,

Regional Director, Region 8, U.S. Fish and Wildlife Service.

[FR Doc. 2010–12170 Filed 5–20–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-R-2009-N274]
[22570-1261-0000-K2]

Limiting Mountain Lion Predation on Desert Bighorn Sheep on Kofa National Wildlife Refuge, Yuma and La Paz Counties, AZ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the final environmental assessment and a finding of no significant impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce availability of our finding of no significant impact (FONSI) for the environmental assessment (EA) for limiting mountain lion *(Puma concolor)* predation on desert bighorn sheep *(Ovis canadensis mexicana)* on the Kofa National Wildlife Refuge (Refuge) in southwest Arizona. In the final EA and FONSI, we describe how we will manage mountain lion predation to help achieve bighorn sheep population objectives on the Refuge.

ADDRESSES: You may view or obtain copies of the FONSI and final EA by the following methods. You may request a hard copy or CD-ROM by U.S. mail from U.S. Fish and Wildlife Service, 9300 East 28th Street, Yuma, AZ 85365; via facsimile at 928-783-8611; or electronically to *KofaLionComments@fws.gov*. You may also download a copy of the documents at: *http://www.fws.gov/southwest/refuges/arizona/kofa*.

FOR FURTHER INFORMATION CONTACT: Mitch Ellis, 928-783-7861 (phone); 928-783-8611 (fax); or *Mitch_Ellis@fws.gov* (e-mail). If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we announce our decision and the availability of the FONSI and final EA. We completed a thorough analysis of impacts on the human environment, which we include in the final EA that accompanies the FONSI. We solicited comments on a draft EA from August 4, 2009, to October 2, 2009, through a notice of availability in the **Federal Register** (74 FR 38667; August 4, 2009). We received 220 responses during the comment period, from 7 government agencies, 19 nongovernmental organizations, and 194 individuals. During preparation of the final EA, we considered all of the comments provided. Appendix C of the final EA contains a more detailed description of the substantive comments received and how we incorporated changes to the draft EA in response to comments we received.

Background

The Refuge contains a major portion of the largest contiguous habitat for desert bighorn sheep in southwestern Arizona and historically has been home to a population averaging 760 bighorns. The Refuge has served as the primary source of bighorn sheep for translocations to reestablish and supplement extirpated or declining populations throughout southern Arizona, New Mexico, Texas, and Colorado. Population estimates from systematic aerial surveys indicate that a 50-percent decline in the Refuge sheep population occurred between the years 2000 and 2006.

In response to this decline, the Refuge and the Arizona Game and Fish Department (AGFD) have conducted an analysis of its probable causes and are currently implementing a strategic management program intended to lead to the recovery of this important wildlife resource. Several studies and monitoring projects have been initiated or enhanced. Some of the more important aspects of this broad program include more frequent bighorn population surveys, monitoring and maintaining water availability, assessing body condition and disease in the bighorn population, monitoring disturbance attributable to human recreation, and monitoring the extent of predation and its impacts on the population. Many of the elements in this management program have been addressed through prior planning documents and require little additional review. Others, such as the proposed lethal control of mountain lions, have not been previously addressed and therefore require analysis under the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), as well as public review.

Final Environmental Assessment—Selected Alternative

The final EA identifies and evaluates three alternatives for managing mountain lion predation on desert bighorn sheep on the Refuge. After a thorough analysis, we have selected Alternative B for implementation. Under this alternative, we will allow the removal of specific, individually identified offending mountain lions, through translocation or lethal removal, from the Refuge under certain circumstances, in order to recover and maintain an optimal population of desert bighorn sheep. This program has several components. We will trap mountain lions and fit them with tracking devices to monitor their activities. When the Refuge bighorn sheep population estimate is below 600 animals, active mountain lion control will occur. Active mountain lion control is the removal (through lethal means or translocation) of each individual mountain lion found to kill two or more bighorn sheep within a 6–month period. The Service, or its agents, will carry out the lethal removal or translocation. However, when the Refuge bighorn sheep population estimate is between 600 and 800 animals, active mountain lion control may or may not be

employed based on the totality of the circumstances at the time. In order to meet the bighorn sheep population objectives while minimizing the necessary impacts to mountain lions, we desire some flexibility. We will base decisions regarding whether active mountain lion control is necessary on an adaptive management approach and on the following factors: The current sheep population estimate; the current sheep population trend; bighorn sheep lamb survival and recruitment; the estimate of the number of mountain lions currently using the Refuge and their predation rate on bighorn sheep; current and forecasted habitat conditions; available funding and manpower; and criticality of bighorn translocation needs. When the Refuge bighorn sheep population estimate is at or above 800 animals, active mountain lion control will not occur, although mountain lions on the Refuge will continue to be captured and fitted with tracking devices to aid in continuing research.

Additional Refuge Information

Additional information on the history of the Refuge and its purpose, goals, objectives, and management strategies can be found in the *Kofa National Wildlife Refuge & Wilderness and New Water Mountains Wilderness Interagency Management Plan and Environmental Assessment: EA-AZ-055-95-1 05, October 1997.* Pertinent information can also be found in the April 2007 report titled *Investigative Report and Recommendations for the Kofa Bighorn Sheep Herd*, prepared jointly by the Service and the AGFD. Both documents, along with other detailed information, are available at the following web site: *http://www.fws.gov/southwest/refuges/arizona/kofa.*

Authorities

Environmental review of this project has been conducted in accordance with the requirements of NEPA, NEPA Regulations (40 CFR parts 1500-1508), other appropriate Federal laws and regulations, Executive Order 12996, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those laws and regulations.

Dated: December 18, 2009

Benjamin N. Tuggle,

Regional Director, Region 2.

[FR Doc. 2010–12247 Filed 5–20–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N051; 40136–1265–0000–S3]

Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee National Wildlife Refuges, Lee and Charlotte Counties, FL

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 Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee National Wildlife Refuges (NWRs) for public review and comment. In the Draft CCP/EA, we describe the alternative we propose to use to manage these four refuges for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 21, 2010.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Cheri M. Ehrhardt, via U.S. mail at J.N. "Ding" Darling National Wildlife Refuge Complex, 1 Wildlife Drive, Sanibel, FL 33957, or via e-mail at *DingDarlingCCP@fws.gov.* Alternatively, you may download the document from our Internet Site at *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. Cheri M. Ehrhardt, Natural Resource Planner, telephone: 321/861–2368; or Mr. Paul Tritaik, Refuge Manager, telephone: 239/472–1100.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee NWRs. We started the process through a notice in the **Federal Register** on June 27, 2007 (72 FR 35254), and extended the comment period in a notice in the **Federal Register** on April 2, 2008 (73 FR 17991). For more about the refuges, their purposes, and our CCP process, please see those notices.

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 strategy 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.

Totaling approximately 1,201 acres, the four refuges were established "as a preserve and breeding ground for native birds" and are managed as part of the J.N. "Ding" Darling NWR Complex (Complex). Predominantly mangrove swamp, these four refuges provide for native wildlife and habitat diversity through a mix of habitats, including mangrove islands and shorelines, saltwater marshes and ponds, tidal flats, and upland hardwood forests. They also provide protection for 12 Federal-listed and 25 State-listed species, as well as for wading birds, waterbirds, raptors and birds of prey, neotropical migratory birds, shorebirds, and seabirds. Although all four refuges are closed to public access to protect their sensitive resources, they exist in an estuarine system and are all viewable from the water.

The priority management issues facing these four refuges are addressed in the Draft CCP/EA, including: (1) Increasing and changing human population, development of the landscape, recreational uses and demands, and associated impacts; (2) issues and impacts associated with water quality, water quantity, and timing; (3) invasion and spread of exotic, invasive, and nuisance species; (4) climate change impacts; (5) need for long-term protection of important resources; (6) declines in and threats to rare, threatened, and endangered species; (7) insufficient baseline wildlife and habitat data and lack of

comprehensive habitat management plan; and (8) insufficient resources to address refuge needs.

CCP Alternatives, Including Our Proposed Alternative

We developed four alternatives for managing the Complex and chose Alternative C as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A (Current Management, No Action)

Alternative A would continue management activities and programs at levels similar to past management, providing a baseline for the comparison of the action alternatives.

Under Alternative A, wildlife and habitat management activities for the Complex would continue to be limited. The rare, threatened, and endangered species of management concern would continue to be wood storks, roseate spoonbills, roseate terns, black skimmers, American oystercatchers, snowy and piping plovers, and bald eagles. We would continue to coordinate with the partners to survey rookeries, monitor black skimmer nesting, survey for snowy plovers, and restore mangroves on four islands, as well as address exotic, invasive, and nuisance species through the Southwest Florida Cooperative Invasive Species Management Area (SWFL CISMA). Since wintering critical habitat for the piping plover has been designated on the Terrapin Creek Tract at Matlacha Pass NWR, we would continue to protect this area and limit human disturbances. We would continue to work with the partners to address water quality, quantity, and timing concerns associated with the refuges' watersheds, including Lake Okeechobee regulatory releases, the Caloosahatchee Basin and Cape Coral drainages, and local runoff issues. Several climate change models have included these refuges, helping us to begin to develop an understanding of the impacts of climate change on these resources.

Under Alternative A, resource protection management activities for Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee NWRs would continue to be very minimal. Law enforcement staff would continue to patrol known cultural resource sites. The full extent of cultural resources on the refuges would continue to remain unknown. Boundaries would be reposted as possible. Violations of the closed areas would continue to occur. Boundary discrepancies would likely continue to exist (*e.g.,* at Caloosahatchee NWR and Givney Key at Matlacha Pass NWR). Caloosahatchee NWR would develop a Minor Expansion Proposal (MEP) to include Manatee Island under refuge management, since Florida Power and Light donated the island to the "Ding" Darling Wildlife Society for future inclusion in the refuge. The Island Bay NWR Wilderness Area would continue to remain closed with no active management.

Under Alternative A, the four refuges would remain closed to visitors, resulting in limited visitor service activities and programs. However, since the area around the refuges receives high use and since the refuges are part of the Great Calusa Blueway, the refuges would continue to be identified on maps distributed by partners, providing limited visitor welcome and orientation. Various activities, including fishing, canoeing, kayaking, motor boating, parasailing, windsurfing, ski tubing, using personal watercraft, and participating in wildlife observation and photography, would continue to occur in the State waters adjacent to the refuges. Environmental education and interpretation activities would continue to be conducted at the "Ding" Darling Education Center on Sanibel Island and at off-site locations.

J.N. "Ding" Darling NWR staff would continue to conduct minimal management and periodic patrols of Pine Island, Matlacha Pass, Island Bay, and Caloosahatchee NWRs.

Alternative B (Native Wildlife and Habitat Diversity)

Alternative B would increase refuge management actions, with a focus on native wildlife and habitat diversity.

The rare, threatened, and endangered species of management concern to the refuges would be expanded to include the wood stork, roseate spoonbill, roseate tern, black skimmer, American oystercatcher, snowy plover, Wilson's plover, red knot, piping plover, bald eagle, mangrove cuckoo, black-whiskered vireo, gray kingbird, Florida prairie warbler, West Indian manatee, ornate diamondback terrapin, loggerhead sea turtle, green sea turtle, Kemp's ridley sea turtle, gopher tortoise, American alligator, American crocodile, eastern indigo snake, Sanibel Island rice rat, Gulf sturgeon, and smalltooth sawfish. Increased surveying and monitoring activities, minimized disturbances to wildlife and habitats, increased habitat management, increased intergovernmental coordination, and increased information would enhance decision-making, benefitting a variety of resources. The establishment of buffer zones around known rookery locations and key foraging and resting areas would benefit a variety of birds. In relation to the proposed widening of I–75, we would work with the partners to identify and address wildlife and habitat impacts associated with the proposed project, with an emphasis on minimizing impacts to wildlife and habitat diversity. Focusing on native diversity, we would expand exotic, invasive, and nuisance species plant control activities with updated priority plant lists and identification and location of new plant infestations, with initial efforts focused on elimination. Further, we would work with the partners to control and eradicate exotic, invasive, and nuisance animal species and would coordinate with the partners to increase the public's awareness of the negative impacts of these species. The refuges would adapt management as necessary to eradicate new invasive species and increase active participation in the SWFL CISMA. We would increase management activities related to water quality, quantity, and timing concerns. We would evaluate the need to expand the existing water quality monitoring stations to cover all four refuges. We would work with the partners to foster and conduct research to better understand the impacts of climate change on wildlife and habitat diversity and to refine and run appropriate climate change models to better predict sea level change impacts on resources of the refuges. Further, we would work with the partners to establish benchmarks to record sea level rise and beach profiles and shoreline changes, which could potentially impact a variety of species.

A complete archaeological and historical survey of the satellite refuges would be conducted, allowing for the protection of any newly identified sites. To resolve boundary and ownership discrepancies, we would conduct legal boundary surveys and historical research. To serve the purposes of the refuges and wildlife and habitat management goals and objectives, we would work with the partners to develop agreements to establish closed area buffers to protect key resources. We would prioritize acquisition efforts for those sites with high native wildlife and habitat values and would pursue completion of the approved acquisition boundaries from willing sellers. We would pursue Western Hemisphere Shorebird Reserve Network designation. To improve management of the Island Bay NWR Wilderness Area, Alternative B would initiate coordination with the Charlotte County Mosquito Control

District to eliminate the use of larvicides in the Wilderness Area during mosquito control activities. To increase understanding and awareness regarding the Wilderness Area, we would incorporate Island Bay NWR Wilderness Area into programs and materials delivered at the "Ding" Darling Education Center and at the proposed annual event for the satellite refuges.

Although the refuges would likely remain closed throughout the life of the CCP, we would expand the Visitor Services program of the refuges with a focus on native diversity through coordination with the partners, expanded environmental education and interpretation opportunities, and increased outreach efforts and activities. Since numerous area visitors also visit the nearby J.N. "Ding" Darling NWR, we would update the exhibits and activities at the "Ding" Darling Education Center to highlight the satellite refuges and provide wilderness stewardship principles. Since numerous uses occur adjacent to these refuges, we would work with the partners to minimize the impacts to resources of the refuges from these adjacent activities (*e.g.,* impacts from disturbance and from abandoned monofilament fishing line, cast nets, and crab traps on birds, manatees, sea turtles, and terrapins) and to improve the ethical outdoor behavior of area users. We would incorporate messages that focus on native wildlife and habitat diversity, the role and importance of these refuges in the landscape, and the importance of minimizing the impacts of human activities into on-site (at the "Ding" Darling Education Center) and off-site curriculum-based environmental education programs, as well as into interpretive and outreach materials developed for all refuges in the Complex. We would train volunteers, teachers, and staff to conduct educational and interpretive programs; increase outreach efforts and activities to the local communities; and work with partners to develop an annual satellite refuges event in one of the local communities.

Alternative B would create five staff positions specific to these refuges: Biological science technician, law enforcement officer, wildlife refuge specialist (assistant refuge manager), hydrologist, and park ranger (Environmental Education). The lead biologist at the J.N. "Ding" Darling NWR would continue to design and oversee the biological program and activities at the satellite refuges. We would work with the partners to evaluate and install interpretive signage at partner sites. A key refuge administration activity would be to work to improve the visibility and image of the Service in communities around these refuges to build support for refuge management, including through the development of an annual event in one of the local communities to highlight the satellite refuges.

Alternative C (Migratory Birds, Proposed Action)

Alternative C would propose actions and activities that focus management on the needs of migratory birds. This alternative addresses the management needs of all birds covered under the Migratory Bird Treaty Act, including resident species of native birds that are found using the refuge year-round.

The needs of migratory birds would be prioritized in all management and restoration plans. The rare, threatened, and endangered species of management concern to the refuges would be expanded to include the wood stork, roseate spoonbill, roseate tern, black skimmer, American oystercatcher, snowy plover, Wilson's plover, red knot, piping plover, bald eagle, mangrove cuckoo, black-whiskered vireo, gray kingbird, Florida prairie warbler, West Indian manatee, ornate diamondback terrapin, loggerhead sea turtle, green sea turtle, Kemp's ridley sea turtle, gopher tortoise, American alligator, American crocodile, eastern indigo snake, Gulf sturgeon, and smalltooth sawfish. Increased and improved surveying and monitoring activities, minimized disturbances to wildlife and habitats, increased habitat creation and management, increased intergovernmental coordination, and increased information would enhance decisionmaking, benefitting a variety of resources. We would work with the partners to evaluate the Turtle Bay area of Island Bay NWR for designation as a Manatee Sanctuary, since it is an important manatee natality area within Charlotte Harbor. The establishment of buffer zones around known rookery locations and key foraging and resting areas would benefit a variety of birds. In relation to the proposed widening of I–75, we would work with the partners to identify and address wildlife and habitat impacts associated with the proposed project, with an emphasis on minimizing impacts to migratory birds. Focusing on the needs of migratory birds, we would expand exotic, invasive, and nuisance plant species control activities with a focus on migratory birds with updated lists of priorities and identification and location of new plant infestations with initial efforts focused on elimination. Further, we would work with the partners to control and eradicate exotic, invasive, and nuisance animals and would coordinate with the partners to increase the public's awareness of the negative impacts of these species. In all these efforts, we would adapt management as necessary to eradicate new invasive species and increase active participation in the SWFL CISMA. We would increase management activities related to water quality, quantity, and timing concerns with a focus on migratory birds. We would evaluate the need to expand the existing water quality monitoring stations to cover all four refuges. We would work with the partners to foster and conduct research to better understand the impacts of climate change on migratory birds and to refine and run appropriate climate change models to better predict sea level change impacts on resources of the refuges. Further, we would work with the partners to establish benchmarks to record sea level rise and beach profiles and shoreline changes, which could potentially impact a variety of species.

A complete archaeological and historical survey of the satellite refuges would be conducted, allowing for the protection of any newly identified sites. To resolve boundary and ownership discrepancies, we would conduct legal boundary surveys and historical research. To serve the purposes of the refuges and wildlife and habitat management goals and objectives, we would work with the partners to develop agreements to establish closed area buffers to protect key resources. We would prioritize acquisition efforts for those sites with high values for migratory birds and would pursue completion of the approved acquisition boundaries from willing sellers. We would pursue the designation of lands and waters within the current management boundaries of Pine Island and Matlacha Pass NWRs for inclusion in the Western Hemisphere Shorebird Reserve Network and of all four refuges as RAMSAR Wetlands of International Importance, as part of the application for J.N. "Ding" Darling NWR. To improve management of the Island Bay NWR Wilderness Area, we would initiate coordination with the Charlotte County Mosquito Control District to eliminate the use of larvicides in the Wilderness Area during mosquito control activities. To increase understanding and awareness regarding the Wilderness Area, we would incorporate Island Bay NWR Wilderness Area into programs and materials delivered at the "Ding" Darling Education Center and at the proposed annual event for the satellite refuges.

Although the refuges would likely remain closed throughout the life of the CCP, we would expand the Visitor Services program of the refuges with a focus on migratory birds through coordination with the partners, expanded environmental education and interpretation opportunities, and increased outreach efforts and activities. Since numerous area visitors also visit the nearby J.N. "Ding" Darling NWR, we would update the exhibits and activities at the "Ding" Darling Education Center to highlight the satellite refuges and provide wilderness stewardship principles. Since numerous uses occur adjacent to these refuges, we would work with the partners to minimize the impacts to resources of the refuges from these adjacent activities (*e.g.,* impacts from disturbance and from abandoned monofilament fishing line, cast nets, and crab traps on birds, manatees, sea turtles, and terrapins) and to improve the ethical outdoor behavior of area users. We would incorporate messages that focus on migratory birds, the role and importance of these refuges in the landscape, and the importance of minimizing the impacts of human activities into on-site (at the "Ding" Darling Education Center) and off-site curriculum-based environmental education programs, as well as into interpretive and outreach materials developed for all refuges in the Complex. The Complex would train volunteers, teachers, and staff to conduct educational and interpretive programs; increase outreach efforts and activities to the local communities; and work with partners to develop an annual satellite refuge event in one of the local communities.

Alternative C would create five staff positions specific to these refuges: Biological science technician, law enforcement officer, wildlife refuge specialist (assistant refuge manager), hydrologist, and park ranger (environmental education). The lead biologist at the J.N. "Ding" Darling NWR would continue to design and oversee the biological program and activities at the satellite refuges. We would work with the partners to evaluate and install interpretive signage at partner sites. And, we would expand existing partnerships and develop new partnerships. A key refuge administration activity would be to work to improve the visibility and image of the Service in communities around these refuges to build support for refuge management, including through the development of an annual event in one of the local communities to highlight the satellite refuges.

Alternative D (Rare, Threatened, and Endangered Species)

Alternative D would focus on increasing refuge management actions that promote the recovery of rare, threatened, and endangered species occurring within the four refuges.

The rare, threatened, and endangered species of management concern to the refuges would be expanded to include the wood stork, roseate spoonbill, roseate tern, black skimmer, American oystercatcher, snowy plover, Wilson's plover, red knot, piping plover, bald eagle, mangrove cuckoo, black-whiskered vireo, gray kingbird, Florida prairie warbler, West Indian manatee, Sanibel Island rice rat, ornate diamondback terrapin, loggerhead sea turtle, green sea turtle, Kemp's ridley sea turtle, gopher tortoise, American alligator, American crocodile, eastern indigo snake, Gulf sturgeon, and smalltooth sawfish. Increased and improved survey and monitoring activities, minimized disturbances to wildlife and habitats, increased habitat creation and management, increased intergovernmental coordination, and increased information would enhance decision-making, benefitting a variety of resources and helping serve recovery goals. We would work with the partners to evaluate the Turtle Bay area of Island Bay NWR for designation as a Manatee Sanctuary, since it is an important manatee natality area within Charlotte Harbor. The establishment of buffer zones around known rookery locations and key foraging and resting areas would benefit a variety of rare, threatened, and endangered species. In relation to the proposed widening of I–75, we would work with the partners to identify and address wildlife and habitat impacts associated with the proposed project with an emphasis on minimizing impacts to rare, threatened, and endangered species. The refuges would expand exotic, invasive, and nuisance plant species control activities with a focus on rare, threatened, and endangered species, with updated lists of priorities and identification and location of new plant infestations with initial efforts focused on elimination. Further, we would work with the partners to control and eradicate exotic, invasive, and nuisance animals and would coordinate with the partners to increase the public's awareness of the negative impacts of these species. In all these efforts, we would adapt management as necessary to eradicate new invasive species and increase active participation in the SWFL CISMA. We would increase management activities related to water quality, quantity, and timing concerns with a focus on rare, threatened, and endangered species. We would evaluate the need to expand the existing water quality monitoring stations to cover all four refuges. We would work with the partners to foster and conduct research to better understand the impacts of climate change on rare, threatened, and endangered species and to refine and run appropriate climate change models to better predict sea level change impacts on resources of the refuges. Further, we would work with the partners to establish benchmarks to record sea level rise and beach profiles and shoreline changes, which could potentially impact a variety of species.

A complete archaeological and historical survey of the satellite refuges would be conducted, allowing for the protection of any newly identified sites. To resolve boundary and ownership discrepancies, we would conduct legal boundary surveys and historical research. To serve the purposes of the refuges and wildlife and habitat management goals and objectives, we would work with the partners to develop agreements to establish closed area buffers to protect key resources. We would prioritize acquisition efforts for those sites with high values for rare, threatened, and endangered species and would pursue completion of the approved acquisition boundaries from willing sellers. We would pursue Western Hemisphere Shorebird Reserve Network designation. To improve management of the Island Bay NWR Wilderness Area, we would initiate coordination with the Charlotte County Mosquito Control District to eliminate the use of larvicides in the Wilderness Area during mosquito control activities. To increase understanding and awareness regarding the Wilderness Area, we would incorporate Island Bay NWR Wilderness Area into programs and materials delivered at the "Ding" Darling Education Center and at the proposed annual event for the satellite refuges.

Although the refuges would likely remain closed throughout the life of the CCP, we would expand the Visitor Services program of the refuges through coordination with the partners, expanded environmental education and interpretation opportunities, and increased outreach efforts and activities. Visitor services programs and activities would be focused on rare, threatened, and endangered species. Since numerous area visitors also visit the nearby J.N. "Ding" Darling NWR, we would update the exhibits and activities at the "Ding" Darling Education Center to highlight the satellite refuges and

provide wilderness stewardship principles. Since numerous uses occur adjacent to these refuges, we would work with the partners to minimize the impacts to resources of the refuges from these adjacent activities (*e.g.,* impacts from disturbance and from abandoned monofilament fishing line, cast nets, and crab traps on rare, threatened, and endangered species) and to improve the ethical outdoor behavior of area users. We would incorporate messages that focus on rare, threatened, and endangered species, the role and importance of these refuges in the landscape, and the importance of minimizing the impacts of human activities into on-site (at the "Ding" Darling Education Center) and off-site curriculum-based environmental education programs, as well as into interpretive and outreach materials developed for all refuges in the Complex. We would train volunteers, teachers, and staff to conduct educational and interpretive programs; increase outreach efforts and activities to the local communities; and work with partners to develop an annual satellite refuge event in one of the local communities.

Alternative D would create five staff positions specific to these refuges: Biological science technician, law enforcement officer, wildlife refuge specialist (assistant refuge manager), hydrologist, and park ranger (Environmental Education). The lead biologist at the J.N. "Ding" Darling NWR would continue to design and oversee the biological program and activities at the satellite refuges. We would work with the partners to evaluate and install interpretive signage at partner sites. We would expand existing partnerships and develop new partnerships. A key refuge administration activity would be to work to improve the visibility and image of the Service in communities around these refuges to build support for refuge management, including through the development of an annual event in one of the local communities to highlight the satellite refuges.

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 at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: April 14, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–12213 Filed 5–20–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOROR957000–L62510000–PM000: HAG10–0255]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 7 S., R. 9 W., accepted April 12, 2010
T. 39 S., R. 2 E., accepted April 26, 2010
T. 33 S., R. 7 W., accepted April 26, 2010
T. 33 S., R. 2 E., accepted April 26, 2010
T. 19 S., R. 7 W., May 3, 2010
T. 14 S., R. 2 W., May 3, 2010
T. 31 S., R. 6 W., May 4, 2010
T. 31 S., R. 6 W., May 4, 2010
T. 30 S., R. 7 W., May 4, 2010
T. 30 S., R. 8 W., May 4, 2010
T. 22 S., R. 8 W., May 4, 2010

Washington

T. 39 N., R. 43 E., accepted April 26, 2010
T. 17 N., R. 9 W., accepted April 29, 2010
T. 38 N., R. 2 E., accepted May 3, 2010

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204.

Cathie Jensen,

Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2010–12164 Filed 5–20–10; 8:45 am]

BILLING CODE 4310–33–P

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 Meagher County, MT.

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 Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Crow Tribe of Montana; Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Possibly in 1905, human remains representing a minimum of two individuals were removed from Musselshell River, Meagher County, MT, possibly by Ralph Hubbard. One of the individuals appears to have sustained three gun-shot wounds. No known individuals were identified. No associated funerary objects are present.

Previously, human remains representing seven individuals from Meagher County, MT, were identified in the museum's Culturally Unidentifiable Human Remains Inventory (dated May 16, 1996). After consultation, human remains representing five individuals with two associated funerary objects from "in a butte ("Sentinal [sic] Rock"), Meagher County, MT," were determined

to be culturally affiliated with the Blackfeet Tribe, Crow Tribe, Fort Belknap Indian Community, and Three Affiliated Tribes (73 FR 8359–8360, February 13, 2008), and subsequently repatriated to the Blackfeet Tribe. The museum believed at that time that it had accounted for all of the human remains from Montana, and that the number of individuals listed in the Culturally Unidentifiable Human Remains Inventory was an error. However, on June 16, 2009, human remains representing two individuals from "Musselshell R., Montana" were found in the museum. This now accounts for all seven individuals originally listed in the inventory.

Based on biological evidence, the human remains are probably Native American. Based on geographic evidence, including Indian Land Claims Commission decisions and oral tradition, the human remains are reasonably believed to be Blackfeet, Crow, Gros Ventre, or Assiniboine. The Gros Ventre and the Assiniboine are Federally-recognized as the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana. The Fort Belknap Indian Community of the Fort Belknap Reservation of Montana confirmed that the Gros Ventre and Assiniboine ranged through the Meagher County area mainly in the form of hunting and war parties. Based on oral tradition Crow Nations migrated through this area seasonally.

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 two individuals 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 Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Crow Tribe of Montana, and Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.

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 21, 2010. Repatriation of the human remains to the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Crow Tribe of Montana, and Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, may proceed after that date if no additional claimants come forward.

The University of Colorado Museum is responsible for notifying the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Crow Tribe of Montana; Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: May 6, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–12272 Filed 5–20–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

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 Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Iosco County, MI.

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 the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Ottawa Tribe of Oklahoma; and Saginaw Chippewa Indian Tribe of Michigan.

In 1856, human remains representing a minimum of one individual were removed from the western shore of Tawas Point, in Iosco County, MI, by Henry Gillman. They were donated to the Peabody Museum of Archaeology and Ethnology by Mr. Gillman in 1869. No known individual was identified. Mr. Gillman described finding a copper vessel and other "small articles" with the human remains. However, these items were not accessioned into the museum's collection and their disposition is unknown. Therefore, no associated funerary objects are present.

Museum documentation indicates that this individual was recovered from a burial mound. Contextual information suggests that this individual is most likely Native American. This interment likely dates to the Historic period due to the presence of a copper vessel. Information from manuscript maps of Douglass Houghton, the first Geologist for the State of Michigan, indicates that there was a village near the mouth of the Tawas River in 1838. He describes the village as that of Outawanse. Consultation with the Saginaw Chippewa Indian Tribe of Michigan indicates that Outawanse was a chief of the Saginaw Chippewa Tribe during the 19th century. The Tawas River flows into the western shore of Tawas Bay, directly across the water from Tawas Point, where these remains were recovered. Given the presence of the Saginaw Chippewa village in the specific area of the burial during the Historic period, it is likely that the human remains are ancestral Saginaw Chippewa. The present-day group that represents the Saginaw Chippewa people is the Saginaw Chippewa Indian Tribe of Michigan.

Officials of the Peabody Museum of Archaeology and Ethnology 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 Peabody Museum of Archaeology and Ethnology have also 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 Saginaw Chippewa Indian Tribe of Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138, telephone (617) 496–3702, before June 21, 2010. Repatriation of the human remains to the Saginaw Chippewa Indian Tribe of Michigan may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Grand Traverse Band of

Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Ottawa Tribe of Oklahoma; and Saginaw Chippewa Indian Tribe of Michigan that this notice has been published.

Dated: May 6, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–12275 Filed 5–20–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC00000.L16400000.BF0000.241A.0; 4500012112]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) will meet as indicated below.

DATES: June 21–22, 2010. On June 21, the meeting will be from 11:30 a.m. to 4:30 p.m. with the public comment period from 3:30 p.m. to 4:30 p.m. On June 22, a field trip will be conducted from 8 a.m. to about 2 p.m. The meeting will be held at the Bureau of Land Management Office, 1 Butte Drive, Cottonwood, Idaho.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815 or telephone at (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. On June 21, the agenda topics include: the proposed M3 land exchange; overview of the Clearwater Basin Collaborative; and the proposed designation of the Lower Salmon River under the Wild and Scenic Rivers Act. On June 22, a field trip will be conducted to several sites within the field office area, including the Salmon River and Craig Mountain Wildlife Management Area. Additional agenda topics or changes to the agenda will be announced in local press releases. More information is available at *http://www.blm.gov/id/st/en/res/resource_advisory.html.*

All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: May 13, 2010.

Stephanie Snook,

Acting District Manager.

[FR Doc. 2010–12297 Filed 5–20–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000.XP0000LXSS150A00006100.241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Arizona Resource Advisory Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC), will meet on June 17, 2010, at the BLM National Training Center located at 9828 North 31st Avenue in Phoenix from 8 a.m. until 4:30 p.m. Agenda items include: BLM State Director's update on statewide issues; Presentation on the California Condor Reintroduction Program; State Director Updates on the BLM Arizona National Landscape Conservation System (NLCS), Water and Renewable Energy Strategies and RAC discussion and recommendations on issues BLM should consider as these strategies are implemented; RAC questions on BLM District Managers' Reports; and reports by RAC working groups. A public comment period will be provided at 11:30 a.m. on June 17, 2010, for any interested members of the public who wish to address the Council on BLM programs and business.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation Resource Advisory Council (RRAC), and has the authority to review all BLM and Forest Service (FS) recreation fee proposals in Arizona. The afternoon meeting agenda on June 17, will include a brief review of the Recreation Enhancement Act (REA) Working Group Report, REA Working Group meeting schedule and future BLM/FS recreation fee proposals. *The RRAC will not review any recreation fee proposals at this meeting.*

DATES: *Effective Date:* May 14, 2010.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504.

James G. Kenna,

Arizona State Director.

[FR Doc. 2010–12217 Filed 5–20–10; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW175940]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from Fossil Energy, Inc. for competitive oil and gas lease WYW175940 for land in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW175940 effective December 1, 2009, under the original terms and

conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2010–12246 Filed 5–20–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000.L58740000.EU0000. LXSS018B0000; CACA 050670]

Notice of Realty Action: Proposed Direct Sale of Public Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Palm Springs—South Coast Field Office, proposes to sell an 80-acre parcel of public land in Riverside County, California to Cocopah Nurseries, Inc. for the appraised fair market value of $77,000.

DATES: Comments regarding the proposed sale must be received by the BLM on or before July 6, 2010.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, BLM, Palm Springs Field Office, 1201 Bird Center Drive, Palm Springs, California 92262.

FOR FURTHER INFORMATION CONTACT: Della Asuagbor, Realty Specialist, BLM, Palm Springs Field Office, 1201 Bird Center Drive, Palm Springs, California 92262, *by phone:* (760) 833–7148, or by e-mail *Della_Asuagbor@blm.gov.*

SUPPLEMENTARY INFORMATION: The following described public land is being proposed for direct sale to Cocopah Nurseries, Inc., in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713), at not less than the appraised fair market value:

San Bernardino Meridian

T. 5 S., R. 17 E.,
Sec. 30, S½NE¼.

The area described contains 80 acres in Riverside County.

The appraised fair market value is $77,000. The public land is identified as suitable for disposal in the BLM's 1980 California Desert Conservation Area Plan, as amended, and is not needed for any other Federal purpose.

The BLM considers the public land suitable for sale because it is a small isolated parcel of land which lacks legal access. The BLM is proposing a direct sale to Cocopah Nurseries, Inc. because the public land is completely surrounded by private lands owned by Cocopah Nurseries, Inc. A competitive sale is therefore not appropriate and the public interest would be best served by a direct sale. The land identified for sale is considered to have no known mineral value. The BLM proposes that conveyance of the Federal mineral interests would occur simultaneously with the sale of the land. Cocopah Nurseries, Inc. would be required to pay a $50 nonrefundable filing fee for conveyance of the Federal mineral interests.

On May 21, 2010, the above described land will be segregated from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the identified public lands, except application for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2802.15 and 2886.15. The temporary segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or May 21, 2012, whichever occurs first, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The land will not be sold until at least 60 days after the date of publication of this notice in the **Federal Register.** Any patent issued would contain the following terms, conditions, and reservations:

a. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under 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. A notice and indemnification statement under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(W)), indemnifying and holding the United States harmless from any release of hazardous materials that may have occurred; and

d. Additional terms and conditions that the authorized officer deems appropriate. Detailed information concerning the proposed land sale including the appraisal, planning and environmental documents, and a mineral report are available for review at the location identified in the "**ADDRESSES**" section above.

Public comments regarding the proposed sale may be submitted in writing to the attention of the BLM Palm Springs Field Manager (*see* **ADDRESSES** section above) on or before July 6, 2010. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 2711.1–2(a) and (c))

Karla Norris,

Assistant Deputy State Director for Natural Resources.

[FR Doc. 2010–12168 Filed 5–20–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N105]
[96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before June 21, 2010. We must receive requests

for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by June 21, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 18, require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: U.S. Fish and Wildlife Service, George Jordan, Pallid Sturgeon Recovery Coordinator, Billings, MT; PRT-03492A

The applicant requests a permit to export 50 otoliths (structures of the inner ear system in fishes) from 25 Pallid sturgeon (*Scaphirhyncus albus*), obtained from the pallid sturgeon repository, for the purpose of enhancement of the species. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: George Carden Circus Intl., Inc., Springfield, MO; PRT-128999 and 12311A

The applicant requests permits to re-export (12311A) and re-import (128999) one male captive-born Asian elephant (*Elephas maximus*) to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a 3–year period.

Applicant: Brooks Puckett, Plano, TX; PRT-11231A

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

B. Endangered Marine Mammals and Marine Mammals

Applicant: U.S. Geological Survey, Alaska Science Center, Anchorage, AK; PRT-067925

The applicant requests an amendment to the permit to increase in the number of takes of northern sea otter (*Enhydra lutris kenyoni*) in Alaska, to allow takes of northern sea otter (*Enhydra lutris lutris*) in Washington, and to increase the number of samples of northern sea otter (*Enhydra lutris lutris*) to be imported from for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of the 5–year period for which the permit would be valid.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: May 14, 2010.

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–12222 Filed 5–20–10; 8:45 am]

BILLING CODE 4310–55–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–718]

In the Matter of Certain Electronic Paper Towel Dispensing Devices and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 19, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Georgia-Pacific Consumer Products LP of Atlanta, Georgia. On May 10, 2010, the

complainant filed a letter supplementing the complaint. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic paper towel dispensing devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,871,815; 7,017,856; 7,182,289; and 7,387,274. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa A. Murray, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2734.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 14, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic paper towel dispensing devices or components thereof that infringe one or more of claims 1–7 of U.S. Patent No. 6,871,815; claims 1–22 of U.S. Patent No. 7,017,856; claims 1–3 of U.S. Patent No. 7,182,289; and claims 1–22 of U.S. Patent No. 7,387,274, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Georgia-Pacific Consumer Products LP, 133 Peachtree Street, NE., Atlanta, GA 30303.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Kruger Products LP, 1900 Minnesota Court, Suite 200, Mississauga (Ontario) Canada L5N 5R5;
KTG USA LP, 400 Mahannah Avenue, Memphis, TN 38107;
Stefco Industries, Inc., 1006 Marley Drive, Haines City, FL 33844;
Cellynne Corporation, 1006 Marley Drive, Haines City, FL 33844;
Draco Hygienic Products Inc., 716 S. Bon View Avenue, Ontario, CA 91761.
NetPak Electronic Plastic and Cosmetic, Inc., d/b/a Open for Business, 1642 N. Campbell Avenue, Chicago, IL 60647;
NetPak Elektronik Plastik ve Kozmetik Sanayi, Ve Ticaret Ltd., 1563 Sk. No: 8 35110, İzmir, Turkey;
Paradigm Marketing Consortium, Inc., 350 Michael Drive, Suite 4, Syosset, NY 11791;
United Sourcing Network Corp., 350 Michael Drive, Syosset, NY 11791;
New Choice (H.K.) Ltd., Unit 03, G/F., Block B, Shatin Ind. Centre, 5–7 Yuen Shun Circuit, Shatin, Hong Kong;
Vida International Inc., #8, Lane 281, Lung-Chiang Road, Taipei, Taiwan.

(c) The Commission investigative attorney, party to this investigation, is Lisa A. Murray, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 17, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–12210 Filed 5–20–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–516; Investigation No. 332–517]

Certain Environmental Goods: Probable Economic Effect of Duty-Free Treatment for U.S. Imports; Certain Environmental Goods: U.S. International Trade and Competitive Conditions

AGENCY: United States International Trade Commission.

ACTION: Institution of investigations and scheduling of hearing.

SUMMARY: Following receipt of a request dated April 16, 2010 from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–516, *Certain Environmental Goods: Probable Economic Effect of Duty-Free Treatment for U.S. Imports,* and investigation No. 332–517, *Certain Environmental Goods: U.S. International Trade and Competitive Conditions.*

DATES:

Investigation No. 332–516:

July 7, 2010: Deadline for filing written submissions from interested parties.

October 18, 2010: Transmittal of the Commission's report to USTR.

Investigation No. 332–517:

September 7, 2010: Deadline for filing requests to appear at the public hearing.

September 14, 2010: Deadline for filing pre-hearing briefs and statements.

September 28, 2010: Public hearing.

October 6, 2010: Deadline for filing post-hearing briefs and written submissions from interested parties.

February 16, 2011: Transmittal of the Commission's report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Co-project leaders Karl Tsuji (202–205–3434 or *karl.tsuji@usitc.gov*) or Andrew David (202–205–3368 or *andrew.david@usitc.gov*) for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: As requested, in the first report (investigation No. 332–516), the Commission will provide advice as to the probable economic effect on U.S. industries and on U.S. consumers of reducing U.S. tariffs to zero on dutiable imported environmental goods from all U.S. trading partners, based on 2010 HTS nomenclature at the 8-digit level, and using 2009 trade data. In absence of a universally accepted definition of an "environmental good," the Commission, for purposes of its analysis, will refer to the items proposed in Annex III of WTO document TN/TE/19, and as applicable, the additional product-specific descriptions set out in that Annex.

As requested, for the second report (investigation No. 332–517), the Commission will:

- Provide an overview of the current state of global environmental goods trade; and
- Develop industry, trade, and market information for the items proposed in Annex III of WTO document TN/TE/19, taking into account to the extent possible, the additional, more detailed product descriptions in that Annex. Such information will include major U.S. producers and exporters, key U.S. export markets, MFN applied and bound tariffs in those markets, and the value of U.S. imports and exports for 2007–09, to the extent practical; and
- Prepare several case studies on the competitive position of selected U.S. environmental goods industries that produce the items proposed in Annex III of WTO document TN/TE/19. The Commission will select environmental goods of significant export and/or commercial interest to the United States. Each case study will include a description of the competitive factors affecting exports, or the potential to export, and to the extent practical, identify tariff and non-tariff measures, government programs, and technological advantages, and provide information on shares in domestic and major foreign markets as well as other relevant information.

The Commission will submit its first report to USTR by October 18, 2010, and its second report to USTR by February 16, 2011. The USTR indicated that the portions of the Commission's first report and its associated working papers that deal with the requested probable economic effect advice, as well as relevant parts of the more detailed analysis, as identified by USTR, will be classified as "confidential." The USTR said that his office will provide further guidance relating on the extent to which portions of the two reports require classification and the duration. The USTR also stated that he considers the Commission's reports to be inter-agency memoranda that will contain pre-decisional advice and be subject to the deliberative process privilege.

Public Hearing: A public hearing in connection with the second investigation (No. 332–517) will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on September 28, 2010. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., September 7, 2010, in accordance with the requirements in the "Submissions" section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., September 14, 2010; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., October 6, 2010. In the event that, as of the close of business on September 7, 2010, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after September 7, 2010, for information concerning whether the hearing will be held. The Commission intends to issue a subsequent **Federal Register** notice that will provide details on the subject areas that would be of particular interest for witnesses to address at the public hearing.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning these investigations. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m. on the respective dates specified above for each investigation. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000). Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document

and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

Some or all of the confidential business information that the Commission receives in this investigation may be included in the report that the Commission sends to the USTR. However, any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: May 14, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–12211 Filed 5–20–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–696]

In the Matter of Certain Restraining Systems for Transport, Components Thereof, and Methods of Using Same; Notice of Commission Determination Not To Review an Initial Determination Granting Respondent's Second Amended Motion To Terminate the Investigation in Its Entirety Based on a Consent Order Stipulation and To Issue a Consent Order; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 6) granting respondent's second amended motion to terminate the investigation in its entirety based on a consent order stipulation and to issue a consent order.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on December 29, 2009, based on a complaint filed by Matthew Bullock and Walnut Industries, Inc. 74 FR 68865 (Dec. 29, 2009). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain restraining systems for transport, components thereof, and methods of using the same by reason of infringement of certain claims of United States Patent Nos. 6,089,802, 6,227,779, and 6,981,827. The complaint named Qingdao Auront Industry & Trade Co. Ltd. ("Auront") as the sole respondent.

On March 16, 2010, Auront filed a motion to terminate the investigation based on a consent order stipulation. The Commission investigative attorney ("IA") opposed the motion to terminate because Auront did not satisfy the Commission Rules. On April 5, 2010, Auront filed a second motion to terminate based on a revised consent order. On April 14, 2010, Auront filed an amendment to its second motion with additional revisions to the consent order stipulation. On April 20, 2010, complainants filed an opposition to Auront's motions. On the same day, the IA filed a response in support of termination.

On April 21, 2010, the ALJ issued an initial determination ("ID") granting Auront's second amended motion to terminate the investigation. The ALJ found that the motion complied with the requirements of Commission Rule 210.21 (19 CFR 210.21). The ALJ also concluded that, pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)), there is no evidence that termination of this investigation will prejudice the public interest. Accordingly, the ALJ terminated the investigation. No petitions for review of this ID were filed. The Commission has determined not to review the ALJ's ID terminating the investigation and to issue the consent order submitted by Auront.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.45).

By order of the Commission.

Issued: May 17, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–12266 Filed 5–20–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,052]

Chrysler LLC; St. Louis North Assembly Plant, Including On-Site Leased Workers From HAAS TCM, Inc., Logistics Services, Inc., Robinson Solutions, and Yazaki North America; Fenton, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 14, 2008, applicable to workers of Chrysler LLC, St. Louis North Assembly Plant, Fenton, Missouri. The notice was published in the **Federal Register** on May 2, 2008 (73 FR 24317). The certification was amended on November 18, 2009 and December 9, 2009 to include on-site leased workers from HAAS TCM, Inc. and Logistics Services, Inc. The notices were published in the **Federal Register** on December 1, 2008 (73 FR 72848) and December 18, 2008 (73 FR 77069) respectively. It was amended again on October 30, 2009 to include on-site leased workers from Robinson Solutions, and again March 31, 2010 to include Logistics Management Services, and on April 20, 2010 to include Corrigan Company and Murphy Company. The notices were published in the **Federal Register** on November 12, 2009 (74 FR 58316), April 19, 2010 (75 FR 203832–20383), and April 29, 2010 (75 FR 22627–22628) respectively.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers assemble Dodge Ram full-sized pickup trucks.

New information shows that workers leased from Yazaki North America were employed on-site at the Fenton, Missouri location of Chrysler LLC, St. Louis North Assembly Plant. The Department has determined that these workers were sufficiently under the control of Chrysler LLC, St. Louis North Assembly Plant to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Yazaki North America working on-site at the Fenton, Missouri location of the subject firm.

The intent of the Department's certification is to include all workers employed at Chrysler LLC, St. Louis North Assembly Plant, Fenton, Missouri who were adversely affected by increased imports of Dodge Ram full-sized pickup trucks.

The amended notice applicable to TA–W–63,052 is hereby issued as follows:

All workers of Chrysler LLC, St. Louis North Assembly Plant, including on-site leased workers from HAAS TCM, Inc., Logistics Services, Inc., Robinson Solutions, Logistics Management Services, Corrigan Company, Murphy Company and Yazaki North America, Fenton, Missouri, who became totally or partially separated from employment on or after March 18, 2007, through April 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of May 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12252 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,912]

Rexam Closure Systems, Inc. a Subsidiary of Rexam PLC Including On-Site Leased Workers From Addeco Employment Services Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Owens Illinois Manufacturing Hamlet, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on March 15, 2010, applicable to the workers of Rexam Closure Systems, Inc., a subsidiary of Rexam PLC, Hamlet, North Carolina. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21357).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of plastic closures.

New findings show that Rexam Closure Systems, Inc., a subsidiary of Rexam PLC purchased Owens Illinois Manufacturing. Some workers separated from employment at the subject firm had their wages reported under a separated unemployment insurance (UI) tax account under the name Owens Illinois Manufacturing.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Rexam Closure Systems, Inc. who were adversely affected as a secondary component supplier for a TAA certified firm.

The amended notice applicable to TA–W–72,912 is hereby issued as follows:

All workers of Rexam Closure Systems, Inc., a subsidiary of Rexam PLC, including on-site leased workers from Addeco Employment Services, and including workers whose UI wages are paid through Owens Illinois Manufacturing, Hamlet, North Carolina, who became totally or partially separated from employment on or after November 10, 2008, through March 15, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of May 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12249 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,324]

Delphi Packard Electrical/Electronic Architecture, a Subsidiary of Delphi Corporation, Including On-Site Leased Workers From Bartech and EDS, an HP Company; Warren, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 8, 2009, applicable to workers of Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech, Warren, Ohio. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3930). The notice was amended on January 28, 2010 to include on-site leased workers from EDS an HP Company. The notice was published in the **Federal Register** on April 1, 2010 (75 FR 16513)

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wiring and connector components.

The review shows that on November 3, 2006, a certification of eligibility to apply for adjustment assistance was issued for all workers of Delphi Packard Electric, Warren, Ohio, separated from employment on or after July 26, 2005 through November 3, 2008. The notice was published in the **Federal Register** on November 22, 2006 (71 FR 67649).

In order to avoid an overlap in worker group coverage, the Department is amending the May 19, 2008 impact date established for TA–W–70,324, to read November 4, 2008.

The amended notice applicable to TA–W–70,324 is hereby issued as follows:

All workers of Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased

workers from Bartech and EDS an HP Company, Warren, Ohio (TA–W–70,324, Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech, and EDS an HP Company, Rootstown, Ohio (TA–W–70,324A), Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech and EDS an HP Company, Vienna, Ohio (TA–W–70,324B), Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech and EDS an HP Company, Howland, Ohio (TA–W–70,324C), Delphi Packard Electrical/Electronic Architecture, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech, and EDS an HP Company, Cortland, Ohio (TA–W–70,324D), who became totally or partially separated from employment on or after November 4, 2008, through December 8, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of May 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12253 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,670]

Indalex, Inc.; Girard, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 3, 2010, applicable to workers of Indalex, Inc., Girard, Ohio. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21361).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of aluminum extrusions, coatings, and fabrications.

The review shows that on May 1, 2008, a certification of eligibility to apply for adjustment assistance was issued for all workers of Indalex Aluminum Solutions, Girard, Ohio, separated from employment on or after March 26, 2007, through May 1, 2010. The notice was published in the **Federal Register** on May 15, 2008 (73 FR 28167).

In order to avoid an overlap in worker group coverage, the Department is amending the July 13, 2008 impact date established for TA–W–71,670, to read May 2, 2010.

The amended notice applicable to TA–W–71,670 is hereby issued as follows:

All workers of Indalex, Inc., Girard, Ohio (TA–W–71,670) who became totally or partially separated from employment on or after May 2, 2010 through March 3, 2012; and Indalex, Inc., City of Industry, California (TA–W–71,670A); Indalex, Inc., Burlington, North Carolina (TA–W–71,670B); Indalex, Inc., Mountain Top, Pennsylvania (TA–W–71,670C); Indalex, Inc., Connersville, Indiana (TA–W–71,670D); Indalex, Inc., Elkhart, Indiana (TA–W–71,670E); Indalex, Inc., Gainesville, Georgia (TA–W–71,670F); and Indalex, Inc., Kokomo, Indiana (TA–W–71,670G), who became totally or partially separated from employment on or after July 13, 2008, through March 3, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 12th day of May, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12256 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,981]

Amphenol Printed Circuits, Inc., a Subsidiary of Amphenol Corporation, Including On-Site Leased Workers From Technical Needs, MicoTech, and CoWorx, Nashua, NH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on March 5, 2010, applicable to workers at Amphenol Printed Circuits, Inc., a subsidiary of Amphenol Corporation, Nashua, New Hampshire. The notice was published in the **Federal Register** April 23, 2010 (75 FR 21362).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of rigid commercial products.

The company reports that workers leased from Technical Needs, MicoTech, and CoWorx were employed on-site at the Nashua, New Hampshire, location of Amphenol Printed Circuits, Inc., a subsidiary of Amphenol Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Technical Needs, MicoTech, and CoWorx working on site at the Nashua, New Hampshire, location of Amphenol Printed Circuits, Inc., a subsidiary of Amphenol Corporation.

The amended notice applicable to the TA–W–70,981 is hereby issued as follows:

All workers of Amphenol Printed Circuits, Inc., a subsidiary of Amphenol Corporation, including on-site leased workers from Technical Needs, MicoTech, and CoWorx, Nashua, New Hampshire, who became totally or partially separated from employment on or after June 1, 2008, through March 5, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 12th day of May 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12288 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,748]

New United Motor Manufacturing, Inc., Formerly a Joint Venture of General Motors Corporation, and Toyota Motor Corporation, Including On-Site Leased Workers From Corestaff, ABM Janitorial, and Toyota Engineering and Manufacturing North America, Fremont, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to

apply for Worker Adjustment Assistance on November 19, 2009, applicable to workers of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation, including on-site leased workers from Corestaff and ABM Janitorial, Fremont, California. The notice will be published in the **Federal Register** soon.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers assemble the Toyota Corolla and the Toyota Tacoma and used to assemble the Pontiac Vibe.

The company reports that workers leased from Toyota Engineering and Manufacturing North America were employed on-site at the Fremont, California location of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Toyota Engineering and Manufacturing North America working on-site at the Fremont, California location of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation.

The amended notice applicable to TA–W–72,748 is hereby issued as follows:

All workers of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation, including on-site leased workers from Corestaff, ABM Janitorial, and Toyota Engineering and Manufacturing North America, Fremont, California, who became totally or partially separated from employment on or after October 29, 2008, through November 19, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of May, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12258 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,150; TA–W–72,150A]

Dell Products LP—Parmer North Location, a Subsidiary of Dell, Inc., Including On-Site Leased Workers From Belcan Services Group, Hawkins Associates, Inc., Integrated Human Capital, MagRabbit, Manpower and Spherion Corporation; Round Rock, TX; Dell Products LP—Parmer North One; Austin, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 2010, applicable to workers of the subject firm. The Department's Notice of determination was published in the **Federal Register** on March 5, 2010 (75 FR 10321). The workers are engaged in employment related to the production of computer equipment, such as workstations, servers, and other peripheral equipment.

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm.

The petitioner provided sufficient information for the Department to determine that the appropriate subdivision of the subject firm covered by the immediate certification included an auxiliary facility located in Austin, Texas (Parmer North One).

Based on these findings, the Department is amending this certification to include workers at Parmer North One who are impacted by a shift of production of computer equipment by the subject firm to Mexico.

The amended notice applicable to TA–W–72,150 is hereby issued as follows:

All workers of Dell Products LP, Parmer North Location, a subsidiary of Dell, Inc., including on-site leased workers from Belcan Services Group, Hawkins Associates Inc., Integrated Human Capital, MagRabbit, Manpower, and Spherion Corporation, Round Rock, Texas (TA–W–72,150) and Dell Products LP, Parmer North One, Austin, Texas (TA–W–72,150A), who became totally or partially separated from employment on or after August 24, 2008 through January 29, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through January 29, 2012, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 7th day of May, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12257 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 1, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 1, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200

Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 13th day of May 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 4/26/10 and 4/30/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73988	International Business Machines Corporation (State/One-Stop).	Armonk, NY	04/26/10	03/01/10.
73989	Chrysler (Union)	Fenton, MO	04/26/10	04/21/10.
73990	Trinity North American Freight Car, Inc. (State/One-Stop)	Fort Worth, TX	04/26/10	04/23/10.
73991	JBL Incorporated (Company)	Northridge, CA	04/26/10	04/21/10.
73992	BP Solar (State/One-Stop)	Frederick, MD	04/26/10	04/23/10.
73993	Springer Science and Business Media, LLC (Company)	Norwell, MA	04/26/10	04/22/10.
73994	Thomson Reuters (Workers)	Denver, CO	04/26/10	04/23/10.
73995	Datamatics Global Services, Inc. (Workers)	Burlington, MA	04/26/10	04/16/10.
73996	General Electric Company (Company)	Owensboro, KY	04/27/10	04/23/10.
73997	Citicorp Credit Services, Inc. (State/One-Stop)	St. Louis, MO	04/27/10	04/21/10.
73998	Dupont Performance Coatings (Company)	Mt. Clemens, MI	04/27/10	04/12/10.
73999	Webb Furniture Enterprises, Inc. (Company)	Galax, VA	04/27/10	04/23/10.
74000	International Business Machines (State/One-Stop)	Endicott, NY	04/27/10	10/07/09.
74001	Connections, Inc. (Workers)	Concord, NC	04/27/10	04/20/10.
74002	New Era Cap Company (State/One-Stop)	Mobile, AL	04/27/10	04/19/10.
74003	VF Jeanswear Limited Partnership (Company)	Greensboro, NC	04/27/10	04/22/10.
74004	Dixie Belle Textiles, Inc. (Company)	Elkin, NC	04/27/10	04/20/10.
74005	Pentair (Workers)	Rockford, IL	04/28/10	04/15/10.
74006	CIGNA (Workers)	Fort Scott, KS	04/28/10	04/26/10.
74007	SyChip, Inc. (Company)	Berkeley Heights, NJ	04/28/10	04/23/10.
74008	Cooper, Crause-Hinds MTL, Inc. (State/One-Stop)	West Melbourne, FL	04/28/10	04/20/10.
74009	Akzo Nobel (Union)	Brecksville, OH	04/28/10	04/22/10.
74010	General Electric Control Products (Company)	Morrison, IL	04/28/10	04/26/10.
74011	Kennametal, Inc. (Workers)	Bedford, PA	04/28/10	04/27/10.
74012	GM Powertrain Defiance Foundry (State/One-Stop)	Defiance, OH	04/29/10	04/14/10.
74013	WellPoint, Inc. (Company)	Denver, CO	04/29/10	04/27/10.
74014	763 Fashion, Inc. (Workers)	New York, NY	04/29/10	04/19/10.
74015	Hutchins and Perreault, Inc. (Company)	East Barre, VT	04/29/10	04/27/10.
74016	Mid-Park Metals (SST) (Workers)	Leitchfield, KY	04/29/10	04/22/10.
74017	Asten Johnson (Company)	Jonesboro, GA	04/29/10	04/21/10.
74018	Paramount Multi-Services, LLC (Company)	Dallas, TX	04/29/10	04/28/10.
74019	Choicepoint (Workers)	Brea, CA	04/29/10	04/26/10.
74020	The Electric Materials Company (Workers)	North East, PA	04/29/10	04/12/10.
74021	Diagnostic Staffing Services (Company)	Pittsburgh, PA	04/29/10	04/27/10.
74022	WestPoint Home, Inc. (Company)	West Point, GA	04/29/10	04/27/10.
74023	WestPoint Home (Company)	Clemson, SC	04/29/10	04/27/10.
74024	Hewlett-Packard Company (State/One-Stop)	Stone Mountain, GA	04/29/10	04/28/10.
74025	Babcock Lumber Company (Workers)	St. Marys, PA	04/29/10	04/23/10.
74026	Form Tech Fraser (State/One-Stop)	Fraser, MI	04/30/10	04/08/10.
74027	UPS Supply Chain Solutions (Workers)	Dunmore, PA	04/30/10	04/21/10.
74028	Imhauser Corporation (Company)	Romney, WV	04/30/10	04/28/10.
74029	Mohican Juvenile Correctional (Workers)	Perrysville, OH	04/30/10	04/29/10.
74030	Daveco Hydraulics and Welding (Company)	Eureka, CA	04/30/10	04/02/10.

[FR Doc. 2010–12250 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 1, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade

Adjustment Assistance, at the address shown below, not later than June 1, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 13th day of May 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 5/3/10 and 5/7/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74031	Moore Flame Cutting Company (Workers)	Sterling Heights, MI	05/03/10	04/30/10
74032	Biolab (Workers)	Ashley, IN	05/03/10	04/30/10
74033	SuperMedia, Inc. (State/One-Stop)	St. Petersburg, FL	05/03/10	05/02/10
74034	MMG Corporation (Union)	St. Louis, MO	05/04/10	04/26/10
74035	OSRAM Sylvania (Union)	Warren, PA	05/04/10	05/03/10
74036	Manpower (Company)	Poughkeepsie, NY	05/04/10	04/30/10
74037	Electronic Technical Services, Inc. (Company)	Albuquerque, NM	05/04/10	04/20/10
74038	EJ Brooks Company (Workers)	Phillipsburg, NJ	05/04/10	04/30/10
74039	BOC Design (Workers)	Berwick, PA	05/04/10	04/30/10
74040	Cemex Cement Company (Union)	Wampum, PA	05/04/10	04/24/10
74041	Crane Aerospace and Electronics (State/One-Stop)	Lynnwood, WA	05/05/10	05/04/10
74042	Filtran, LLC (Workers)	Lugoff, SC	05/05/10	04/27/10
74043	American Superconductor (Workers)	West Mifflin, PA	05/05/10	05/03/10
74044	Simport Corporation (Company)	Fairfax, VT	05/05/10	04/15/10
74045	Buell Motorcycle Company (Workers)	East Troy, WI	05/05/10	05/03/10
74046	Celestica (Workers)	San Jose, CA	05/05/10	04/26/10
74047	Stever-Lock Industries (Company)	Honeoye Falls, NY	05/05/10	05/04/10
74048	Cedar Creek Corporation (Company)	High Point, NC	05/05/10	05/04/10
74049	Trans States Airlines (Company)	Bridgeton, MO	05/05/10	04/30/10
74050	Giddings and Lewis Machine Tools, LLC (Company)	Fond du Lac, WI	05/06/10	04/28/10
74051	Bowne and Company, Inc. (State/One-Stop)	Piscataway, NJ	05/06/10	05/05/10
74052	Green Design Furniture Company (Company)	Portland, ME	05/06/10	05/05/10
74053	Faurecia Emissions Control Technologies (Company)	Lordstown, OH	05/07/10	05/07/10
74054	Dell/Perot Systems (Workers)	Rome, GA	05/07/10	05/05/10
74055	Harman International (Workers)	Novi, MI	05/07/10	05/05/10
74056	K and C (Workers)	San Francisco, CA	05/07/10	04/27/10
74057	Specialty Minerals, Inc. (Workers)	Franklin, VA	05/07/10	05/06/10
74058	Pentel of America, Ltd (State/One-Stop)	Torrance, CA	05/07/10	05/06/10
74059	Freescale Semiconductors (State/One-Stop)	Woburn, MA	05/07/10	04/16/10
74060	Hussmann (Union)	Bridgeton, MO	05/07/10	04/05/10
74061	Plastic Omnium Auto Exteriors, LLC (State/One-Stop)	Troy, MI	05/07/10	04/15/10

[FR Doc. 2010–12251 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0012]

National Advisory Committee on Occupational Safety and Health (NACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH).

SUMMARY: The National Advisory Committee on Occupational Safety and Health (NACOSH) will meet June 8, 2010, in Washington, DC.

DATES: *NACOSH meeting:* NACOSH will meet from 8 a.m. to 4:30 p.m., Tuesday, June 8, 2010.

Submission of comments, requests to speak, and requests for special accommodation: Comments, requests to speak at the NACOSH meeting, and requests for special accommodations for the NACOSH meeting must be submitted (postmarked, sent, transmitted) by May 28, 2010.

ADDRESSES: *NACOSH meeting:* NACOSH will meet in Room N–N3437 A/B/C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments and requests to speak: You may submit comments and requests to speak at the NACOSH meeting, identified by docket number for this **Federal Register** notice (Docket No. OSHA–2010–0012), by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, messenger or courier service: Submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (TTY (887) 889–5627). Deliveries (hand, express mail, messenger, courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m. *e.t.*

Requests for special accommodation: Submit requests for special accommodations for the NACOSH meeting by hard copy, telephone, or e-mail to Ms. Veneta Chatmon, OSHA,

Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2010–0012). Because of security-related procedures, submission by regular mail may result in significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, messenger or courier service. For additional information about submitting comments and requests to speak, *see* the **SUPPLEMENTARY INFORMATION** section of this notice.

Comments and requests to speak, including personal information provided, will be placed in the public docket and may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

Docket: To read or download documents in the public docket for this NACOSH meeting, go to *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office at the address above.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Ms. Jennifer Ashley, OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

For general information: Ms. Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1932; e-mail *crawford.deborah@dol.gov.*

SUPPLEMENTARY INFORMATION:

NACOSH will meet Tuesday, June 8, 2010, in Washington, DC. NACOSH meetings are open to the public.

NACOSH is authorized by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with provisions in the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App.), and regulations issued pursuant to those laws (29 CFR 1912a, 41 CFR part 102–3).

The tentative agenda of the NACOSH meeting will include updates and discussions on the following topics:

- Remarks from the Assistant Secretary of Labor for Occupational Safety and Health (OSHA);
- Remarks from the Director of the National Institute for Occupational Safety and Health;
- OSHA enforcement initiatives;
- OSHA regulatory projects;
- Emerging workplace hazards;
- Enhancing workers' voice in the workplace;
- OSHA's Transparency and Open Government efforts; and
- Committee administration, including establishing work groups.

NACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts and minutes are included in the public record of this NACOSH meeting (Docket No. OSHA 2010–0012).

Public Participation

Interested parties may submit a request to make an oral presentation to NACOSH by any one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (*e.g.,* organization name), if any and a brief outline of the presentation. Requests to address NACOSH may be granted as time permits and at the discretion of the NACOSH chair.

Interested parties also may submit comments, including data and other information using any one of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to NACOSH members prior to the meeting.

Individuals who need special accommodations to attend the NACOSH meeting should contact Ms. Chatmon by any one of the methods listed in the **ADDRESSES** section.

Submissions and Access to Meeting Record

You may submit comments and requests to speak (1) electronically, (2) by facsimile, or (3) by hard copy. All submissions, including attachments and other materials, must identify the Agency name and the docket number for this notice (Docket No. OSHA–2010–0012). You also may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit three copies to the OSHA Docket Office using the instructions in the **ADDRESSES** section above. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office.

Meeting transcripts and minutes as well as comments and requests to speak at the NACOSH meeting are included in the public record of the NACOSH meeting (Docket No. OSHA–2010–0012). Comments and requests to speak are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (*e.g.,* copyrighted materials) are not publicly available to read or download through that webpage. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

For information on using *http://www.regulations.gov* to make submissions and to access the docket, click on the "Help" tab at the top of the Home page. Contact the OSHA Docket Office for information about materials not available through that webpage and for assistance in using the Internet to locate submissions and other documents in the docket. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available on the OSHA webpage at *http://www.osha.gov.*

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (U.S.C. 656), 29 CFR 1912a, and Secretary of Labor's Order No. 5–2007 (71 FR 31160).

Signed at Washington, DC, on May 17, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–12172 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,601]

Ceda-Pine Veneer, Inc., a Subsidiary of Excaliber, Inc., Sandpoint, ID; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 10, 2010, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The negative determination was signed on December 17, 2009. The Department's Notice of negative determination was published in the **Federal Register** on February 16, 2010 (75 FR 7034).

Pursuant to 29 CFR 90.18(c,) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the TAA petition filed on behalf of workers at Ceda-Pine Veneer, Inc., Sandpoint, Idaho, was based on the finding that there was no increase of imports by the workers' firm or its customer and no shift/acquisition by the workers' firm; nor did the workers produce an article or supply a service that was used by a firm with TAA-certified workers in the production of an article or supply of a service that was the basis for TAA-certification.

In the request for reconsideration, the petitioner stated that the workers should be eligible to apply for TAA because of the importation from Canada of boards whose production is subsidized by the Canadian government and that similarly-situated workers (workers at mills producing similar products in the same part of the country) are eligible to apply for TAA, specifically Welco, LLC, Naples, Idaho (TA–W–72,655, certified on January 25, 2010).

The basis for certification of TA–W–72,655 was increased imports by the major declining customers of Welco, LLC. The increase in imports was revealed by a customer survey conducted by the Department.

In the case at hand, however, the survey of the major declining customers of the subject firm regarding their purchases of veneer and lumber boards revealed no increase imports nor any increased reliance on imports on the part of the subject firm's customers during the relevant time period.

The petitioner did not supply facts not previously considered, nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 12th day of May, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–12254 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0012]

National Advisory Committee on Occupational Safety and Health (NACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations to serve on the National Advisory Committee on Occupational Safety and Health (NACOSH).

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health invites interested persons to submit nominations for membership on NACOSH.

DATES: Nominations for NACOSH must be submitted (postmarked, sent or received) by July 20, 2010.

ADDRESSES: You may submit nominations for NACOSH, identified by OSHA Docket No. OSHA–2010–0012, by any of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for submitting nominations.

Facsimile: If your nomination, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: Submit three copies of your nominations to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All nominations for NACOSH must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2010–0012). All submissions in response to this Federal Register notice, including personal information provided, will be posted without change at *http://www.regulations.gov.* Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for submitting nominations by hand delivery, express delivery, messenger or courier service. For additional information on submitting nominations, see the **SUPPLEMENTARY INFORMATION** section below.

Docket: To read or download submissions, go to *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1932; fax (202) 693–1641; e-mail address *crawford.deborah@dol.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Assistant Secretary of Labor for Occupational Safety and Health invites interested individuals to submit nominations for membership on NACOSH.

NACOSH is authorized by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with provisions in the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App.), and regulations issued pursuant to those laws (29 CFR 1912a, 41 CFR part 102–3).

NACOSH Membership

NACOSH is comprised of 12 members, all of whom the Secretary of Labor appoints. Nominations will be accepted for five positions (29 CFR 1912a.2). The composition of the committee and categories of new members to be appointed are as follows:

- *Four public representatives*—Two will be appointed;
- *Two management representatives*—One will be appointed;
- Two labor representatives;
- *Two occupational safety professional representatives*—One will be appointed; and,
- *Two occupational health professional representatives*—One will be appointed.

Pursuant to 29 CFR 1912a.2, the Secretary of Health and Human Services (HHS) designates one of the public representatives and the representative from the occupational health professions for appointment by the Secretary of Labor. OSHA will provide to HHS all nominations and supporting materials for those membership categories.

NACOSH members serve staggered two-year terms, unless they become unable to serve, resign, cease to be qualified to serve or is removed by the Secretary of Labor. If a vacancy occurs before a term expires, the Secretary may appoint for the remainder of the unexpired term a new member who represents the same interest as the predecessor. NACOSH members may be appointed to successive terms. The committee meets at least two times a year (29 CFR 1912a.4).

Any interested person or organization may nominate one or more qualified persons for membership. *Nominations must include the following information:*

- The nominee's contact information and current occupation or position;
- The nominee's resume or curriculum vitae, including prior membership on NACOSH or other OSHA advisory committees or other relevant organizations, associations, and committees;
- The categories of membership (employer, employee, public, safety professional, health professional) that the candidate is qualified to represent;
- A summary of the background, experience, and qualifications that demonstrates the nominee's suitability for each of the nominated membership categories;
- Articles or other documents the nominees has authorized that indicate the nominee's knowledge, experience, and experience in occupational safety and health; and
- A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in NACOSH meetings for a two-year term, and has no conflicts of interest that would preclude membership on NACOSH.

Membership Selection

NACOSH members will be selected upon the basis of their experience and competence in the field of occupational safety and health (29 CFR 1912a.2). The information received through this nomination process, in addition to other relevant sources of information, will assist the Secretary of Labor in appointing members to serve on NACOSH. In selecting NACOSH members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

The U.S. Department of Labor is committed to bringing greater diversity of thought, perspective and experience to its advisory committees. Nominees from all races, gender, age and disabilities are encouraged to apply.

Public Participation—Submission of Nominations and Access to Docket

You may submit nominations (1) Electronically at *http://www.regulations.gov*, the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and docket number for this **Federal Register** notice (OSHA Docket No. OSHA–2010–0012). You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (*see* **ADDRESSES** section). The additional materials must clearly identify your electronic nomination by name, date, and docket number so OSHA can attach them to your nomination.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office.

All submissions in response to this **Federal Register** notice are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov*. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Guidance on submitting nominations and materials and accessing submissions in response to this **Federal Register** notice is available at *http://www.regulations.gov* and from the OSHA Docket Office. Contact the OSHA Docket Office for information about materials not available through *http://www.regulations.gov* and for assistance in submitting nominations and using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov*. This document, as well as news releases and other relevant information, also are available at OSHA's Webpage at *http://www.osha.gov.*

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), 29 CFR 1912a, and Secretary of Labor's Order No. 5–2007 (71 FR 31160).

Signed at Washington, DC, on May 17, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–12175 Filed 5–20–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–059)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Counsel, Langley Research Center, Mail Code 141, Hampton, VA 23681–2199; telephone (757) 864–3230; fax (757) 864–9190.

NASA Case No.: LAR–16308–2: Catalyst for Decomposition of Nitrogen Oxides.

NASA Case No.: LAR–17245–1: Use of Beam Deflection to Control an Electron Beam Wire.

NASA Case No.: LAR–17286–1: Miniature, Low-Power X–Ray Tube Using a Microchannel Electron Generator Electron Source.

NASA Case No.: LAR–17413–2: Nanoparticle-Containing Thermoplastic Composites and Methods of Preparing Same.

NASA Case No.: LAR–17514–1: Aircraft Configured for Flight in an Atmosphere Having Low Density.

NASA Case No.: LAR–17709–1: Controlling Second Harmonic Efficiency of Laser Beam Interactions.

NASA Case No.: LAR–17723–1: Device and Method for Healing Wounds.

NASA Case No.: LAR–17724–1: Structural Health Monitoring System/Method Using Electroactive Polymer Fibers.

NASA Case No.: LAR–17738–1: Strain-Detecting Composite Materials.

NASA Case No.: LAR–17766–1: Closed-Loop Process Control for Electron Beam Freeform Fabrication and Deposition Processes.

NASA Case No.: LAR–17856–1: Flexible Thin Metal Film Thermal Sensing System.

Dated: May 17, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–12178 Filed 5–20–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–054)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 21, 2010.

FOR FURTHER INFORMATION CONTACT: James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–32099–1: Composite Pressure Vessel Including Crack Arresting Barrier.

NASA Case No. MFS–32605–1–CIP: Neutron Guides and Methods of Fabrication.

NASA Case No. MFS–32612–1: Safety System for Controlling Fluid Flow into a Suction Line.

NASA Case No.: MFS–32697–1: Friction Modifier Using Adherent Metallic Multilayered or Mixed Element Layer Conversion Coatings.

Dated: May 17, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–12166 Filed 5–20–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–057)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No.: NPO–46938–1: 201HG+ CO-Magnetometer for 199HG+ Trapped Ion Space Atomic Clocks.

NASA Case No.: NPO–41506–2: Biomarker Sensors and Method for Multi-Color Imaging and Processing of Single-Molecule Life Signatures.

NASA Case No.: DRC–009–008: Improved Automatic Aircraft Collision Avoidance System and Method.

Dated: May 17, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–12180 Filed 5–20–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–056)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Bryan A. Geurts, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–14968–2: Swarm Autonomic Agents with Self-Destruct Capability.

NASA Case No. GSC–15464–1: Optical Wave-Front Recovery for Active and Adaptive Imaging Control.

NASA Case No. GSC–15732–1: Wind and Temperature Spectrometer with Crossed Small-Deflection Energy Analyzer.

Dated: May 17, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–12161 Filed 5–20–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–055)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No. ARC–14653–1: Air Traffic Management Evaluation Tool (FACET).

NASA Case No. ARC–16320–1: Model-Based Prognostics for Batteries.

NASA Case No. ARC–16342–1: Advanced Sensor Technology for Algai Biotechnology (ASTAB).

NASA Case No. ARC–16370–1: A Truss Beam Having Convex-Curved Rods, Shear Web Panels, and Self-Aligning Adapters.

NASA Case No. ARC–16407–1: Content Analysis to Detect High Stress in Oral Interviews and Text Documents.

Dated: May 17, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–12163 Filed 5–20–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–058)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281) 483–4871; (281) 483–6936 [Facsimile].

NASA Case No. MSC–24490–1: High Altitude Hydration System.

Dated: May 17, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–12179 Filed 5–20–10; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–011; NRC–2008–0252]

Southern Nuclear Operating Company; Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Early Site Permit Issued to Southern Nuclear Operating Company et al., for Vogtle Electric Generating Plant ESP Site Located in Burke County, GA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Project Manager, AP1000 Branch 1, Division of New Reactors Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* (301) 415–3025; *fax number:* (301) 415–6350; *e-mail: Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Early Site Permit (ESP) No. ESP–004, issued to Southern Nuclear Operating Company (SNC) and several co-applicants (Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia), for the Vogtle Electric Generating Plant (VEGP) ESP site located in Burke County, Georgia. The proposed amendment would modify the Vogtle Electric Generating Plant ESP site safety analysis report (SSAR) to allow the use of Category 1 and 2 backfill obtained from onsite borrow areas not specifically identified in the VEGP ESP SSAR.

NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to authorize a change to the early site permit issued to SNC for the Vogtle Electric Generating Plant ESP site located in Burke County, Georgia. Specifically, the proposed amendment would modify the Vogtle Electric Generating Plant ESP site safety analysis report (SSAR) to allow the use of Category 1 and 2 backfill obtained from onsite borrow areas that were not specifically identified in the VEGP ESP SSAR. On April 20, 2010, as supplemented on April 23 and 28, and May 5, 10, and 13, 2010, SNC requested that NRC approve the proposed amendment. By letter dated May 13, 2010, the applicant requested that the NRC consider issuing a limited scope approval (LSA) of a subset of the requested onsite borrow locations pending the NRC determination on the remainder of the borrow sources identified in the license amendment request (LAR). The LSA request proposed NRC approval of SNC's use of borrow material from certain onsite locations where impacts from site preparation activities were already anticipated and previously evaluated in NUREG–1872, "Final Environmental Impact Statement for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant Site." SNC's request for the proposed change was previously noticed in the **Federal Register** on May 6, 2010 (75 FR 24993), with a notice of an opportunity to request a hearing.

The staff has prepared the EA in support of its review of the proposed license amendment. Because the LSA requests separate approval of a subset of the locations described by the LAR, this EA separately evaluates the activities associated with acquiring additional backfill from those onsite borrow sources and summarizes the radiological and non-radiological environmental impacts that may result from granting the LSA portion of the amendment request. The staff has determined that granting the proposed amendment would not result in significant non-radiological impacts to land use, surface and groundwater resources, terrestrial and aquatic resources, threatened and

endangered species, socioeconomic factors and environmental justice, cultural and historical resources, air quality, non-radiological human health and nonradioactive waste. In addition, the staff has determined that there are no significant radiological health impacts associated with the proposed action.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* The NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents, may be accessed from this site. The ADAMS accession numbers for the documents related to this notice are: The application dated April 20, 2010, as supplemented by letters dated April 23, 28, May 5, 10, and 13, 2010 is available at ML101120089, ML101160531, ML101230337, ML101270283, ML101330141, and ML101340649 respectively. The Environmental Assessment and Finding of No Significant Impact evaluation is available at ML101380114. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 18th day of May, 2010.

For the Nuclear Regulatory Commission.

Jeffrey Cruz,

Branch Chief, AP1000 Branch1, Division of New Reactors Licensing, Office of New Reactors.

[FR Doc. 2010–12365 Filed 5–20–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–10; SEC File No. 270–265; OMB Control No. 3235–0273.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–10 (17 CFR 240.17Ad–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–10 requires a registered transfer agent to create and maintain minimum information on securityholders' ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityholder records to keep certificate detail that has been deleted from those records for a minimum of six years and to maintain and keep current an accurate record of the number of shares or principal dollar amount of debt securities that the issuer has authorized to be outstanding (a "control book"). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding overissuance.

There are approximately 565 registered transfer agents. The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 20 hours per year, totaling 11,300 hours industry-wide. The average cost per hour is approximately $50 per hour, with the industry-wide cost estimated at approximately $565,000. However, the information required by Rule 17Ad–10 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

The retention period for the recordkeeping requirements under Rule 17Ad–10 is six years for certificate detail that has been deleted and to maintain and keep current an accurate record of the number of shares or principal dollar amount of debt securities that the issuer has authorized to be outstanding. The recordkeeping requirement under Rule 17Ad–10 is mandatory to ensure accurate securityholder records and to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Persons should note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher Director/Chief Information Officer, Securities and Exchange Commission, Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 17, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12261 Filed 5–20–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29270; 812–13745]

Kinetics Mutual Funds, Inc., et al.; Notice of Application

May 17, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit registered open-end investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Kinetics Mutual Funds, Inc. ("Company"), Kinetics Portfolios Trust ("Trust"), Kinetics Asset Management, Inc. ("Adviser"), and Kinetics Funds Distributor, Inc. ("KFDI").

FILING DATES: The application was filed on January 19, 2010, and amended on May 12, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 11, 2010 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Jay H. Kesslen, Kinetics Asset Management, Inc., 555 Taxter Road, Suite 175, Elmsford, NY 10523.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 551–6815, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm*, or by calling (202) 551–8090.

Applicants' Representations

1. The Company is organized as a Maryland corporation and the Trust is organized as a Delaware statutory trust and each is registered under the Act as an open-end management investment company. The Adviser is a New York corporation registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and currently serves as investment adviser to the The Tactical Paradigm Fund, a series of the Company, and to each series of the Trust. KFDI is a New York corporation registered as a broker-dealer under the Securities Exchange Act of 1934, as amended ("Exchange Act"), that serves as the distributor for the Company and all of its series and as the private placement agent for the Trust and all of its series.

2. Applicants request the exemption to the extent necessary to permit any existing or future registered open-end management investment company or series thereof (i) that is advised by the Adviser or an entity controlling, controlled by, under common control with the Adviser (each, an "Adviser") that is in the same group of investment companies as defined in section 12(d)(1)(G) of the Act and (ii) that invests in other registered open-end management investment companies in reliance on section 12(d)(1)(G) of the Act, and (iii) that is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (together with such series of the Company and the Trust, the "Funds of Funds") to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").[1]

3. Consistent with its fiduciary obligations under the Act, each Fund of Fund's board of directors or trustees will review the advisory fees charged by the Fund of Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or 12(d)(1)(G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act,

[1] Applicants also request that the order exempt any entity controlling, controlled by or under common control with the Adviser or KFDI that now or in the future acts as principal underwriter with respect to the transactions described in the application. Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12260 Filed 5–20–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62115; File No. 4–602]

Market Structure Roundtable

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: The Securities and Exchange Commission will host a one-day roundtable to solicit the views of investors, issuers, exchanges, alternative trading systems, financial services firms, high frequency traders, and the academic community regarding the current securities market structure. The roundtable will focus on market structure performance, including the events of May 6, metrics for evaluating market structure performance, high frequency trading, and undisplayed liquidity.

The roundtable discussion will be held in the auditorium of the Securities and Exchange Commission headquarters at 100 F Street, NE., in Washington, DC on June 2, 2010 from 9:30 a.m. to approximately 4:30 p.m. The public is invited to observe the roundtable discussion. Seating will be available on a first-come, first-served basis. The roundtable discussion also will be available via webcast on the Commission's Web site at *http://www.sec.gov.*

The roundtable will consist of a series of panels. Panelists will consider a range of market structure topics, such as the appropriate metrics for assessing the performance and fairness of the market structure, particularly in light of the extraordinary price volatility of May 6. Panelists also will analyze the tools and strategies of high frequency trading and the role of undisplayed liquidity in today's market structure.

DATES: The roundtable discussion will take place on June 2, 2010. The Commission will accept comments regarding issues addressed at the roundtable until June 23, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number 4–602 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 4–602. This file number should be included on the subject line if e-mail is used. To help us 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*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Arisa Tinaves, Special Counsel, at (202) 551–5676 or Gary M. Rubin, Attorney, at (202) 551–5669, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

By the Commission.

Dated: May 18, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12303 Filed 5–20–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 334–62114; File No. 265–26–01]

COMMODITY FUTURES TRADING COMMISSION

Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues

AGENCIES: Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC") (each, an "Agency," and collectively, "Agencies").

ACTION: Notice of meeting of Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues.

SUMMARY: The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues is providing notice that it will hold a public meeting on Monday, May 24, 2010, in the Auditorium, Room L–002, at the SEC's main offices, 100 F Street, NE., Washington, DC. The meeting will begin at 9 a.m. (EST) and will be open to the public. The Committee meeting will be Webcast on the SEC's Web site at *http://www.sec.gov.* Persons needing special accommodations to take part because of a disability should notify a contact person listed below. The public is invited to submit written statements to the Committee.

The agenda for the meeting includes: (i) Opening remarks; (ii) the introduction of Committee members, (iii) discussion of Committee agenda and organization; (iv) discussion of the Joint CFTC–SEC report on the market events of May 6, 2010; and (v) discussion of next steps and closing comments.

Pursuant to 41 CFR 102–3.150(b), the Agencies are providing less than fifteen days notice of the meeting so that Committee members can quickly begin to conduct a review of the market events of May 6, 2010, and make recommendations related to market structure issues that may have contributed to the volatility, as well as disparate trading conventions and rules across various markets.

DATES: Written statements should be received on or before noon on Friday, May 21, 2010.

ADDRESSES: 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 e-mail to *rule-comments@sec.gov.*

Please include File No. 265–26–01 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 20549. All submissions should refer to File No. 265–26–01.

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 Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), James R. Burns and Timothy Karpoff, each Co-Designated Federal Officer of the Committee, acting jointly, have approved publication of this notice.

Dated: May 18, 2010.

By the Securities and Exchange Commission.

Elizabeth M. Murphy,

Committee Management Officer.

By the Commodity Futures Trading Commission.

Martin White,

Committee Management Officer.

[FR Doc. 2010–12301 Filed 5–20–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on May 26, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

Item 1: The Commission will consider whether to propose new Rule 613 of Regulation NMS that would require national securities exchanges and national securities associations to act jointly in developing a national market system plan to create, implement, and maintain a consolidated audit trail that would capture customer and order event information, mostly in real time, for all orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.

Item 2: The Commission will consider a recommendation to adopt amendments to Rule 15c2–12 under the Securities Exchange Act of 1934, a rule pertaining to municipal securities disclosure. The Commission will also consider related interpretive guidance to assist brokers, dealers and municipal securities dealers in meeting their obligations under the antifraud provisions of the federal securities laws.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 18, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12369 Filed 5–19–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold Closed Meetings on Tuesday, May 25, 2010 and Thursday, May 27, 2010 at 2 p.m., respectively.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meetings in a closed session, and determined that no earlier notice of thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, May 25, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

The subject matter of the Closed Meeting scheduled for Thursday, May 27, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Consideration of amicus participation; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have

been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 19, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–12366 Filed 5–19–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62105; File No. SR–Phlx–2010–71]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Professional Routing Fees

May 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on May 7, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees governing pricing for Exchange members using the Phlx XL II system,[3] for routing standardized equity and index option professional orders to away markets for execution.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing professional orders in equity and index options to away markets.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.[4] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange's Fee Schedule includes Routing Fees for customer and professional orders. The Exchange currently assesses a fee of $.06 per contract in all professional [5] option orders that are routed to International Securities Exchange, LLC ("ISE").

The Exchange proposes to amend the current fee of $.06 per contract that is assessed for routing professional orders to ISE in all options to $.24 per contract. The Exchange is proposing this charge in order to recoup clearing and transaction charges which are incurred by the Exchange when orders are routed to ISE. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange proposes this fee change to account for an increase in cost for routing to ISE.[6]

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[5] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

[6] *See* SR–ISE–2010–41.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change. While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trade date May 10, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(4) of the Act [8] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this fee is equitable because it would be equally assessed on all professional orders routed to ISE. The Exchange also believes that this fee is reasonable because the Exchange is seeking to recoup the costs incurred by the Exchange to route professional orders to ISE on behalf of its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and paragraph (f)(2) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx-2010–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx-2010–71 and should be submitted on or before June 11, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12227 Filed 5–20–10; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62102; File No. SR–BATS–2010–011]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9, Entitled "Orders and Modifiers"

May 13, 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 May 4, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a modification to the existing technology that it provides to a User that wishes to avoid trading against orders from that same User (currently referred to as "Member Match Trade Prevention" or "MMTP").

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a minor change to its Member Match Trade Prevention, or MMTP, functionality, described in BATS Rules 11.9(f) and 21.1(g) and to rename the functionality as Match Trade Prevention ("MTP").

MMTP modifiers are designed to prevent two orders with the same Unique Identifier (as defined below) from executing against each other. The Exchange currently offers four MMTP modifiers that can be set at the market participant identifier ("MPID"), the Exchange Member identifier or the Exchange Sponsored Participant identifier level (any such identifier, a "Unique Identifier").[5] BATS is proposing a change to the MMTP Decrement and Cancel identifier ("MDC"); none of the other MMTP identifiers are affected by this proposal, other than to change the references throughout the rule text to MTP.

Under the existing rules, an incoming order marked with the MDC modifier will not execute against opposite side resting interest marked with any MMTP modifier originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User. If the orders are not equivalent in size, the equivalent size will be cancelled back to the originating User and the larger order will be decremented by the size of the smaller order, with the balance remaining on the BATS Book; provided, however, that if the resting order is marked with any MMTP modifier other than MDC, and the incoming order is smaller in size than the resting order, then both orders will be cancelled back to the originating User (the "MDC Exception"). Thus, as shown in the example below, rather than decrementing either order, pursuant to the MDC Exception both orders are cancelled in their entirety when the resting order contains an MMTP modifier other than MDC and is larger than the incoming order.

Current MDC Exception—Example: An order to buy 500 shares @ $22.00 is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Any Exchange Member that has an MPID issued by FINRA is identified in the Exchange's internal systems by that MPID. Each Exchange Member that does not already have an MPID and each Sponsored Participant is issued an identifier that is specific to the Exchange and allows the Exchange to determine the User for each order and trade.

marked with any MMTP modifier other than MDC and becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

Current MDC Exception—Result: The resting buy order for 500 shares at $22.00 marked with a MMTP modifier other than MDC is cancelled back to the originating User. The incoming sell order for 400 shares @ $22.00 marked with the MDC modifier is cancelled back to the originating User.

The Exchange proposes to allow Users to opt-out of the default behavior of the MDC Exception to allow an incoming MDC order to result in a decremented order even when it is smaller than the resting order and the resting order contains an MMTP modifier other than MDC.

Proposed Opt-Out of MDC—Example: An order to buy 500 shares @ $22.00 is marked with any MMTP modifier and becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

Proposed Opt-Out of MDC—Result: 400 of the 500 shares on the resting buy order at $22.00 marked with any MMTP modifier are cancelled back to the originating User. The outstanding 100 shares remain on the BATS Book. The incoming sell order for 400 shares @ $22.00 marked with the MDC modifier is cancelled back to the originating User.

Although the Exchange intentionally created the MDC Exception based on conversations with its Users regarding the best way to implement the MDC modifier, other Users have requested that the Exchange allow them to have the incoming order control the result in all situations, and thus, have requested to be able to opt-out of the MDC Exception. The Exchange notes that NYSE Arca Equities ("NYSE Arca") has implemented its version of match trade prevention without the MDC Exception, and thus, allowing Users to opt-out of the exception is consistent with NYSE Arca's STP Decrement and Cancel option.[6] The Exchange will allow a User to opt-out of the MDC Exception by changing the settings of its order entry ports. The Exchange may also permit Users to opt-out of the MDC Exception on an order-by-order basis through use of a specific tag attached to each order.

Additional Discussion

In addition to the modification to the MDC modifier described above, the Exchange proposes to change the references throughout its rules from "Member Match Trade Prevention" to "Match Trade Prevention" and from "MMTP" to "MTP".

The Exchange believes that its Match Trade Prevention functionality allows certain firms to better internalize their agency order flow, which in turn may decrease costs to customers of such firms. The Exchange notes that MTP modifiers do not alleviate, or otherwise exempt, broker-dealers from their best execution obligations. As such, broker-dealers using MTP modifiers are obligated to internally cross agency orders at the same price, or a better price than they would have received had the orders been executed on the Exchange. Additionally, MTP modifiers assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. Finally, the Exchange notes that offering the MTP modifiers may streamline certain regulatory functions by reducing false positive results that may occur on Exchange generated wash trading surveillance reports when orders are executed under the same Unique Identifier. For these reasons, the Exchange believes the MTP modifiers offer users enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, Match Trade Prevention functionality allows firms to better manage order flow and prevent undesirable executions against themselves, and the proposed change described herein enhances the choices available to such firms in how they do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may immediately offer Exchange Users another choice with respect to MTP modifiers. The Commission notes that the proposal is consistent with the rules of another national securities exchange.[13] Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[14]

[6] *See* NYSE Arca Rule 7.31(qq)(3).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *Id.*

[13] *See supra* note 6.

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the

Continued

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–BATS–2010–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2010–011. 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,[15] 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 BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2010–011 and should be submitted on or before June 11, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12226 Filed 5–20–10; 8:45 am]

BILLING CODE 8011–01–P

proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7020]

Bureau of International Security and Nonproliferation; Determination Under the Foreign Assistance Act and the Department of State, Foreign Operations, and Related Programs Appropriations Acts

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A decision has been made to remove the restrictions imposed on the Tula Instrument Design Bureau (KBP) and rescind **Federal Register** Notice 3039, from April 29, 1999.

DATES: *Effective Date:* May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Brian Bachman, Office of Conventional Arms Threat Reduction, Bureau of International Security and Nonproliferation, Department of State (202–647–3937).

SUPPLEMENTARY INFORMATION: A decision was made on May 12, 2010, that it is in the foreign policy or national security interests of the United States to remove the restrictions imposed on the Tula Instrument Design Bureau (KBP) on April 29, 1999 under **Federal Register** notice 3039.

Dated: *May 17, 2010.*

C.S. Eliot Kang,

Acting Assistant Secretary of State for International Security and Nonproliferation, Department of State.

[FR Doc. 2010–12322 Filed 5–20–10; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice: 7022]

Bureau of International Security and Nonproliferation; Lifting of Nonproliferation Measures Against Two Russian Entities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made, pursuant to Section 6 of Executive Order 12938 of November 14, 1994, as amended, to remove nonproliferation measures on two Russian entities.

DATES: *Effective Date:* May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Pamela K. Durham, Office of Missile Threat Reduction, Bureau of International Security and Nonproliferation, Department of State (202–647–4930).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) ("IEEPA"), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and Section 6 of Executive Order 12938 of November 14, 1994, as amended, a determination was made on May 12, 2010, that it is in the foreign policy or national security interests of the United States to remove the restrictions imposed pursuant to Sections 4(b), 4(c), and 4(d) of the Executive Order on the following Russian entities, their sub-units and successors:

1. D. Mendeleyev University of Chemical Technology of Russia
2. Moscow Aviation Institute

These restrictions were imposed on January 8, 1999 (*see* 64 FR 2935).

Dated: May 17, 2010.

C.S. Eliot Kang,

Acting Assistant Secretary of State for International Security and Nonproliferation, Department of State.

[FR Doc. 2010–12313 Filed 5–20–10; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 7019]

U.S. National Commission for UNESCO Notice of Teleconference Meeting

The U.S. National Commission for UNESCO will hold a conference call on

Friday, June 11, 2010, beginning at 3 p.m. Eastern Time. The teleconference meeting will be closed to the public to allow the Commission to discuss applications for the 2010 UNESCO International Literacy Prizes. This call will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(6) because it will involve discussions of information of a personal nature regarding the relative merits of individual applicants where disclosure would constitute a clearly unwarranted invasion of privacy.

For more information contact Elizabeth Kanick, Executive Director of the U.S. National Commission for UNESCO, Washington, DC 20037. Telephone: (202) 663–0026; fax: (202) 663–0035; e-mail: *DCUNESCO@state.gov.*

Dated: May 13, 2010.

Elizabeth Kanick,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. 2010–12319 Filed 5–20–10; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 6974]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 16 and 17 at the U.S. Department of State and the Boeing Company, Arlington, Virginia. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: May 10, 2010.

Jeffrey W. Culver,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. 2010–12316 Filed 5–20–10; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 7021]

Bureau of Verification, Compliance, and Implementation; Termination of Measures Against a Russian Entity

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made to terminate sanctions imposed on Rosoboronexport (ROE) pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act.

DATES: *Effective Date:* May 21, 2010.

FOR FURTHER INFORMATION CONTACT: On general issues: Stephen J. Tomchik, Bureau of Verification, Compliance, and Implementation, Department of State, Telephone (202) 647–1192. For U.S. Government procurement ban issues: Kimberly Triplett, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079.

SUPPLEMENTARY INFORMATION: Pursuant to Section 4 of the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 106–178), the U.S. Government determined on May 12, 2010 that sanctions imposed effective October 23, 2008 (73 FR 206) on the Russian entity Rosoboronexport (ROE) are terminated.

Dated: May 12, 2010.

Rose E. Gottemoeller,

Assistant Secretary of State for Verification, Compliance, and Implementation, Department of State.

[FR Doc. 2010–12304 Filed 5–20–10; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35339]

Carolina Coastal Railway, Inc.—Acquisition and Operation Exemption—Morehead & South Fork Railroad Co.

AGENCY: Surface Transportation Board.

ACTION: Correction to Notice of Acquisition and Operation Exemption.

SUMMARY: This document corrects a notice served and published in the **Federal Register** on January 15, 2010 (75 FR 2580), titled "Carolina Coastal Railway, Inc.—Acquisition and Operation Exemption—North Carolina State Ports Authority" to reflect a correction submitted by Carolina Coastal Railway, Inc. (CLNA). CLNA filed a verified notice of exemption under 49 CFR 1150.41 to acquire, by assignment, the lease of Morehead & South Fork Railroad Co., Inc. (MHSF) with North Carolina State Ports Authority (SPA) and to operate approximately 0.87 miles of SPA's rail line. After the effective date of the exemption, CLNA filed a letter on February 16, 2010, notifying the Board that MHSF's counsel has advised CLNA that MHSF is not a party to any lease agreement with SPA and therefore was not assigning a lease to CLNA. Instead, MHSF assigned a freight easement and operating agreement to CNLA.[1] This notice correctly identifies MHSF, instead of SPA, as the regulated party to the transaction, corrects the title, and clarifies what was conveyed. Accordingly, the correct title should read, "Carolina Coastal Railway, Inc.—Acquisition and Operation Exemption—Morehead & South Fork Railroad Co."

FOR FURTHER INFORMATION CONTACT: Julia Farr (202) 245–0359 [Federal Information Relay System (FIRS) for the hearing impaired: 1–800–877–8339].

Decided: May 18, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–12245 Filed 5–20–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2010–0023]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the revision of

[1] In a previous decision, MHSF acquired the freight easement over all railroad tracks at the Port of Morehead City, N.C., from Carolina Rail Service, LLC. These tracks are owned by SPA. *Morehead & South Fork R.R.—Acquis. and Operation Exemption—Carolina Rail Service, LLC,* FD 34748 (STB served Sept. 23, 2005).

the currently approved information collection:

49 U.S.C. Sections 5310 and 5311—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Nonurbanized Area Formula Program.

DATES: Comments must be submitted before July 20, 2010.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *http://www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *http://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert F. Williams, Office of Program Management, (202) 366–0797 or Lorna R. Wilson, Office of Program Management, (202) 366–0893.

SUPPLEMENTARY INFORMATION:

Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. 5310 and 5311—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Nonurbanized Area Formula Program (OMB Number: 2132–0561)

Background: The Capital Assistance Program for Elderly Persons and Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities. The program is administered by the States and may be used in all areas, urbanized, small urban, and rural. The Nonurbanized Area Formula Program provides financial assistance for the provision of public transportation services in nonurbanized areas and this program is also administered by the States. 49 U.S.C. 5310 and 5311 authorize FTA to review applications for federal financial assistance to determine eligibility and compliance with statutory and administrative requirements. Information collected during the application stage includes the project budget, which identifies funds requested for project implementation; a program of projects, which identifies subrecipients to be funded, amount of funding that each will receive, and a description of the projects to be funded; the project implementation plan; the State management plan; a list of annual certifications and assurances; and public hearings notice, certification and transcript. The applications must contain sufficient information to enable FTA to make the findings required by laws to enforce the program requirements. Information collected during the project management stage includes an annual financial report, an annual program status report, and pre-award and post-delivery audits. The annual financial report and program status report provide a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

Respondents: State and local governments, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 219 hours for each of the respondents.

Estimated Total Annual Burden: 11,775 hours.

Frequency: Annual.

Issued: May 17, 2010.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2010–12126 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0182]

Mercedes-Benz, U.S.A. LLC; Denial of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 108

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of application for renewal of temporary exemption.

SUMMARY: This document responds to an application from Mercedes-Benz, U.S.A. LLC ("MBUSA"), on behalf of itself and its parent corporation Daimler AG ("Daimler"), dated December 3, 2007, for the renewal of a temporary exemption from S5.5.10 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108; *Lamps, reflective devices, and associated equipment.* The National Highway Traffic Safety Administration (NHTSA) granted MBUSA's original petition for a temporary exemption on January 30, 2006. Based on the agency's evaluation, NHTSA is denying the application from MBUSA for the renewal of the temporary exemption.

DATES: The exemption from S5.5.10 of FMVSS No. 108 terminates on July 20, 2010.

FOR FURTHER INFORMATION CONTACT: David Hines, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue, SE., W45–338, Washington, DC 20590, telephone (202)–493–0245, facsimile (202)–366–7002.

SUPPLEMENTARY INFORMATION:

I. Background

In a petition dated June 5, 2005, Mercedes-Benz, U.S.A. LLC (MBUSA) petitioned the National Highway Traffic Safety Administration (NHTSA), for a two-year temporary exemption from S5.5.10 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108; *Lamps, reflective devices, and associated equipment.* S5.5.10 specifies that with certain exceptions (not applicable to this MBUSA application) all lamps, including stop lamps, must be wired to be steady-burning.[1] In order to evaluate a flashing stop lamp signaling system in the United States, MBUSA sought a temporary exemption from the "steady-burning" requirement as it applies to stop lamps. MBUSA stated that its flashing stop lamp system was currently available in Europe on a number of Mercedes vehicles.

On January 30, 2006, NHTSA published in the **Federal Register** a notice granting the MBUSA application for a temporary exemption, until January 23, 2008, from the requirements of S5.5.10 of FMVSS No. 108. In granting MBUSA's request in the original grant, NHTSA made several determinations. The agency stated that MBUSA had met the requirements to receive an exemption under 49 CFR Part 555(b), which permits exemptions from the FMVSS on the basis that the exemption would make easier the development of field evaluation of safety equipment. Specifically, the agency stated that based on information provided by MBUSA, it appeared the proposed lighting equipment provided at least an equivalent level of safety to the lighting equipment required by FMVSS No. 108. Furthermore, NHTSA decided that granting the request would be in the public interest, because the new field data obtained by MBUSA through the temporary exemption would enable the agency to make more informed decisions regarding the effect of the flashing stop lamp signaling systems on motor vehicle safety. In accordance with 49 CFR 555.6(b)(5), MBUSA was permitted to sell up to 2,500 exempted vehicles in any twelve-month period within the two-year exemption period.

[1] *See* S5.5.10 of 49 CFR 571.108. Turn signal lamps, hazard warning signal lamps, and school bus warning lamps shall be wired to flash. Headlamps and side marker lamps may be wired to flash for signaling purposes. Motorcycle headlamps may be wired to allow either its upper beam or its lower beam, but not both, to modulate from a higher intensity to a lower intensity in accordance with section S7.9.

II. MBUSA Application Requesting Renewal of Temporary Exemption

In a petition dated December 3, 2007, MBUSA petitioned NHTSA, on behalf of itself and its parent corporation Daimler AG ("Daimler"), for a renewal of the temporary exemption from S5.5.10 of FMVSS No. 108. According to MBUSA, the basis of the renewal was to further evaluate whether safety benefits could be identified through the allowance of flashing stop lamps on passenger vehicles in the United States. MBUSA stated that the preliminary results from the United States and Europe were positive and while limited, constituted a trend which could continue to be monitored.

In its request for a renewal, MBUSA indicated that the company has "sold a total of approximately 2,870 12 cylinder S and CL class passenger vehicles in the United States between February 2006 and August 2007," and this number would slightly increase through the remainder of the exemption period, but remain below the maximum 5,000 vehicle limit over 2 years.

MBUSA's application stated, "Daimler's plan for monitoring the experience of these vehicles focused on both dealer inputs and insurance claims." Daimler received only one dealer input, but in early November 2007 received input from an insurance company that insures about 20 percent of the vehicles that have been sold in the United States with the flashing stop lamp feature. MBUSA stated that the data collected from the insurance company at the time of the MBUSA application was promising. The company reported that with respect to 416 vehicles equipped with the flashing stop lamp feature, there were a total of 5 reported crashes and of these only one involved activation of the feature. It said there were a total of 94 reported crashes in a group of 4,507 vehicles without the flashing stop lamp feature. This, the company said, translates into a "crash ratio per month" for vehicles with the flashing stop lamp feature of 11.44688645 as compared to a ratio of 19.86328146 for vehicles without the feature.

MBUSA also indicated that "data from Germany has also been promising." While intending to monitor a German database with the acronym GIDAS and data from Germany's Federal Statistical Office, MBUSA, in its application, indicated that there have thus far been no GIDAS investigations involving vehicles equipped with flashing stop lamps among the approximately 1,000 in depth crash investigations performed for GIDAS every year. The company indicated it examined Federal Statistical Office crash statistics for 2005 and 2006. MBUSA stated, "Although subject to a significant degree of statistical scatter, data from the Federal Statistical Office for 2005 shows a decrease of rear impact compared to other Mercedes-Benz passenger cars, and an experience for 2006 that shows a slight increase in rear impacts but which is also comparable to the experience with the control group without the feature."

III. Comments and Response Regarding the MBUSA Petition for Renewal of the Temporary Exemption

NHTSA published a notice of receipt of the petition on November 25, 2008, and provided an opportunity for comment.[2] The agency received five comments, one each from Nissan North America, Inc., Porsche Cars North America, Inc., American Honda Motors Co., Inc., Toyota Motor North America, Inc., and Ms. Barbara Sachau. The four motor vehicle manufacturers all supported the MBUSA application for renewal of the temporary exemption. Toyota Motor North America, Inc., also indicated that it has recently introduced its flashing stop lamp signaling system on Toyota and Lexus models in the European and Japanese markets. However, we note that none of the vehicle manufacturers presented data indicating that the use of the flashing stop lamp systems provided traffic safety benefits. A fifth comment from Ms. Barbara Sachau opposed the granting of the petition by stating that vehicle manufacturers should not determine regulatory policy involving vehicle safety.

In January 2009, Daimler, through a submission by Hogan & Hartson LLP, supplied additional information related to the experience of flashing stop lamps in Germany. This submission referenced data samples representing half of police-reported crashes in Germany for several years and characterized a preliminary positive safety trend, which was not able to be considered a stable result due to the low number of rear end crashes for Mercedes vehicles. In April 2010, MBUSA submitted an additional comment in support of its petition. It indicated that, to date, MBUSA/Daimler has sold approximately 4,700 vehicles with flashing stop lamps in the United States during the pendency of the exemption. It stated, however, that the

[2] We note that under 49 CFR 555.8(e), if an application for renewal of a temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal.

limited volume of vehicles permitted to be sold each year in the United States under this type of exemption creates a fundamental impediment to being able to use statistical analysis to show the impact of a crash avoidance feature controlled for other influences on the results. MBUSA stated that the data available in the United States cannot, due to the limited numbers of vehicles sold, statistically support in just a few years an analysis showing the number of crashes avoided because drivers were alerted to an emergency situation through flashing stop lamps.

MBUSA claimed that it is clear that flashing stop lamps do not otherwise impair any of the important benefits of other rear lamps. It also claimed that data being developed in other markets does support the safety benefits of flashing stop lamps.

In its April 2010 submission, MBUSA provided a further update to the information it had previously submitted concerning data from Germany. It stated that the data from Germany continues to indicate a positive trend, with crash rates for vehicles equipped with flashing stop lamps slightly lower than those for comparable vehicles without the feature. It also stated that since this feature is now available on all Mercedes vehicles sold in Germany and other markets, the trend is expected to be more defined and easier to interpret in the coming years. In addition, MBUSA noted that the exposure of vehicles with flashing stop lamps remains too low to derive statistical conclusions from the data.

In addition, MBUSA stated that the United States should contribute to the growing body of international data on flashing stop lamps to the extent permitted by the regulation. It stated that a number of manufacturers are offering this feature in other markets in increasing numbers. MBUSA argued that the agency's decision should not be based on whether the exemption would create a database that can conclusively demonstrate a statistical benefit, but should instead base its decision on being able to contribute to the growing body of international data with experience from the United States. It stated that while the data set will be necessarily small because of the regulatory limitations, the experience is necessary to show that the limited exposure in the United States remains consistent with the more robust experience found in other markets. MBUSA also argued that flashing stop lamps can contribute to the reduction of crashes associated with distracted driving, and that continuing the exemption would contribute to this objective.

IV. Agency Analysis and Decision

After carefully considering the MBUSA application for renewal of the temporary exemption from S5.5.10 of FMVSS No. 108 and the public comments, we have decided to deny the petition. The reasons for this decision are explained below.

We note that prior to the submission of MBUSA's original petition for temporary exemption, NHTSA had denied that company's petition for rulemaking to permanently amend FMVSS No. 108 to allow flashing brake signaling systems. Among the reasons for the denial was the need for additional data on safety benefits of flashing brake lamps.

In granting the original petition for temporary exemption in January 2006, we stated that we believed a temporary exemption was in the public interest because the new field data obtained through the temporary exemption would enable the agency to make more informed decisions regarding the effect of flashing brake signaling systems on motor vehicle safety. We also noted that the agency was conducting research concerning enhanced rear signaling.

We noted, however, that some of the benefits associated with signal lamps relate to standardization. We stated that we had not made any determination as to whether it would be appropriate to permit flashing stop lamps more generally.

In considering MBUSA's application for renewal of the temporary exemption, we have evaluated whether a renewal would be in the public interest. As part of this, we have considered whether the additional field data that would be obtained as a result of a renewed exemption would enhance, in a meaningful way, the agency's ability to make more informed decisions in this area. Based on the available information, we have concluded that the answer is no.

First, after reviewing the material in the renewal request, we are concerned that MBUSA has not established a rigorous crash evaluation and data collection program in the U.S. for its flashing stop lamp system. As such, we believe that a continuation of the current efforts would not yield additional insight into the anticipated benefits of such a rear signaling system.

In its application for renewal, the petitioner included the following paragraph:

"Daimler's plan for monitoring the experience of these vehicles focused on both dealer inputs and insurance claims. MBUSA received only one dealer input, but in early November 2007 received input from an insurance company that insures about 20% of the vehicles that have been sold in the United States with the flashing stop lamp feature. The data collected to date from the insurance company is promising. The crash ratio per month of these vehicles with the flashing stop lamp feature is 11.44688645; whereas the crash ratio per month of the same vehicles without the feature was 19.86328146."

A footnote to this paragraph provided by MBUSA in its application explained, "There were a total of 5 reported crashes with regard to vehicles with the emergency braking feature, of 416 vehicles, and a total of 94 reported crashes with regard to the 4507 vehicles without emergency brake assist. Daimler has since learned, based on more detailed information, that at least 4 of the 5 vehicles involved in the crashes with the feature did not involve activation of the feature, indicating an even lower crash per month ratio."

NHTSA made the following determinations regarding the data and information presented. First, the agency is struck by the low level of participation by what would seem to be critical players in a research crash data collection effort, specifically insurance carriers and dealers. The agency is concerned about the level of effort devoted to the research plan on which the original 2-year temporary exemption from S5.5.10 of FMVSS No. 108 was based. Beyond this, there is no indication in the data presented, based on only 20 percent of the vehicles in the U.S. equipped with the flashing stop signaling system, as to the nature of the crashes involved. It is suggested from the information provided by MBUSA that four of the five crashes discussed earlier were not rear end collisions and that one of the crashes occurred because it was the only case in which the flashing stop lamp signaling system was activated. In any event, there is not enough information presented in MBUSA's request for renewal of its exemption to know. The nature of all the crashes involved is important information to know in assessing the data presented.

It does not appear, based upon the data provided by MBUSA, that there is a robust program to evaluate acceptance of the flashing stop lamps among the American public or whether risk might be transferred to vehicles without the flashing stop lamps by acting as a distraction from other on-road events. The agency notes that MBUSA indicated that it had, on the date of its application

for extension, received input from only one dealer.

Also, MBUSA did not make it possible for NHTSA to evaluate its suggested claims of potential safety benefits of its flashing stop lamp system because its application for renewal and the data provided to NHTSA to date does not clearly identify how it will appropriately track applicable rear end collisions in the United States, and does not include an explanation of the comparisons cited in its application. Without definitions of the comparison groups, raw data, and a description of the calculations made, the MBUSA claim of potential safety benefits is not supported.

Moreover, even if MBUSA were to develop a more robust evaluation program, it is not clear how the additional vehicles produced as a result of an extended exemption would provide significant additional data on safety benefits of flashing stop lamps. As indicated above, MBUSA stated in its recent comments that the data available in the United States cannot, due to the limited numbers of vehicles that can be sold under a temporary exemption, statistically support in just a few years an analysis showing the number of crashes avoided because drivers were alerted to an emergency situation through flashing stop lamps.

The petitioner argued that the agency's decision should not be based on whether the exemption would create a database that can conclusively demonstrate a statistical benefit, but NHTSA should instead base its decision on being able to contribute to the growing body of international data with experience from the United States. It stated that while the data set will be necessarily small because of the regulatory limitations, the experience is necessary to show that the limited exposure in the United States remains consistent with the more robust experience found in other markets.

However, MBUSA has already sold approximately 4700 vehicles with flashing stop lamps in the United States during the pendency of the existing exemption, and it has not provided any specific explanation as to how a two year extension resulting in potentially up to 5000 additional vehicles in this country would result in significant additional meaningful data concerning safety benefits of flashing brake lamps. Also, it is unclear how extending the exemption in this country would facilitate the analysis of the German data, especially given the difference in the sizes of the relevant vehicle populations.

MBUSA also mentioned the fact that the flashing stop lamp signaling system is permitted in Europe in support of an extension of its temporary exemption from S5.5.10 of FMVSS No. 108. While NHTSA is always interested in actions taken in other parts of the world, there is nothing presented in MBUSA's request for renewal relating to safety benefits and crash reduction data provided to the European regulatory authorities. We note the data from Germany referenced in MBUSA's renewal request is not any more effective in shedding light on the effectiveness of the flashing stop lamp signaling system in preventing rear end collisions. The request notes that the "GIDAS database", which includes "about 1,000 in depth crash investigations each year" thus far has not included investigations of vehicles equipped with the flashing stop lamp signaling system. No conclusion can be drawn from this fact. The request indicated that crash statistics have been received for 2005 and 2006 from the Federal Statistical Office. The crash data is "subject to a significant degree of statistical scatter," MBUSA says, but maintains the data "shows a decrease of rear impacts compared to other Mercedes-Benz passenger cars, and an experience for 2006 that shows a slight increase in rear impacts but which is also comparable to the experience with the control group without the feature."

Again, this information is inconclusive. There is no indication of the sample size involved and the number of crashes on which MBUSA makes its assertions as to the impact of the flashing stop lamp signaling system. The agency does not know what MBUSA means when it says the crash data is subject to a "significant degree of statistical scatter" and the impact it has on the conclusion suggested by MBUSA or the likelihood that the larger sample will be enough for statistically significant conclusions.

MBUSA also argued that flashing stop lamps can contribute to the reduction of crashes associated with distracted driving, and that continuing the exemption would contribute to this objective. However, while NHTSA is interested in potential safety benefits of enhanced rear signaling, MBUSA has not shown how extending the exemption would result in significant meaningful data concerning safety benefits of flashing stop lamps.

After considering the available information, we have concluded that MBUSA has not provided adequate justification for renewal of the exemption. It has not shown that the additional field data that would be obtained as a result of a renewed exemption would enhance, in a meaningful way, NHTSA's ability to make more informed decisions concerning anticipated benefits of flashing brake lamps. Moreover, as noted earlier, some of the benefits associated with signal lamps relate to standardization. We have therefore concluded that it would not be in public interest to renew this exemption, and we are denying the application.

In order to allow MBUSA adequate time to make the necessary production changes, we are making this decision to deny the request effective 60 days after publication of this notice.

Issued: May 17, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–12190 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID FMCSA–2010–0115]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 37 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before June 21, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2010–0115 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 37 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMV in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Billy Banks

Mr. Banks, age 45, has had ITDM since 1999. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Banks meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable proliferative diabetic retinopathy. He holds a Class E operator's license from New York which allows him to operate a vehicle with a gross vehicle weight rating (GVWR) of 26,000 lbs.

Joseph P. Beagan

Mr. Beagan, 45, has had ITDM since 1979. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Beagan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class 10 operator's license from Rhode Island, which allows him to operate any motor vehicle except a motorcycle and a vehicle that weighs more than 26,000 pounds.

John M. Charlton

Mr. Charlton, 34, has had ITDM since 1990. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Charlton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Utah.

Stuart A. Dietz

Mr. Dietz, 60, has had ITDM since 2005. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Dietz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Marie C. Eddy

Ms. Eddy, 50, has had ITDM since 1991. Her endocrinologist examined her in 2009 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes mellitus using insulin, and is able to drive a CMV safely. Ms. Eddy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2009 and certified that she has stable nonproliferative diabetic retinopathy. She holds a Class D operator's license from Vermont.

Michael G. Eikenberry

Mr. Eikenberry, 55, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Eikenberry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and

certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Francisco K. Gallardo

Mr. Gallardo, 50, has had ITDM since 2005. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Gallardo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Arizona.

John P. Gould

Mr. Gould, 44, has had ITDM since 1982. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Gould meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alaska.

David B. Graef

Mr. Graef, 44, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Graef meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Jason C. Green

Mr. Green, 35, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Green meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Mississippi, which allows him to drive any non-commercial vehicle except motorcycles.

Kimmy D. Hall

Mr. Hall, 51, has had ITDM since 1983. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Hall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Arkansas.

Bruce G. Hammill, Jr.

Mr. Hammill, 32, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Hammill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

Edward G. Harbin

Mr. Harbin, 29, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Harbin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

Timothy R. Hefling

Mr. Hefling, 48, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Hefling meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Indiana.

Christopher M. Hultman

Mr. Hultman, 29, has had ITDM since 1993. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Hultman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wisconsin.

Michael R. Jackson

Mr. Jackson, 48, has had ITDM since 1998. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus

using insulin, and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class 2 operator's license from Connecticut.

Gerald A. Johnson

Mr. Johnson, 48, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Jay T. Kirschmann

Mr. Kirschmann, 32, has had ITDM since 1985. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Kirschmann meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Duane K. Kohls

Mr. Kohls, 55, has had ITDM since 1997. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Kohls meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

John F. Lohmuller

Mr. Lohmuller, 55, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Lohmuller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Rodney A. Markham

Mr. Markham, 54, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Markham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Christopher P. Martin

Mr. Martin, 31, has had ITDM since 1990. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class OPR–MC operator's license from New Hampshire, which allows him to drive any non-commercial vehicle.

H. Alan Miller

Mr. Miller, 54, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Oregon.

Andrew D. Monson

Mr. Monson, 36, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Monson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Cheryl T. Murphy

Ms. Murphy, 50, has had ITDM since 2008. Her endocrinologist examined her in 2010 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes mellitus using insulin, and is able to drive a CMV safely. Ms. Murphy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a Class D operator's license from Washington, DC.

Kurt D. Oertelt

Mr. Oertelt, 59, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Oertelt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Joseph M. Pirrello

Mr. Pirrello, 56, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Pirrello meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Jersey.

Audrey R. Roddy

Ms. Roddy, 44, has had ITDM since 2001. Her endocrinologist examined her in 2009 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes mellitus using insulin, and is able to drive a CMV safely. Ms. Roddy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Michigan.

Theodore J. Rolfe

Mr. Rolfe, 42, has had ITDM since 2006. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Rolfe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

Ross R. Romano

Mr. Romano, 23, has had ITDM since 2000. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Romano meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class O operator's license from Michigan, which allows him to drive any non-commercial vehicle except motorcycles

Max S. Sklarski

Mr. Sklarski, 61, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Sklarski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

Gerald J. Solwey

Mr. Solwey, 63, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Solwey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Darren G. Steil

Mr. Steil, 41, has had ITDM since 1986. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Steil meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Jason D. Sweet

Mr. Sweet, 34, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Sweet meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Robert M. Thomson

Mr. Thomson, 37, has had ITDM since 2002. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Thomson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Illinois.

Kevin R. Welch

Mr. Welch, 50, has had ITDM since 2009. His endocrinologist examined him

in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Welch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Scott A. Yon

Mr. Yon, 44, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Yon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: May 13, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–12186 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2010–0050]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 19 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective May 21, 2010. The exemptions expire on May 21, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

Background

On March 26, 2010, FMCSA published a Notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 14656). That notice listed 19 applicants' case histories. The 19 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also

allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 19 applications on their merits and made a determination to grant exemptions to all of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 19 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, aphakia, cataracts, complete loss of vision, demyelinizing optic neuropathy, macular detachment, ocular histoplasmosis, optic nerve atrophy prosthesis and retinal detachment. In most cases, their eye conditions were not recently developed. All but 5 of the applicants were either born with their vision impairments or have had them since childhood. The 5 individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 35 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 19 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3½ to 40 years. In the past 3 years, one of the drivers had a conviction for a traffic violation and three of the drivers were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 26, 2010 notice (75 FR 14656).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (*See* 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 19 applicants, one of the applicants had a traffic violation for speeding and three of the drivers were involved in crashes. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover,

driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 19 applicants listed in the notice of March 26, 2010 (75 FR 14656).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 19 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 19 exemption applications, FMCSA exempts, Dean R. Allen, Donald C. Butler, Alan R. Fontaine, Malcolm R. Heins, Mark Hill, Herbert C. Hirsch, Michael D. Kilgore, Joseph J. Kushak, Louis C. Lee, Jason T. Montoya, Doug L. Norman, Richard W. Pierce, Christopher A. Reineck, Carroll R. Rogers, Kevin L. Routin, Lane L. Savoie, Richard G. Schumacher, Scott E. Tussey and Todd V. Welch from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 12, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–12187 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2010–0051]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-seven individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective May 21, 2010. The exemptions expire on May 21, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://www.regulations.gov.*

Background

On March 26, 2010, FMCSA published a Notice of receipt of Federal diabetes exemption applications from twenty-seven individuals and requested comments from the public (75 FR 14652). The public comment period closed on April 26, 2010 and no comments were received.

FMCSA has evaluated the eligibility of the twenty-seven applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-seven applicants have had ITDM over a range of 1 to 33 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 26, 2010, **Federal Register** Notice therefore, they will not be repeated in this Notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the twenty-seven exemption applications, FMCSA exempts, Jason H. Altenberger, Shawn P. Amaro, Berry Anderson, James R. Atkinson, Alladin J. Butler, Carlos V. Candelaria, James R. Crawford, Alan Curtis, Benny DeVizio, Jimmy W. Dotson, Arden A. Endrek, David B. Flaa, James W. Gordon, Eldon L. Janssen, Frank Katzbeck, James K. Libke, Joseph R. Marcelewski, Daniel R. McBride, John A. Mohr, William O. Ruiz, Harold D. Russman, Hector Sanchez, Robert L. Staats, Christopher Stargill, Kevin L. Upmann, Bob E. Vacek and Mathew G. Williams, from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 13, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–12188 Filed 5–20–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–39: OTS Nos. H–2944 and H–4701]

Oritani Financial Corp., MHC, Township of Washington, NJ; Approval of Conversion Application

Notice is hereby given that on May 10, 2010, the Office of Thrift Supervision approved the application of Oritani Financial Corp., MHC, and Oritani Bank, Township of Washington, New Jersey, 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 Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: May 17, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–12117 Filed 5–20–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–41: OTS Nos. 04983, H–3879, and H–4714]

Colonial Bankshares, MHC, Vineland, NJ; Approval of Conversion Application

Notice is hereby given that on May 14, 2010, the Office of Thrift Supervision approved the application of Colonial Bankshares, MHC, and Colonial Bank, Vineland, New Jersey, 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 Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: May 17, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–12119 Filed 5–20–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–40: OTS No. H–4708]

FedFirst Financial Corporation, Monessen, PA; Approval of Conversion Application

Notice is hereby given that on May 14, 2010, the Office of Thrift Supervision approved the application of FedFirst Financial MHC and First Federal Savings Bank, Monessen, Pennsylvania, 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 Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: May 17, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–12120 Filed 5–20–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service; Cooperative Studies Scientific Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee will be held on June 15, 2010, at the St. Gregory Hotel, 2033 M Street, NW., Washington, DC. The meeting is scheduled to begin at 8 a.m. and end at 4 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by § 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 461–1700.

Dated: May 17, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–12206 Filed 5–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on June 28–29, 2010, in room 230 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The meeting will be open to the public and it will start at 8 a.m. each day and will adjourn at 5 p.m. on June 28 and at 1:15 p.m. on June 29.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War Veterans' Illnesses and updates on relevant scientific research published since the last Committee meeting. Additionally, there will be presentations and discussion of background information on the Gulf War and Gulf War Veterans' Illnesses, the effects of various potential exposures on memory and cognition, an update on amyotrophic lateral sclerosis rates in Gulf War Veterans, and new imaging techniques. There will also be discussion of Committee business and activities.

The meeting will include time reserved for public comments. A sign-up sheet for 5-minute comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White, Chair, Department of Environmental Health, Boston University School of Public Health, 715 Albany St., T2E, Boston, MA 02118, or e-mail at *rwhite@bu.edu.*

Any member of the public seeking additional information should contact Dr. White, Scientific Director, at (617) 638–4620 or Dr. William Goldberg, Designated Federal Officer, at (202) 461–1667.

Dated: May 17, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–12209 Filed 5–20–10; 8:45 am]

BILLING CODE P

Federal Register

Friday,
May 21, 2010

Part II

Health and Human Services Department

42 CFR Part 50

45 CFR Part 94

Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding Is Sought and Responsible Prospective Contractors; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 50

45 CFR Part 94

[Docket Number: NIH–2010–0001]

RIN 0925–AA53

Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding Is Sought and Responsible Prospective Contractors

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS or the Department) and the HHS Public Health Service (PHS), proposes to amend its regulations on the Responsibility of Applicants for Promoting Objectivity in Research for which PHS Funding is Sought and Responsible Prospective Contractors. Since the promulgation of the regulations in 1995, biomedical and behavioral research and the resulting interactions among Government, research institutions, and the private sector have become increasingly complex. This complexity, as well as a need to strengthen accountability, have led to the proposal of amendments that would expand and add transparency to investigator disclosure of significant financial interests, enhance regulatory compliance and effective institutional oversight and management of investigators' financial conflicts of interests, as well as NIH's compliance oversight.

DATES: Comments must be received on or before July 20, 2010 in order to ensure we will be able to consider the comments when preparing the final rule.

ADDRESSES: Individuals, organizations and institutions interested in submitting comments identified by RIN 0925–AA53 and Docket Number [NIH–2010–0001] may do so by any of the following methods:

Electronic Submissions

You may submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- To ensure timely processing of comments, NIH is no longer accepting comments submitted to the agency by e-mail.

Written Submissions

You may submit written comments in the following ways:

- *Fax:* 301–402–0169.
- *Mail:* Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) [0925–AA53] and docket number [NIH–2010–0001] for this rulemaking action. All comments may be posted without change, including any personal information provided.

Docket: For access to the docket to read background documents or comments received concerning this rulemaking action, go to the eRulemaking.gov Portal: *http://www.regulations.gov* and follow the instructions provided for conducting a search, using the docket number [NIH–2010–0001].

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852–7669, telephone 301–496–4607, fax 301–402–0169, e-mail *jm40z@nih.gov,* concerning questions about the rulemaking process and Dr. Sally Rockey, NIH Deputy Director for Extramural Research, concerning substantive questions about the proposed rule, e-mail *FCOI-NPRM@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: Proper stewardship of Federal funds includes ensuring objectivity of results by protecting Federally-funded research from potential bias due to investigator financial conflicts of interest (FCOI).

I. Background

In 1995, the PHS and the Office of the Secretary of HHS published regulations at 42 CFR Part 50 Subpart F and 45 CFR Part 94 (the regulations), that are designed to promote objectivity in PHS-funded research.[1] The current regulations are applicable to Institutions that apply for or seek PHS funding for research (except for Small Business Innovation Research (SBIR)/Small Business Technology Transfer Research (STTR) Phase I applications) and, through implementation of the regulations by these Institutions, to each Investigator participating in the research. Generally, under the current regulations:

- The Institution[2] is responsible for complying with the regulations, including maintaining a written and enforced policy; managing, reducing, or eliminating identified conflicts; and reporting identified conflicts to the PHS Awarding Component. The reports denote the existence of a conflicting interest and the Institution must assure that it has been managed, reduced, or eliminated.
- Investigators[3] are responsible for complying with their Institution's written FCOI policy and for disclosing their Significant Financial Interests[4] (SFIs) to the Institution.
- The PHS Awarding Components[5] are responsible for overseeing

[1] 48 CFR Subpart 9.1, "Responsible Prospective Contractors," and 48 CFR Subpart 9.5, "Organizational and Consultant Conflicts of Interest," also address conflicts of interest in Federally-funded projects. These provisions apply only to acquisitions, not to grants or cooperative agreements.

[2] "Institution" is currently defined under 42 CFR Part 50, Subpart F, as any domestic or foreign, public or private, entity or organization (excluding a Federal agency), and under 45 CFR Part 94 as any public or private entity or organization (excluding a Federal agency) (1) that submits a proposal for a research contract whether in response to a solicitation from the PHS or otherwise, or (2) that assumes the legal obligation to carry out the research required under the contract. 42 CFR 50.603; 45 CFR 94.3.

[3] "Investigator" is currently defined under the regulations as the principal investigator and any other person who is responsible for the design, conduct, or reporting of research (or, in the case of PHS contracts, a research project) funded by PHS, or proposed for such funding. For purposes of the regulatory requirements relating to financial interests, the term "Investigator" includes the Investigator's spouse and dependent children. 42 CFR 50.603; 45 CFR 94.3.

[4] "Significant Financial Interest" is currently defined under the regulations as anything of monetary value, including but not limited to, salary or other payments for services (*e.g.,* consulting fees or honoraria); equity interests (*e.g.,* stocks, stock options or other ownership interests); and intellectual property rights (*e.g.,* patents, copyrights and royalties from such rights). The term does not include: (1) Salary, royalties, or other remuneration from the applicant institution; (2) any ownership interests in the institution, if the institution is an applicant under the SBIR/STTR programs; (3) income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities; (4) income from service on advisory committees or review panels for public or nonprofit entities; (5) an equity interest that when aggregated for the Investigator and the Investigator's spouse and dependent children meets both of the following tests: Does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership interest in any single entity; or (6) salary, royalties, or other payments that when aggregated for the investigator and the investigator's spouse and dependent children over the next twelve months, are not expected (or, in the case of PHS contracts, are not reasonably expected) to exceed $10,000. 42 CFR 50.603; 45 CFR 94.3.

[5] "PHS Awarding Component" is currently defined as the/an organizational unit of the PHS that funds [the] research that is subject to the regulations. 42 CFR 50.603, 45 CFR 94.3.

Institutional compliance with the regulations.

Ensuring objectivity in research requires a commitment from Institutions and their Investigators to:

- Completely disclose,
- Appropriately review, and
- Robustly manage identified conflicts.

The purpose of the existing regulations is to ensure that there is no reasonable expectation that the design, conduct, or reporting of PHS-funded research will be biased by any Investigator FCOI.

Since the publication of these regulations, the pace by which new discoveries are translated from the research bench into effective treatment of patients has accelerated significantly and the biomedical and behavioral research enterprise in the United States has grown in size and complexity. For example, an analysis of financial support of biomedical research from 1994 to 2004 [6] showed that funding increased from $37.1 billion in 1994 to $94.3 billion in 2003. Fifty seven percent of the funding in 2003 came from industry sources. At the same time, relationships between individual academic researchers and industry have also increased from 28% in a 1996 survey [7] to 52.8% in a survey conducted in 2007.[8]

Researchers frequently work in multidisciplinary teams to develop new strategies and approaches for translating basic research into clinical application, thus hastening discovery and advancing human health. In addition, these newer translational strategies often involve complex collaborations between investigators and the private sector.

The growing complexity of biomedical and behavioral research; the increased interaction among Government, research institutions, and the private sector in attaining common public health goals while meeting public expectations for research integrity; as well as increased public scrutiny, all have raised questions as to whether a more rigorous approach to Investigator disclosure, management of financial conflicts, and Federal oversight is required. Consequently, we previously published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on May 8, 2009 (74 FR 21610–21613), inviting public comment on potential changes to the regulations.

The ANPRM invited comment on the following major areas of the regulation:

1. Expanding the scope of the regulation and disclosure of interests
2. Definition of "significant financial interest" (including questions regarding the appropriate de minimis threshold and exemptions to the definition)
3. Identification and management of conflicts by Institutions
4. Assuring institutional compliance
5. Requiring Institutions to provide additional information to the PHS
6. Institutional conflict of interest

After careful consideration of the comments received in response to the ANPRM and further deliberation within the Department, we are proposing substantial revisions to the current regulations, detailed below. The specific comments to the ANPRM are discussed in the relevant sections describing the proposed changes to the regulations. We believe that the proposed revisions would expand and add transparency to investigator disclosure of SFIs as well as enhance regulatory compliance and effective FCOI oversight.

II. Description of Proposed Revisions

The following provides a more detailed discussion of the proposed revisions to the current regulations in the order that they would appear in 42 CFR Part 50, Subpart F and 45 CFR Part 94.

Purpose (42 CFR 50.601; 45 CFR 94.1)

We are proposing minor revisions to the text of this section. These revisions reflect a broader effort to improve internal consistency with regard to the use of various terms and phrases throughout these regulations. As a general matter, along with the more substantive changes to the regulations discussed further below, we are seeking to use this rulemaking proceeding as an opportunity to refine the current text of the regulations to improve clarity and readability for users.

Applicability (42 CFR 50.602, 45 CFR 94.2)

The current regulations at 42 CFR Part 50, Subpart F, are applicable to each Institution that applies for PHS grants or cooperative agreements for research and, through implementation of the regulations by each Institution, to each Investigator participating in such research.[9] The current PHS contracting regulations at 45 Part 94 similarly apply to each Institution that seeks PHS funding for research and, through implementation of the regulations, to each Investigator who participates in such research. In neither case do the regulations currently apply to SBIR/STTR Phase I applications.

When the existing regulations were published as a final rule in 1995, it was acknowledged in the preamble that SBIR/STTR Phase I applications "are for limited amounts." [10] Since that time, the size of these awards has increased and the amounts are not insignificant expenditures of public funds. For example, the median amount of an NIH Phase I award increased from approximately $99,000 in 1995 to approximately $182,000 in 2009. In addition, Phase I awards are often used to leverage Phase II funding or significant outside financial support, and a significant proportion of Institutions receiving Phase I funding from NIH, in particular, already have Phase II awards (approximately 200 Institutions in 2008 and 2009). As a result, it would be reasonable to conclude that many Institutions with Phase I awards will be required to implement these regulations in due course.

In light of these factors, we asked in the ANPRM whether the scope of the regulations should be expanded to cover SBIR/STTR Phase I applications. Many of the respondents to the ANPRM indicated that any and all applications and proposals for PHS funding should be subject to the regulations, including SBIR/STTR Phase I applications. For the reasons stated above and the sentiment expressed in public comments on the ANPRM, we are proposing to broaden the applicability of the regulations by eliminating the current exception for SBIR/STTR Phase I applications.

We also propose to add language in this section clarifying that the regulations continue to apply once the PHS-funded research is underway (*i.e.,* after the application process). Finally, we are proposing to make minor revisions to the text of this section as part of a broader effort to improve internal consistency in the use of various terms and phrases throughout the regulations and, where feasible, consistency between the text of 42 CFR Part 50, Subpart F, and 45 CFR Part 94.

Definitions (42 CFR 50.603, 45 CFR 94.3)

We propose to add several new definitions in this section of the regulations, revise some of the existing

[6] Moses H *et al,* JAMA; 2005; 294:1333–1342

[7] Blumenthal D *et al,* N Engl J Med; 1996; 335:1734–9

[8] Zinner DE *et al, Health Aff;* 2009; 28:1814–25.

[9] In those few cases where an individual, rather than an institution, is an applicant for PHS grants or cooperative agreements for research, PHS Awarding Components will make case-by-case determinations on the steps to be taken to ensure that the design, conduct, and reporting of the research will not be biased by any conflicting financial interest of the individual.

[10] 60 FR 35810, 35814 (July 11, 1995)

definitions, and remove one definition, as follows:

1. *Contractor.* We propose a minor revision to the current definition of "Contractor" in 45 CFR 94.3 that would clarify that the term applies to an entity that provides property or services "under contract" for the direct benefit or use of the Federal Government.

2. *Disclosure of significant financial interests.* This definition would be new and would mean an Investigator's disclosure of significant financial interests to an Institution. We propose to include this definition—along with the definition of "FCOI report" below—because of the confusion that can result from the seemingly interchangeable use of the terms "disclosure" and "report" with regard to communications from an Investigator to an Institution and, correspondingly, from an Institution to the PHS. We propose to use the phrase "disclosure of significant financial interests" to describe the communication that occurs between an Investigator and the Institution requesting SFI information from the Investigator as part of its compliance with these regulations. We intend for the term "FCOI report" to describe communications from an Institution to the PHS regarding FCOI.

3. *FCOI report.* This definition would be new and would mean an Institution's report of a financial conflict of interest to a PHS Awarding Component. We propose to add this new definition for the reasons described above regarding the "disclosure of significant financial interests" definition.

4. *Financial conflict of interest.* This definition would be new and would mean a significant financial interest that could directly and significantly affect the design, conduct, or reporting of PHS-funded research. Although this definition would be "new" in the sense that it is not listed in the current definitions sections (42 CFR 50.603 and 45 CFR 94.3), the definition is consistent with language contained elsewhere in the current regulations. Specifically, subsection (a)(1) of the current 42 CFR 50.605 and 45 CFR 94.5 provides that a "conflict of interest exists when the designated official(s) reasonably determines that a Significant Financial Interest could directly and significantly affect the design, conduct, or reporting of the PHS-funded research." We propose to incorporate a modified version of this text into a freestanding financial conflict of interest definition in order to improve the clarity and readability of the regulations.

5. *Financial interest.* This definition would be new and would mean anything of monetary value or potential monetary value. We propose adding this new definition as a companion to our proposed revision of the "significant financial interest" definition, described below. In the current regulations, the "significant financial interest" definition incorporates the phrase, "anything of monetary value." In the new definition of "financial interest," we propose adding the phrase "or potential monetary value" to capture financial interests that may not have monetary value currently, but could become valuable in the future. This proposed definition could apply, for example, to an ownership interest that an Investigator may hold in a small start-up company.

6. *Institution.* We propose to revise the current definition of "Institution" in 42 CFR 50.603 to refer specifically to an Institution that is applying for, or that receives, PHS research funding. We propose this revision to clarify the entities and organizations to which the requirements in 42 CFR Part 50, Subpart F would apply. We propose corresponding changes to the current definition of "Institution" in 45 CFR 94.3 to maintain consistency, where feasible, between the text of 42 CFR Part 50, Subpart F, and 45 CFR Part 94.

7. *Institutional responsibilities.* This definition would be new and would mean an Investigator's professional responsibilities on behalf of the Institution including, but not limited to, activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards. We propose to add this new definition because, as described further below, we are proposing to modify the "significant financial interests" definition and Investigator disclosure obligations such that the SFIs being disclosed are those that reasonably appear to be related to the Investigator's "institutional responsibilities" as defined.

Under the current regulations, an Investigator generally is obligated to disclose SFIs on a project-specific basis (*i.e.,* interests that would reasonably appear to be affected by the research for which PHS funding is sought, or in entities whose financial interests would reasonably appear to be affected by the research). We believe that the proposed shift to a focus on "institutional responsibilities" in the regulations would provide Institutions with a better understanding of the totality of an Investigator's interests and would result in more consistent identification, evaluation, and management of any identified conflicts. We also believe that the revised approach would be consistent with the current practices at many institutions, which require investigators to disclose interests annually and/or on an ongoing basis, regardless of specific research projects that are underway. We welcome public comment on the specific elements that should (or should not) be included in an "institutional responsibilities" definition.

8. *Investigator.* We propose to revise the definition of "Investigator" to clarify that it means the PD/PI as well as any other person, regardless of title or position, who is responsible for the design, conduct, or reporting of research funded by the PHS, or proposed for such funding, including persons who are subgrantees, contractors, collaborators, or consultants (or, in the case of PHS contracts, subcontractors, collaborators, or consultants). We propose these revisions based on our observations regarding the current regulations and the proper application of the "investigator" definition. Although we have developed regulatory guidance on this issue with regard to grants and cooperative agreements (*see* NIH "Frequently Asked Question" A.7 at *http://grants.nih.gov/grants/policy/coifaq.htm*), we believe that further clarification in the regulations themselves is warranted.

We have also revised this definition to eliminate reference to the Investigator's spouse and dependent children. As described further below, we propose to include reference to an Investigator's spouse and dependent children in the revised "significant financial interest" definition.

9. *Manage.* This definition would be new and would mean to take action to address a financial conflict of interest, which includes reducing or eliminating the financial conflict of interest, to ensure that the design, conduct, or reporting of research is free from bias or the appearance of bias. We propose adding this definition as part of a wider reconsideration of the concepts of managing, reducing, and eliminating a FCOI. In the current regulations, these concepts are typically listed separately (*see, e.g.,* 42 CFR 50.604(g), 45 CFR 94.4(g)), suggesting that reducing or eliminating a FCOI may not be the same as managing a FCOI. We believe that it would be more appropriate to consider the reduction or elimination of a FCOI as alternate means of managing a FCOI, depending on the circumstances. Thus, in a hypothetical example where an Institution has concluded that an Investigator's ownership interest in a company is a FCOI, the Institution

could manage the FCOI by requiring the Investigator to reduce his or her ownership interest by some appropriate amount, or to sell the ownership interest in its entirety.

10. *PD/PI.* This definition would be new and would mean a project director or principal investigator of a PHS-funded research project. We propose to use "PD/PI" in the regulation in circumstances in which we may have traditionally used the term "principal investigator" (*e.g.,* in the proposed "investigator" definition, as revised).

11. *PHS.* We propose to revise the definition of "PHS" to include a specific reference to the National Institutes of Health. NIH is part of the Public Health Service and provides a substantial amount of research funding to Institutions, however, it is not otherwise referenced specifically in these regulations. We want to clarify for Institutions applying for, or receiving, research funding from the NIH that they are subject to these PHS regulations.

12. *Research.* We propose to revise the definition of "research" to include a non-exclusive list of examples of different types of PHS funding mechanisms to which the definition applies. As revised, the definition would include any activity for which research funding is available from a PHS Awarding Component through a grant, cooperative agreement, or contract whether authorized under the PHS Act or other statutory authority, such as a research grant, career development award, center grant, individual fellowship award, infrastructure award, institutional training grant, program project, or research resources award.

13. *Significant Financial Interest.* We propose to revise substantially the definition of "significant financial interest" (SFI). Under the current regulations, a SFI means anything of monetary value, including but not limited to, salary or other payments for services (*e.g.,* consulting fees or honoraria); equity interests (*e.g.,* stocks, stock options or other ownership interests); and intellectual property rights (*e.g.,* patents, copyrights and royalties from such rights). The term does not include: (1) Salary, royalties, or other remuneration from the applicant institution; (2) any ownership interests in the institution, if the institution is an applicant under the SBIR or STTR programs; (3) income from seminars, lectures, or teaching engagements sponsored by public or nonprofit entities; (4) income from service on advisory committees or review panels for public or nonprofit entities; (5) an equity interest that when aggregated for the Investigator and the Investigator's spouse and dependent children meets both of the following tests: does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a five percent ownership interest in any single entity; or (6) salary, royalties, or other payments that when aggregated for the investigator and the investigator's spouse and dependent children over the next twelve months, are not expected (or, in the case of PHS contracts, are not reasonably expected) to exceed $10,000.

We propose to revise the definition of "significant financial interest" as follows, incorporating the proposed definitions of "financial interest" and "institutional responsibilities" described above:

"*Significant financial interest* means, except as otherwise specified in this definition: "(1) A financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities:

"(i) With regard to any publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds $5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (*e.g.,* consulting fees, honoraria, paid authorship, travel reimbursement); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;

"(ii) With regard to any non-publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds $5,000, or the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (*e.g.,* stock, stock option, or other ownership interest); or

"(iii) Intellectual property rights (*e.g.,* patents, copyrights), royalties from such rights, and agreements to share in royalties related to such rights.

"(2) The term *significant financial interest* does not include the following types of financial interests: salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution; any ownership interest in the Institution held by the Investigator, if the Institution is a commercial or for-profit organization; income from seminars, lectures, or teaching engagements sponsored by a federal, state, or local government agency, or an institution of higher education as defined at 20 U.S.C. 1001(a); or income from service on advisory committees or review panels for a federal, state, or local government agency, or an institution of higher education as defined at 20 U.S.C. 1001(a)."

This revised SFI definition would differ from the current SFI definition in a number of respects.

Institutional responsibilities: As indicated in the discussion of the "institutional responsibilities" definition above, SFIs subject to disclosure by an Investigator to an Institution would be those that reasonably appear to be related to the Investigator's "institutional responsibilities" and would not be specific to a particular PHS-funded research project. As a result, when read in conjunction with the revised Investigator disclosure requirements under 42 CFR 50.604 and 45 CFR 94.4 (discussed below), we anticipate that the revised SFI definition would result in the disclosure by Investigators to Institutions of a wider array of interests on a more frequent basis. This proposed approach is consistent with many of the comments we received in response to the ANPRM, which supported expansion of the SFIs that should be disclosed by Investigators to Institutions.

Monetary threshold: The revised SFI definition also would lower—and, in some circumstances, eliminate—the existing monetary thresholds for disclosure. Under the current regulations, a SFI does not include an equity interest that when aggregated for the investigator and the investigator's spouse and dependent children, meets both of the following tests: Does not exceed $10,000 in value, and does not represent more than a five percent ownership interest in any single entity. Similarly, a SFI does not include payments (*e.g.,* salary) that when aggregated for the Investigator and the Investigator's spouse and dependent children over the next twelve months are not expected to exceed $10,000. The revised definition would differentiate between remuneration to the Investigator (and the Investigator's spouse and dependent children) from a publicly traded entity and remuneration from a non-publicly traded entity. With regard to a publicly traded entity, a

monetary threshold of $5,000 would apply to the aggregated value of any remuneration received from the entity in the twelve months preceding disclosure and the value of any equity interest as of the date of disclosure. With regard to a non-publicly traded entity, a monetary threshold of $5,000 would apply to any remuneration received from the entity in the twelve months preceding disclosure; in addition, however, a SFI would exist with regard to any equity interest in the entity, regardless of value.

In a hypothetical example, the proposed changes to the monetary threshold would operate as follows. Assume an Institution has required an Investigator, who conducts biomedical research at the Institution, to complete a form disclosing her SFIs. Among the Investigator's financial interests are the following: $3,000 in consulting fees that she has received in the past twelve months from Pharmaceutical Company A; stock in Pharmaceutical Company A held by her husband worth $2,500 as of the date of disclosure; and stock options she holds in Start-Up Company B, a private biotechnology firm whose only products are in the early research and development stage. Assuming that these financial interests reasonably appear to be related to the Investigator's institutional responsibilities, the Investigator would be required to disclose them as SFIs. A SFI in Pharmaceutical Company A would exist because the aggregated value of her remuneration for the past twelve months and her husband's equity interest in the company exceeds $5,000 ($3,000 + $2,500 = $5,500). A SFI in Start-up Company B would exist because the Investigator would have an obligation to disclose any ownership interest in a non-publicly traded entity, even if the interest has only potential monetary value as of the time of disclosure.

We recognize that lowering the monetary threshold, as proposed, is not without cost. In particular, while we believe that certain elements of the revised "significant financial interest" definition would make the disclosure and review obligations of Investigators and Institutions more efficient, we recognize that incorporating a lower monetary threshold is likely to lead to increased administrative burden on Investigators and Institutions because more financial interests are likely to be subject to disclosure and review. For this reason, we considered a variety of alternatives for the proposed regulations including a threshold that would be approximate to the current standard (*i.e.,* $10,000), a significantly lower threshold for all types of financial interests (*e.g.,* $100), as well the current proposal.

We declined to propose a threshold equivalent to the current standard because we do not believe that this approach would be consistent with our statutory mandate to revise the regulations for the purpose of "strengthening Federal and institutional oversight and identifying enhancements, including requirements for financial disclosure to institutions * * *." Public Law 111–117, Div. D, Tit. II, sec. 219, 123 Stat. 3034 (2009). In addition, when we raised this question in the ANPRM, a majority of respondents who addressed this question favored lowering the monetary disclosure threshold. These responses were consistent with our own sense that Institutions would welcome greater transparency regarding Investigator financial interests because additional information would help them to better manage identified FCOI. Thus, for example, even if an Investigator's disclosed SFIs falling below the current monetary threshold would not themselves result in new FCOI determinations, the information could provide context for the Institution's management of higher value SFIs that the Institution determines are FCOI.

Given the arguments in favor of lowering the monetary threshold, we analyzed whether a significantly lower threshold (*e.g.,* $100) would be appropriate for all types of financial interests. Although there has been limited study on the effect of the exact monetary value of an Investigator's financial interests on the integrity of his or her research, the authors of at least one journal article note, "a large body of evidence from the social sciences shows that behavior can be influenced by gifts of negligible value." [11] In addition, recent legislative initiatives have incorporated low monetary thresholds in comparable circumstances. For example, the disclosure provisions that apply to applicable manufacturers of drugs and other covered items with regard to transfers of value to physicians and teaching hospitals under title VI, section 6002, of the recently enacted Patient Protection and Affordable Care Act, Public Law 111–148, generally apply to transfers of value of $10 or more.

Notwithstanding these arguments for a significantly lower monetary threshold, we are concerned that the administrative costs associated with disclosure and review of all but negligible financial interests would outweigh the intended benefit of these regulations in promoting objectivity in research. For example, given the existing (and proposed) obligation on Investigators to update SFI disclosures during the period of award, we believe it would be a challenge for Investigators and Institutions alike to comply with this provision every time a new, all-but-negligible financial interest was obtained by the Investigator.

We welcome comment on all aspects of the proposed "significant financial interest" definition, including comments regarding the appropriate balance between the costs that may be associated with expanding the number of financial interests subject to disclosure as a result of a lower monetary threshold versus the potential benefits that might be expected to result from the lower threshold.

Timing: As indicated in the example above, the revised SFI definition would also change the timing for determining whether remuneration represents a SFI. The current regulations exclude aggregated payments (including salary and royalties) that are "not expected to exceed" (or, in the case of PHS contracts, are "not reasonably expected to exceed") the monetary threshold "over the next twelve months." Under the revised definition, at issue is remuneration (including salary and any payment for services not otherwise identified as salary) received from an entity "in the twelve months preceding the disclosure." We believe this change would help Institutions and Investigators to determine more accurately whether or not a financial interest represents a SFI because the payments have already occurred and are likely to have been documented. Moreover, to the extent an Investigator receives additional remuneration from an entity after completing an initial SFI disclosure, such remuneration would be subject to the Investigator's ongoing disclosure obligations assuming the relevant monetary threshold were exceeded. This issue is addressed further in the discussion of 42 CFR 50.604, 45 CFR 94.4 below.

Examples of payment for services: The current definition references as examples of payments for services, receipt of consulting fees, or honoraria. We propose to add "paid authorship" and "travel reimbursement" as additional examples in the revised definition. With regard to "paid authorship," in particular, although there should be little question that receipt of payment from an entity in exchange for the drafting of a

[11] Dana Katz, Arthur L. Caplan, and Jon F. Merz, "All Gifts Large and Small," Am. J. of Bioethics, summer 2003, vol. 3, no. 3, at 39, 39.

publication constitutes payment for services, we believe it is important to reference this form of payment specifically in the regulations. This practice has come under increasing scrutiny in recent years and we wish to make it clear to Institutions and Investigators that such activity may be subject to the disclosure and reporting requirements depending on the circumstances of a given case, such as the amount of payment.

Royalties & Intellectual Property: Under the existing regulation, royalties are included among the "payments" subject to the $10,000 threshold. Under the proposed regulations, the $5,000 threshold would apply to equity interests and "payment for services," which would include salary but not royalties. Royalties nevertheless would be potentially subject to disclosure, as would other interests related to intellectual property. Specifically, the revised definition would potentially apply to any of the following: Intellectual property rights (*e.g.,* patents, copyrights), royalties from such rights, and agreements to share in royalties related to intellectual property rights. As discussed further below, however, royalties received by the Investigator from the Institution would still be excluded from the SFI definition if the Investigator is currently employed or otherwise appointed by the Institution.

Exclusions: We propose to modify the types of interests that are specifically excluded from the SFI definition. For example, the revised definition would only exclude income from seminars, lectures, teaching engagements, if sponsored by a federal, state, or local government agency, or an institution of higher education as defined at 20 U.S.C. 1001(a). Similarly, income from service on advisory committees or review panels would only be excluded if from a federal, state, or local government agency, or an institution of higher education as defined at 20 U.S.C. 1001(a). Thus, income from non-profit entities other than institutions of higher education for the types of activities described above would be subject to the SFI definition. We are proposing this change due to the growth of non-profit entities that sponsor such activities since the current regulations were promulgated in 1995. Some of these non-profit entities receive funding from for-profit entities that may have an interest in the outcome of the Investigators' research (*e.g.,* foundations supported by pharmaceutical companies or other industrial sectors). As a result, we believe it would promote objectivity in biomedical and behavioral research if income in excess of the relevant monetary threshold received from such non-profit entities for teaching and advisory committee-related activities were included within the SFI definition and disclosed by Investigators to Institutions for their review. Under the current 1995 exclusions to the SFI definition, income from such entities for the above-described activities would not be disclosed.

In developing the proposed exclusions to the SFI definition, we considered various alternatives, including whether the exclusions described above should be limited solely to income from federal, state, or local government agencies (*i.e.,* income from institutions of higher education for such activities would be covered by the SFI definition). However, given that many academic Investigators engage in seminars, lectures, teaching engagements, as well as service on advisory committees or review panels at academic Institutions other than those at which they are employed, we concluded that the burden of requiring disclosure of the income from these activities outweighed the potential benefit to be gained from such disclosures.

With regard to the current exclusion for any ownership interests in the institution if the institution is an applicant under the SBIR or STTR programs, we propose to broaden this exclusion to include any ownership interest in the Institution held by the Investigator if the Institution is a commercial or for-profit organization (whether or not an SBIR/STTR applicant). This proposed change is based primarily on the recognition that ownership in one's own company not only is generally an inherent and understood financial interest, but also is an interest that the Institution is already in a position to know without having to request an Investigator to include it in a disclosure of SFIs.

For similar reasons, we do not propose to make substantive changes to the current exclusion for salary, royalties, or other remuneration paid by the Institution to the Investigator, other than to limit the exception to circumstances in which the Investigator is currently employed or otherwise appointed by the Institution. With regard to current employees and appointees, we believe not only that these financial interests are inherent and understood, but also that an Institution is in a position to know this information without having to request Investigators to include it in a disclosure of SFIs. However, other Investigators (*e.g.,* subrecipient Investigators) may be involved with a PHS-funded research project who were previously affiliated with an Institution (*e.g.,* former employees) but who still receive remuneration from the Institution (*e.g.,* royalty payments). Although an Institution presumably maintains information regarding payments to all third parties, it may not be obvious to institutional officials reviewing a SFI disclosure from a subrecipient Investigator under these circumstances that recent payments have been made to the subrecipient Investigator. By limiting the exclusion to Investigators who are currently employed or otherwise appointed by the Institution, as proposed, an Institution could avoid having to investigate, as a matter of course, possible Institution payments to every subrecipient Investigator participating in a PHS-funded research project.

We welcome comment on the proposed exclusions to the SFI definition, including, for example, whether the proposed exclusion for income from teaching and advisory committee-related activities should be expanded to apply to all public or non-profit entities (similar to the current regulations) or to specific categories of public or non-profit entities, or further narrowed to apply solely to federal, state, or local government agencies. We are particularly interested in comments about the balance between the cumulative burden of the inclusion of non-profits (or certain categories of non-profits) in conjunction with defining SFIs to include institutional responsibilities and the potential benefit to be gained from such disclosures.

14. *Small Business Innovation Research (SBIR) Program.* We propose to remove the current definition for the SBIR Program. In light of the proposed removal of reference to the SBIR program from the "Applicability" section and the "significant financial interests" definition, discussed above, the SBIR definition would no longer be necessary in the revised regulations, as proposed.

Responsibilities of Institutions Regarding Investigator Financial Conflicts of Interest (42 CFR 50.604, 45 CFR 94.4)

We propose to revise substantially the regulation addressing the responsibilities of Institutions regarding Investigator FCOI.

Subsection (a) of the current regulation provides, in part, that each Institution must maintain an appropriate written, enforced policy on conflict of interest that complies with the regulations. We propose to revise this provision to require an Institution

not only to maintain an up-to-date, written, enforced policy on FCOI that complies with the regulations, but also to make such policy available via a publicly accessible Web site. We believe these revisions would foster greater transparency and accountability with regard to institutional policies. The revised provision would also clarify that if an Institution's policy on FCOI includes standards that are more stringent than the regulations, the Institution shall adhere to its policy and shall provide FCOI reports regarding identified FCOI to the PHS Awarding Component in accordance with the Institution's own standards. Although we have developed regulatory guidance on this issue with regard to grants and cooperative agreements (*see* NIH "Frequently Asked Question" B.4 at *http://grants.nih.gov/grants/policy/coifaq.htm),* we believe that further clarification in the regulation itself is warranted.

The current subsection (a) also requires, in part, that each Institution must inform each Investigator of its policy on conflict of interest, the Investigator's disclosure responsibilities, and of these regulations. We propose to address this requirement as a new subsection (b), and to add to this new subsection an Investigator training requirement. Specifically, we propose that Institutions shall require Investigators to complete training regarding the Institution's FCOI policy, the Investigator's responsibilities regarding disclosure of FCOI, and the regulations, prior to engaging in PHS-funded research and, thereafter, at least once every two years. This proposal is consistent with the comments of a majority of the respondents to the ANPRM, who supported adding an Investigator FCOI training requirement.

The current subsection (a) also states that if the Institution carries out the PHS-funded research through subgrantees, contractors, or collaborators (or, in the case of PHS contracts, subcontractors or collaborators), the Institution must take reasonable steps to ensure that Investigators working for such entities comply with the regulations, either by requiring those Investigators to comply with the Institution's policy or by requiring the entities to provide assurances to the Institution that will enable the Institution to comply with the regulations. We propose to create a new subsection (c) that would provide a substantially expanded clarification of an Institution's obligations with regard to PHS-funded research carried out through a subrecipient (*e.g.,* subgrantee, contractor, or collaborator or, in the case of a PHS contract, a subcontractor or collaborator). In the ANPRM, we included a question that asked whether specific requirements related to FCOI identification, management, and reporting should be established for subrecipients. This question was based, at least in part, on the concern that awardee and subrecipient Institutions may not fully recognize their responsibilities related to the regulations. Many ANPRM respondents stated that they comply with the current version of subsection (a) by requiring a subrecipient to certify to the awardee Institution that its FCOI policy complies with the applicable Federal regulations and, in those cases when a subrecipient cannot provide a certification, requiring the subrecipient to comply with the awardee Institution's policy. We believe that this type of approach provides a useful means of reinforcing compliance with the regulations.

Therefore, we propose to include as part of the new subsection (c) the following requirements: An Institution that carries out the PHS-funded research through a subrecipient must incorporate as part of a written agreement with the subrecipient legally enforceable terms that establish whether the FCOI policy of the awardee Institution or that of the subrecipient applies to the subrecipient's Investigators. If the subrecipient's FCOI policy applies to subrecipient Investigators, the subrecipient shall certify as part of the agreement that its policy complies with the regulations. If the subrecipient cannot provide such certification, the agreement shall state that subrecipient Investigators are subject to the FCOI policy of the awardee Institution. If the subrecipient's FCOI policy applies to subrecipient Investigators, the agreement shall specify time period(s) for the subrecipient to report all identified FCOI to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to provide timely FCOI reports, as necessary, to the PHS. If subrecipient Investigators are subject to the awardee Institution's FCOI policy, the agreement shall specify time period(s) for the subrecipient to submit all Investigator disclosures of SFIs to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to comply timely with its review, management, and reporting obligations under the regulations. Subsection (c) would also require that the Institution must provide FCOI reports to the PHS regarding all FCOI of all subrecipient Investigators consistent with the regulations. We believe that the addition of the above text in the new subsection (c) would help clarify for Institutions and their subrecipients the requirements of both parties in these relationships and promote greater compliance with the regulations.

Subsection (b) of the current regulation requires that an Institution must designate an institutional official(s) to solicit and review financial disclosure statements from each Investigator who is planning to participate in PHS-funded research. In the ANPRM, we asked whether large Institutions (defined as greater than 50 employees) should be required to establish an independent committee to review financial disclosures, and require that committee to report to an organizational level within the Institution that is not conflicted by the short-term financial interests of the Investigator or Institution. After considering the responses, we weighed the complexity of the issues that can arise in reviewing financial interests and evaluating conflicts, as well as the potential practical difficulty in determining which Institutions would fall within a "large" Institution definition and which would not. As a result, we do not propose to change the redesignated subsection (d). That being said, however, we strongly encourage each Institution to form a committee of adequate size and scope to review Investigator SFI disclosures and assess comprehensively the potential conflicts that may arise in the Institution. In addition, since reviewing Investigator financial disclosures for potential FCOI can involve many complex issues, we recommend that Institutions consult available resources from the Federal government (*e.g.,* NIH materials posted at *http://grants.nih.gov/grants/policy/coi/*) or other public resources (*e.g.,* materials prepared by academic and professional associations or other scientific organizations).

The current subsection (c) requires that by the time an application is submitted to the PHS, each Investigator who is planning to participate in the PHS-funded research has submitted to the designated official(s) a listing of his/her known SFIs (and those of his/her spouse and dependent children): (i) That would reasonably appear to be affected by the research for which PHS funding is sought; and (ii) in entities whose financial interests would reasonably appear to be affected by the research. All financial disclosures must be updated during the period of award, either on an annual basis or as new reportable SFIs are obtained. In the ANPRM, we asked whether this

requirement should be expanded to require disclosure by Investigators of all SFIs that are related to their institutional responsibilities. Many respondents to the ANPRM were in favor of expanding the SFIs that should be disclosed by the Investigator. As indicated in the above discussion of the "significant financial interest" definition, the proposed revision would capture as part of the definition itself the concept that a "significant financial interest" is one that reasonably appears to be related to the Investigator's "institutional responsibilities." Accordingly, we propose to revise the current subsection (c) language as part of a redesignated subsection (e) with the understanding that the scope of Investigator disclosures would no longer be project specific, but would (consistent with the revised SFI definition) pertain to the Investigator's institutional responsibilities. As part of the new subsection (e), we are also proposing to revise and clarify an Investigator's annual and ongoing *ad hoc* disclosure obligations.

Specifically, in addition to requiring that each Investigator who is planning to participate in the PHS-funded research disclose to the Institution's designated officials the Investigator's SFIs (and those of the Investigator's spouse and dependent children), the Institution also would have to require that each Investigator who is participating in the PHS-funded research submit an updated SFI disclosure: (1) At least annually during the period of the award, including disclosure of any information that was not disclosed initially to the Institution or in a subsequent SFI disclosure, and disclosure of updated information regarding any previously-disclosed SFI (*e.g.,* the updated value of a previously-disclosed equity interest); and (2) within thirty days of acquiring a new SFI (*e.g.,* through purchase, marriage, or inheritance). Although the current regulations include a requirement regarding the updating of financial disclosures (see current subsection (c)(2)), we believe that the revisions proposed above will provide Institutions and Investigators with greater specificity as to the timing of disclosures that are required after an Investigator's initial SFI disclosure to the Institution.

The existing subsection (d) requires an Institution to provide guidelines consistent with the regulations for the designated official(s) to identify conflicting interests and take such actions as necessary to ensure that such conflicting interests will be managed, reduced, or eliminated. We propose to reorganize and expand this requirement in a redesignated subsection (f) to clarify an Institution's obligations. First, the guidelines to be provided by an Institution for the designated institutional officials would be required to address two related tasks, specifically, determination of whether an Investigator's SFI is related to PHS-funded research and, if so related, whether the SFI is a FCOI. Under the current regulations, the Investigator bears the responsibility for determining the relatedness of a SFI to the PHS-funded research as part of the disclosure process (42 CFR 50.604(c), 45 CFR 94.4(c)). As discussed above, however, the proposed regulations would revise the definition of "significant financial interest" to address "institutional responsibilities" and, as a result, SFIs subject to disclosure by an Investigator to an Institution would not be specific to a particular PHS-funded research project. Consistent with these proposed changes, the responsibility for determining whether an Investigator's SFI is related to PHS-funded research would shift to the Institution. This subsection would provide that an Investigator's SFI is related to PHS-funded research when the Institution, through its designated officials, reasonably determines that the SFI: (1) Appears to be affected by the PHS-funded research; or (2) is in an entity whose financial interest appears to be affected by the research.

To provide clarification regarding the determination of whether an Investigator's SFI is a FCOI, the redesignated subsection (f) would incorporate modified language moved from subsection (a)(1) of the current 42 CFR 50.605 and 45 CFR 94.5. Specifically, this subsection would provide that a FCOI exists when the Institution, through its designated officials, reasonably determines that the SFI could directly and significantly affect the design, conduct, or reporting of the PHS-funded research. As discussed above, the proposed regulations would also incorporate a definition of "financial conflict of interest" that is similarly based on this language.

With regard to the current requirement in subsection (d) regarding FCOI management responsibilities, we propose to include this requirement in a separate subsection (g) and clarify that the requirement includes management of any financial conflicts of a subrecipient Investigator pursuant to the new subsection (c), described above. We also propose to cross-reference the Institution's revised management responsibilities that we propose in 42 CFR 50.605(a), 45 CFR 94.5(a), including development and implementation of a management plan and, if necessary, a mitigation plan. Additional discussion of these proposed revisions is addressed below. As a related matter, we propose to include a new subsection (h) that cross-references the Institution's revised and expanded reporting requirements in the proposed new subsection 42 CFR 50.605(b), 45 CFR 94.5(b).

Subsection (e) of 42 CFR 50.604 currently requires an Institution to maintain records of all financial disclosures and all actions taken by the Institution with respect to each conflicting interest for at least three years from the date of submission of the final expenditures report or, where applicable, from other dates specified in 45 CFR 74.53(b) for different situations. Correspondingly, subsection (e) of 45 CFR 94.4 currently requires an Institution to maintain records of all financial disclosures and all actions taken by the Institution with respect to each conflicting interest for three years after final payment or, where applicable, for the other time periods specified in 48 CFR part 4, subpart 4.7. We propose to revise this requirement in a redesignated subsection (i) of both 42 CFR 50.604 and 45 CFR 94.4 to include a responsibility to maintain records relating to all Investigator disclosures of financial interests and the Institution's review of, or response to, such disclosures (whether or not a disclosure resulted in the Institution's determination of a FCOI). We believe that this proposed revision would help clarify for Institutions our intent for the record retention obligation to apply not only in cases in which the Institution has identified a FCOI, but to all Investigator SFI disclosures whether or not such disclosure generated a response by the Institution.

The existing regulations require at subsection (f) that Institutions establish adequate enforcement mechanisms and provide for sanctions where appropriate. We propose to revise this obligation in a redesignated subsection (j) to require an Institution to establish not only adequate enforcement mechanisms and provide for employee sanctions, but also to provide for other administrative actions to ensure Investigator compliance as appropriate.

We propose to revise and, in some respects, shorten the certification requirement currently set forth in subsection (g). In a redesignated subsection (k), the revised requirement would require an Institution to certify that the Institution (1) has in effect at that Institution an up-to-date, written,

and enforced administrative process to identify and manage FCOI with respect to all research projects for which funding is sought or received from the PHS; (2) shall promote and enforce Investigator compliance with the regulations' requirements including those pertaining to disclosure of SFIs; (3) shall manage FCOI and provide initial and ongoing FCOI reports to the PHS consistent with the regulations; (4) agrees to make information available, promptly upon request, to the HHS relating to any Investigator disclosure of financial interests and the Institution's review of, or response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of a FCOI; and (5) shall fully comply with the requirements of the regulations. Notably, this revised subsection would eliminate much of the current certification language regarding an Institution's reporting obligations. In the existing regulations, the certification requirement in subsection (g) essentially provides the primary source of an Institution's reporting responsibilities regarding FCOI. As described further below, we propose a substantial revision and expansion of the reporting requirements and, thus, propose to move the discussion of such requirements to a newly revised subsection 42 CFR 50.605(b), 45 CFR 94.5(b).

Management and Reporting of Financial Conflicts of Interest (42 CFR 50.605, 45 CFR 94.5)

We propose to revise and expand substantially the current regulation regarding management of FCOI to address requirements for both management and reporting of FCOI.

The existing regulations require, at subsection (a), that an Institution's designated official(s) review all financial disclosures and determine whether a conflict of interest exists. If so, the official(s) must determine what actions should be taken by the institution to manage, reduce or eliminate such conflict of interest. Under the existing regulation, a conflict of interest exists when the designated official(s) reasonably determines that a SFI could directly and significantly affect the design, conduct, or reporting of the PHS-funded research. Subsection (a) also provides examples of conditions or restrictions that might be imposed to manage conflicts of interest, specifically, public disclosure of SFIs, monitoring of research by independent reviewers, modification of the research plan, disqualification from participation in all or a portion of the research funded by the PHS, divestiture of SFIs, or severance of relationships that create actual or potential conflicts.

We propose to revise the above language as part of a redesignated subsection (a)(1) to require that, prior to the Institution's expenditure of any funds under a PHS-funded research project, the designated officials of an Institution shall, consistent with subsection (f) of the preceding section (42 CFR 50.604 or 45 CFR 94.4): Review all Investigator disclosures of SFIs; determine whether any SFIs relate to PHS-funded research; determine whether a FCOI exists; and, if so, develop and implement a management plan that shall specify the actions that have been, and shall be, taken to manage such FCOI. The most significant change in the above proposed text is the introduction of a management plan requirement. Although the existing regulations require Institutions to manage FCOI, the term "management plan" is not used. While many Institutions currently may develop and implement management plans as a means of fulfilling their FCOI management responsibilities, we believe that explicitly incorporating this requirement into the regulations would further help to prevent the introduction of bias into PHS-funded research across the research community. We have not proposed to specify comprehensively in this subsection what elements must be included in a management plan, however, as indicated in the discussion of subsection (b) below, the expanded reporting requirements that we propose would include an obligation to report a description of certain "key elements" of the Institution's management plan in certain FCOI reports. Another change in this subsection would be the deletion of the current sentence that describes when a financial conflict of interest exists. As discussed above, a modified version of this sentence would be moved to the redesignated subsection (f) of 42 CFR 50.604 and 45 CFR 94.4, as well as incorporated into a definition of "financial conflict of interest" in 42 CFR 50.603 and 45 CFR 94.3.

The revised subsection (a)(1) would also include the following updated and expanded list of examples of conditions or restrictions that might be imposed to manage a FCOI: Public disclosure of FCOI (*e.g.,* when presenting or publishing the research); for research projects involving human subjects research, disclosure of FCOI directly to participants; appointment of an independent monitor capable of taking measures to protect the design, conduct, and reporting of the research against bias, or the appearance of bias, resulting from the FCOI; modification of the research plan; change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the research; reduction or elimination of a financial interest (*e.g.,* sale of an equity interest); or severance of relationships that create actual or potential financial conflicts. Among the differences from the current text would be the addition of a specific example in the human subjects research context. The ANPRM posed a number of questions related to the issue of whether the regulations should be amended to require specific approaches to management of FCOI related to certain types of research or alternatively, specific types of financial interests or FCOI. After considering the comments, we agree with the majority of the respondents that this approach would not account for the full range of research projects as well as the large contextual variation in circumstances in which FCOI may arise. As a result, the proposed revised regulations would impose uniform FCOI management responsibilities, regardless of the type of research, financial interest, or identified FCOI at issue.

In addition to revising the current regulation as described above, we also propose to introduce two new subsections that clarify an Institution's obligations in situations in which an Institution becomes aware of a SFI after the PHS-funded research is already underway. Specifically, new subsection (a)(2) would require that whenever, in the course of an ongoing PHS-funded research project, a new Investigator participating in the research project discloses a SFI or an existing Investigator discloses a new SFI to the Institution, the designated officials of the Institution shall, within sixty days: Review the SFI disclosure; determine whether it is related to PHS-funded research; determine whether a FCOI exists; and, if so, implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage the FCOI. This subsection would additionally provide that, depending on the nature of the SFI, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date of disclosure and the completion of the Institution's review.

A new subsection (a)(3) would provide that whenever an Institution identifies a SFI that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution during an ongoing PHS-funded research project

(*e.g.,* was not timely reviewed or reported by a subrecipient), the designated officials shall, within sixty days: Review the SFI; determine whether it is related to PHS-funded research; determine whether a FCOI exists; and, if so: (A) Implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such FCOI going forward; and (B) implement, on at least an interim basis, a mitigation plan which shall include review and determination as to whether any PHS-funded research, or portion thereof, conducted prior to the identification and management of the FCOI was biased in the design, conduct, or reporting of such research. This subsection would additionally provide that, depending on the nature of the SFI, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date that the SFI is identified and the completion of the Institution's review.

Our interest in proposing new subsections (a)(2) and (a)(3) is based, at least in part, on our experience working with awardee Institutions and our general impression that some Institutions may be more diligent about addressing potential FCOI at the onset of a PHS-funded research project than after the work is already underway. We also believe it is important to address in the regulations circumstances in which an Institution, for whatever reason, has not timely reviewed a SFI, particularly when such SFI is later determined to be a FCOI. In such circumstances, it is of course important for an Institution to manage the FCOI going forward, however, there is also a critical need to review and determine whether any bias was introduced into the research during the period of time prior to review and management of the FCOI. We have proposed to address this need in subsection (a)(3) by introduction of a "mitigation plan" requirement. We have not proposed the specific elements of a mitigation plan because we believe different circumstances may necessitate different measures. In some instances, for example, it may be sufficient to review a matter internally within a given research department, while in other instances it may be appropriate to have individuals outside the department or outside the Institution review and determine whether the design, conduct, or reporting of the research in question was biased by a belatedly-identified or belatedly-reviewed FCOI.

New subsection (a)(4) would require that whenever an Institution implements a management plan pursuant to the regulations, the Institution must monitor Investigator compliance with the management plan on an ongoing basis until the completion of the PHS-funded research project. This subsection would dovetail with the new subsections (a)(2) and (a)(3), described above, by ensuring that the management actions taken by an Institution at the time a FCOI is identified continue to be followed by the Investigator(s) involved going forward through the duration of the project.

We propose to introduce at subsection (a)(5) an important and significant new requirement to help the biomedical and behavioral research community monitor the integrity and credibility of PHS-funded research and underscore our commitment to fostering transparency, accountability, and public trust. Specifically, we are proposing to amend the regulations to require that, prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall make available via a publicly accessible Web site information concerning any SFI that meets the following three criteria: (A) The SFI was disclosed and is still held by the PD/PI or any other Investigator who has been identified by the Institution as senior/key personnel for the PHS-funded research project in the grant application, contract proposal, contract, progress report, or other required report submitted to the PHS; (B) the Institution determines that the SFI is related to the PHS-funded research; and (C) the Institution determines that the SFI is a FCOI.

As part of this new subsection, we would require that the information posted include, at a minimum, the following: The Investigator's name; the Investigator's position with respect to the research project; the nature of the SFI; and the approximate dollar value of the SFI (dollar ranges would be permissible; less than $20,000; less than $50,000; less than $100,000; less than or equal to $250,000; greater than $250,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value. We propose to require the Institution to update the posted information at least annually. We would also require the Institution to update the Web site within sixty days of the Institution's receipt or identification of information concerning any additional SFI that was not previously disclosed by the PD/PI or senior/key personnel for the PHS-funded research project, or upon the disclosure of a SFI by a new PD/PI or new senior/key personnel for the PHS-funded research project, if the Institution determines that the SFI is related to the PHS-funded research and is a FCOI. We would also require that information concerning the SFIs of an individual subject to this subsection (a)(5) shall remain available via the Institution's publicly accessible Web site for at least five years from the date that the information was most recently updated.

We are aware that this proposed public disclosure requirement was not discussed in the ANPRM. However, given the number and scope of public disclosure initiatives that have emerged since the ANPRM was developed, we believe it is appropriate to include such a provision in this Notice of Proposed Rulemaking. For example, similar disclosure initiatives already are underway at some Institutions and pharmaceutical companies, and some states have implemented similar disclosure requirements legislatively. In addition, at the federal level, the recently enacted Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, includes several public disclosure provisions. Of greatest relevance, title VI, section 6002, of the Affordable Care Act generally requires designated manufacturers of covered drugs, devices, biological or medical supplies to submit certain information to HHS regarding certain payments made to designated physicians and teaching hospitals annually beginning March 31, 2013, and generally requires the Secretary of HHS to make such information publicly available through an Internet Web site annually beginning not later than September 30, 2013. This section of the Affordable Care Act includes similar provisions that generally apply to information concerning ownership or investment interests held by designated physicians in designated manufacturers and group purchasing organizations. In addition to these institutional and legislative initiatives, many scientific journals require authors to publicly disclose information regarding their research-related financial relationships, and many scientific organizations impose similar requirements with regard to speakers at scientific meetings and conferences.

We recognize that the proposed public disclosure requirement would place an additional administrative burden on Institutions, and would also impact the privacy of Investigators who have information related to their personal financial interests posted publicly to the extent such interests are

determined to be FCOI. Consequently, it is important to identify the optimal balance between these more onerous impacts and the imperative to preserve the integrity of the public's investment in biomedical and behavioral research.

Therefore, we considered several alternatives to the proposed text of subsection (a)(5), including:

1. No requirement that Institutions publicly disclose Investigators' SFI.

2. A requirement that an Institution shall make available via a publicly accessible Web site information concerning any SFI disclosed to the Institution and still held by the PD/PI or any other Investigator who has been identified by the Institution as senior/key personnel for the PHS-funded research project in the grant application, contract proposal, contract, progress report, or other required report submitted to the PHS.

The first alternative—i.e., no requirement for public disclosure—has the advantage of reducing the burden on Institutions and the privacy impact on Investigators. However, this alternative would not promote as much increased transparency or accountability and, given the increasing number of other public sources of at least some of this information, we are unconvinced that this alternative would be sufficient to assist the PHS in strengthening oversight and ensuring proper management of potential bias from FCOI. *The second alternative—i.e.,* requiring public disclosure of all SFIs held by certain Investigators—has the advantage of providing the public with more complete information that aligns and harmonizes with information other sources (*e.g.,* disclosures in journals, at meetings, and in accordance with the Affordable Care Act). Expanding the public disclosure requirement in this manner, however, could increase the administrative burden on the Institutions in some respects (due to an increase in volume of posted information) and raise privacy concerns among impacted Investigators given the increased scope of financial interest information, not all of which is related to PHS-funded research, that would be made publicly available. This requirement also risks strengthening the misperception that all SFI constitute FCOI.

The text proposed in subsection (a)(5) is an attempt to balance the concerns presented by these and other alternatives by including a public disclosure requirement, but limiting it to public disclosure of SFIs determined by the Institution to be related to the PHS-funded research and to be FCOI. We believe that including a public disclosure requirement in these regulations would be advantageous because, among other reasons, the information would derive directly from the Investigator and the Institution (as opposed to a third party not involved in the PHS-funded research) and the information can be updated timely. In addition, confining the public disclosure requirement solely to those SFIs determined by the Institution to be related to the PHS-funded research and to be FCOI limits the amount of Investigator financial information that is made publicly available. We recognize, however, that limiting the requirement for public disclosure in this manner does risk strengthening the misperception that any FCOI necessarily causes bias, which should not be the case if the FCOI is sufficiently managed by the Institution.

We welcome comment on the proposed requirement set forth in the new subsection (a)(5) and the alternatives described above, as well as suggestions for modifying the proposed regulation language or suggestions for other alternative approaches.

Subsection (b) of the current regulation provides that, in addition to the types of conflicting financial interests described in this paragraph that must be managed, reduced, or eliminated, an Institution may require the management of other conflicting financial interests, as the Institution deems appropriate. We propose to maintain this requirement using slightly modified language in a new redesignated subsection (a)(6).

In place of the existing subsection (b), we propose to include a substantial revision and expansion of Institutions' existing FCOI reporting requirements. As indicated above, the certification requirement in the existing 42 CFR 50.604(g), 45 CFR 94.4(g), essentially provides the primary source of an Institution's FCOI reporting responsibilities under the current regulations. The existing provision requires—as part of the Institution's certification in each contract proposal or application for funding to which the regulations apply—that, prior to the Institution's expenditure of any funds under the award, the Institution will report to the PHS Awarding Component the existence of a conflicting interest (but not the nature of the interest or other details) found by the Institution and assure that the interest has been managed, reduced, or eliminated in accordance with the regulation; and, for any interest that the Institution identifies as conflicting subsequent to the Institution's initial report under the award, the report will be made and the conflicting interest managed, reduced, or eliminated, at least on an interim basis, within sixty days of that identification.

A new subsection (b)(1), as proposed, would continue the existing regulation's requirement with regard to the timing of initial FCOI reports and reference the proposed management plan requirements addressed in the above discussion of subsection (a). Specifically, an Institution would be required, prior to the Institution's expenditure of any funds under a PHS-funded research project, to provide to the PHS Awarding Component a FCOI report regarding any Investigator SFI found by the Institution to be conflicting and ensure that the Institution has implemented a management plan in accordance with the regulations.

Similarly, a new subsection (b)(2) would continue the existing regulation's requirement with regard to timing of follow-up FCOI reports with examples of when such reports may be required as well as reference to the proposed management plan and mitigation plan requirements addressed above in the discussion of subsection (a). Specifically, the regulation would require that for any SFI that the Institution identifies as conflicting subsequent to the Institution's initial FCOI report during an ongoing PHS-funded research project (*e.g.,* upon the participation of a new Investigator in the research project), the Institution shall provide to the PHS Awarding Component, within sixty days, a FCOI report regarding the FCOI and ensure that the Institution has implemented a management plan in accordance with the regulations. Where such FCOI report involves a SFI that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution (*e.g.,* was not timely reviewed or reported by a subrecipient), the Institution also would be required to provide with its FCOI report the mitigation plan implemented by the Institution to determine whether any PHS-funded research, or portion thereof, conducted prior to the identification and management of the FCOI was biased in the design, conduct, or reporting of such research.

In the ANPRM, we requested comment on whether Institutions should be required to report additional information to the PHS Awarding Component and if so, what kind of information would provide valuable data to the PHS Awarding Component in evaluating these reports and the potential risk of bias in the conduct of research. Many respondents supported such a requirement and indicated that

reporting additional information would allow for enhanced oversight by the PHS Awarding Component.

Consistent with these public comments, we are proposing a new subsection (b)(3) that would identify the information that must be included in the FCOI reports required under subsections (b)(1) and (b)(2), described above. Specifically, any FCOI report required under these subsections would be required to include sufficient information to enable the PHS Awarding Component to understand the nature and extent of the financial conflict, and to assess the appropriateness of the Institution's management plan. As proposed, elements of the FCOI report shall include, but are not limited to the following:

- Project/Contract number;
- PD/PI or Contact PD/PI if multiple PD/PI model is used;
- Name of the Investigator with the FCOI;
- Nature of the financial interest (*e.g.,* equity, consulting fee, travel reimbursement, honorarium);
- Value of the financial interest (dollar ranges would be permissible: $0–$4,999; $5,000–$9,999; $10,000–$19,999; amounts between $20,000–X$100,000 by increments of $20,000; amounts above $100,000 by increments of $50,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value;
- A description of how the financial interest relates to the PHS-funded research and the basis for the Institution's determination that the financial interest conflicts with such research;
- A description of the key elements of the Institution's management plan, including:
  - The role and function of the conflicted Investigator in the research project;
  - The rationale for including the conflicted Investigator in the research project;
  - The conditions of the management plan;
  - How the management plan will safeguard objectivity in the research project;
  - Confirmation of the Investigator's agreement to the management plan;
  - How the management plan will be monitored to ensure Investigator compliance;
  - Other information as needed.

We welcome public comment on the FCOI report elements that we propose to include in the new subsection (b)(3).

We propose to introduce in a new subsection (b)(4) a new requirement to provide follow-up reports in cases in which an FCOI has been previously identified and reported. Specifically, the regulation would require that for any FCOI previously reported by the Institution with regard to an ongoing PHS-funded research project, the Institution shall provide an annual FCOI report that addresses the status of the FCOI and any changes to the management plan to the PHS Awarding Component for the duration of the PHS-funded research project. The annual FCOI report would be required to specify whether the financial conflict is still being managed or explain why the FCOI no longer exists. The regulations would require the Institution to provide annual FCOI reports to the PHS Awarding Component for the duration of the project period (including extensions with or without funds) in the time and manner specified by the PHS Awarding Component. If this provision were to be implemented as part of a Final Rule, we anticipate that PHS Awarding Components would provide guidance to Institutions regarding the specific mechanics for filing annual FCOI reports.

Finally, we propose in a new subsection (b)(5) language with regard to FCOI reporting that is similar to the language for FCOI management proposed in the redesignated subsection (a)(5), described above. Namely, we propose that in addition to the types of financial conflicts of interest as defined in the regulations that must be reported pursuant to this section, an Institution may require the reporting of other FCOI, as the Institution deems appropriate.

Remedies (42 CFR 50.606, 45 CFR 94.6)

We propose limited revisions to the existing regulation regarding remedies. Subsection (a) currently provides that if the failure of an Investigator to comply with the conflict of interest policy of the Institution has biased the design, conduct, or reporting of the PHS-funded research, the Institution must promptly notify the PHS Awarding Component of the corrective action taken or to be taken. We propose to revise this requirement such that it applies if an Investigator's failure to comply with an Institution's FCOI policy or a FCOI management plan appears to have biased the design, conduct, or reporting of the PHS-funded research.

In subsection (b), we propose to incorporate language regarding the Department's right of inquiry and access to records that is consistent with the proposed certification provision in 42 CFR 50.604(k)(4), 45 CFR 94.4(k)(4), discussed above. Specifically, subsection (b) would provide that the HHS may inquire at any time (*i.e.,* before, during, or after award) into any Investigator disclosure of financial interests and the Institution's review of, or response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of a FCOI. Similar to the existing regulations, an Institution would be required to submit, or permit on site review of, all records pertinent to compliance with the regulations.

Subsection (b) would also be revised to clarify the types of actions that may be taken if a PHS Awarding Component decides that a particular FCOI will bias the objectivity of the PHS-funded research to such an extent that further corrective action is needed or that the Institution has not managed the FCOI in accordance with the regulations. With regard to grants and cooperative agreements, in particular, subsection 50.606(b) would specify that the PHS Awarding Component may determine that imposition of special award conditions under 45 CFR 74.14 or suspension of funding or other enforcement action under 45 CFR 74.62 is necessary until the matter is resolved. Correspondingly, subsection 94.6(b) would specify for PHS contracts that the PHS Awarding Component may determine that issuance of a Stop Work Order by the Contracting Officer or other enforcement action is necessary until the matter is resolved.

We propose to revise subsection (c) to add that in any case in which the HHS determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a FCOI that was not managed or reported by the Institution as required by the regulations, the Institution must not only require the Investigator involved to disclose the FCOI in each public presentation of the results of the research, but also to request an addendum to previously published presentations.

We propose additional minor revisions to this section as part of a broader effort to improve internal consistency with regard to the use of various terms and phrases throughout these regulations and, where feasible, consistency between the text of 42 CFR Part 50, Subpart F, and 45 CFR Part 94.

Other HHS Regulations That Apply (42 CFR 50.607)

We propose minor revisions to the list of other HHS regulations that apply to

update changes that have been made in the CFR location or title of the existing references in this section. In the course of our review, we considered whether this section was necessary, or whether it should be deleted as potentially confusing to readers with regard to the scope of additional regulations that may apply to a given Institution or Investigator. We welcome comment on whether the regulations should be further revised to delete this section.

III. Institutional Conflict of Interest

Institutional conflict of interest is a subject that is not specifically addressed in the current regulations. Because this is a topic of increasing interest to the Department as well as in the research community, we invited public comment in the ANPRM on the possible revision of the regulations to address institutional conflict of interest. In particular, we asked (a) how "institutional conflict of interest" would be defined, and (b) what an institutional conflict of interest policy would address in order to assure the PHS of objectivity in research.

The comments that we received in response to these questions demonstrated a variety of viewpoints on this complex issue and, in particular, the extensive differences in administrative structure among Institutions that receive PHS funding. As a result, we believe that further careful consideration is necessary before PHS regulations could be formulated that would address the subject of institutional conflict of interest in the same comprehensive manner as the proposed regulations regarding Investigator FCOI. Because we believe it is important to revise the existing regulations regarding Investigator FCOI in a timely manner, our proposed revisions to the text of the regulations are limited to the subject of Investigator FCOI.

Notwithstanding this limitation, we welcome comment on whether the regulations should be further revised to require Institutions, at a minimum, to adopt some type of policy on institutional conflict of interest, even if the scope and elements of the policy remain undefined in the regulations. For example, in addition to the changes we have proposed herein to subsection (a) of 42 CFR 50.604 and 45 CFR 94.4, discussed above, this subsection could be further revised to require that each Institution shall maintain up-to-date, written, enforced policies on Investigator financial conflicts of interest and institutional conflict of interest that comply with this subpart, and make such policies available via a publicly accessible Web site. If this additional revision to subsection (a) were to be incorporated, further corresponding revisions to the regulations would be made as necessary, *e.g.,* to the Purpose section (42 CFR 50.601, 45 CFR 94.1).

Whether or not final regulations includes further revisions to address institutional conflict of interest, the Department will continue to consider the issue carefully and may propose in the future more comprehensive revisions to the regulations to address this subject.

IV. Regulatory Impact Analyses (RIA)

The following is provided as public information.

Analysis of Impacts

We have examined the impacts of the proposed amendments to 42 CFR Part 50 Subpart F and 45 CFR Part 94 under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866, Regulatory Planning and Review, directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order defines an economically significant regulatory action as one that would have an annual effect on the economy of $100 million or more. Based on our analyses, we believe that the proposed amendments to the regulations do not constitute an economically significant regulatory action under this definition.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. For the purposes of this analysis, small entities include small business concerns as defined by the SBA, usually businesses with fewer than 500 employees. Approximately 2800 [12] such organizations apply for research funding annually, of which approximately 1300 [13] are awarded funds. The only proposed change to the current regulations that pertains to applicant organizations is the proposed removal of the exemption for SBIR/STTR Program Phase I applications in sections 50.602 and 94.4, respectively. This would affect approximately 2000 small business concerns that apply for SBIR/STTR Program Phase I funding. All other proposed changes to the regulations apply only to the approximately 1200 small business concerns that receive PHS funding (under both the SBIR/STTR Program Phase I and Phase II programs). The cost of implementing the amended regulations is an allowable cost eligible for reimbursement as a Facilities and Administrative cost on PHS-supported grants, cooperative agreements and contracts. This generally offsets the cost burdens of implementation. Therefore, we do not believe that the proposed changes to the regulations would have a significant economic impact on a substantial number of small entities. Our analysis is further supported by the small number of FCOI reports submitted to NIH by small business concerns—four reports were submitted in FY2008 and ten in FY2009. Finally, we considered the impact of the proposed requirement for Investigator training every two years on small entities. For the current regulation, NIH developed training materials that Institutions, including those that small businesses, can use which are available on the NIH Web site at *http://grants.nih.gov/grants/policy/coi/index.htm.* NIH will continue to update the training materials when the Final Rule is published to ameliorate the burden on Institutions, including small businesses.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation with base year of 1995) in any one year." The current inflation-adjusted statutory threshold is approximately $142 million.[14] The agency does not expect that the proposed amendments to the regulations will result in any 1-year expenditure that would meet or exceed this amount.

Though the proposed amendments will not result in the expenditures listed above, we do discuss the effects of the amendments elsewhere in this preamble.

[12] All applicant Institution numbers are based on the number of Institutions that applied for NIH funding in FY2008.

[13] All awardee Institution numbers are based on the number of Institutions that were awarded NIH funding in FY2008.

[14] Bureau of Labor Statistics inflation calculator.

Benefits

The proposed amendments to the regulations on the Responsibility of Applicants for Promoting Objectivity in Research for which PHS Funding is Sought (42 CFR Part 50, Subpart F) and Responsible Prospective Contractors (45 CFR Part 94) would expand and add transparency to investigator disclosure of Significant Financial Interests as well as enhance regulatory compliance and effective oversight of financial conflicts of interest.

Costs

Approximately 5000 Institutions that apply for PHS funding annually would be subject to the amended regulations. The only proposed change to the current regulations that pertains to applicant organizations, however, pertains to a subset of applicant organizations and that is the proposed removal of the exemption for SBIR/STTR Program Phase I applications in sections 50.602 and 94.4, respectively, which would affect approximately 2000 small business concerns. The remaining proposed amendments would affect the approximately 2800 organizations (of all types, including small businesses) that are awarded PHS funding annually and, through the implementation of the regulations by the Institutions, to the estimated 40,500 Investigators participating in PHS-funded research that have Significant Financial Interests. The cost of implementing the amended regulations is an allowable cost eligible for reimbursement as a Facilities and Administrative cost on PHS supported grants, cooperative agreements and contracts. This generally offsets the cost burdens of implementation for the affected Institutions and through their implementation of the regulations, to the Investigators. That said, we are including a description of the projected costs of the proposed amendments to the regulations for general information.

42 CFR Part 50 Subpart F/45 CFR Part 94	New proposed requirement?	Number of respondents	Frequency of response (annual)	Estimated cost per response [15]	Estimated annual cost [16]
50.602/94.2	Only for SBIR/STTR Phase I applicants.	Total: ~5,000 applicant Institutions and 2,800 awardee institutions [17] and an estimated 40,500 investigators. New: Approximately 2,000 applicant Institutions and 700 awardee Institutions.[18]	NA	NA	Total estimated annual cost $$12,047,525.[19]
50.604/94.4					
(a)	Only making the policy public.	2,800 [20]	1	$665	$1,862,000.
(b)	Only the training component is new.	Institutions: 2,800 [21] Investigators: 40,500.[22]	Institutions: 1 Investigators: 0.5	Institutions: $105 Investigators: $17.5 Total: $122.5	Institutions: $294,000. Investigators: $708,750. Total: $1,002,750.
(c)(1)	n—clarification of current requirements.	700 [23]	1	$35.00	$24,500.
(d)	y	2,800 [24]	1	$35	$98,000.
(e)(1)	n but scope has changed.	40,500 [25]	1	$70	$2,835,000.
(e)(2)	n	40,500	1	$17.50 [26]	$708,750.
(e)(3)	n	1,000 [27]	1	$17.50	$17,500.
(f)	n but scope has changed.	2,800 awardee Institutions.	1	$35.00	$98,000.
(i)	n	2,800 awardee Institutions.	1	$140	$392,000.
50.605/94.5					
(a)(1)	Requirement to develop a management plan.	2,800 awardee institutions.[28]	1	$35 for review of 40,500 disclosures and $2,800 for developing management plan for 1,000 identified FCOI.	$4,217,500.[29]
(a)(2)	n	1,000 [30]	NA [31]	NA	NA.
(a)(3)	y	500 [32]	1	$105	$52,200.
(a)(3)(i)	n	50 [33]	1	$2,800 [34]	$140,000.
(a)(3)(ii)	y	50 [35]	1	$280 [36]	$14,000.
(a)(4)	y	1,000 [37]	12	$35	$420,000.
(a)(5)	y	2,800	1	$35 [38]	$98,000.
(b)(1)	n but amount of information reported has changed.	Included in 50.605(b)(3)/94.5 (b)(3) below.	NA	NA	NA.
(b)(2)	y	100 [39]	1	$70	$7,000.
(b)(3)	y	1,000	1	$35	$35,000.[40]
(b)(4)	n but scope has been clarified.	1,000	1	$17.50 [41]	$17,500.
50.606/94.6					

42 CFR Part 50 Subpart F/45 CFR Part 94	New proposed requirement?	Number of respondents	Frequency of response (annual)	Estimated cost per response [15]	Estimated annual cost [16]
(a)	n—but scope has been clarified.	20 [42]	1	$350	$7,000.
(c)	n—only the addendum to previously published presentations is new.	50 [43]	3 [44]	$10.50	$525.

Alternatives

The key alternative to the proposed amendment of these regulations would be to continue to operate under the current regulations. In the intervening years since the regulation was promulgated, Investigator collaborations have become more complex and public scrutiny has increased significantly creating an environment that would benefit from a regulation with more effective means for management and oversight. If we continue to operate under the current regulations, we would then lose the opportunity to implement enhanced institutional management of Investigator financial conflicts of interests related to PHS-funded research, increased oversight by the PHS funding component, and enhanced transparency. We believe that the incremental increase in the cost of implementing the proposed regulation is outweighed by the benefits of these changes and that the proposed regulation will strengthen public trust in PHS-funded research. With regard to alternative approaches to particular requirements in the regulations, we have indicated in various provisions of the preamble to this Notice of Proposed Rulemaking the basis for the Department's proposed approach versus alternatives. (*See, e.g.,* section III regarding institutional conflicts of interest.)

Paperwork Reduction Act

This proposed rule contains requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35). Sections 50.604(a), 50.604(b), 50.604(c)(1), 50.604(d), 50.604(e)(1), 50.604(e)(2), 50.604(e)(3), 50.604(f), 50.605(a)(1), 50.605(a)(3), 50.605(a)(3)(i), 50.605(a)(3)(ii), 50.605(a)(4), 50.605(a)(5), 50.605(b)(1), 50.605(b)(2), 50.605(b)(3), 50.605(b)(4), 50.606(a), 50.606(c); 94.4(a), 94.4(b), 94.4(c)(1), 94.4(d), 94.4(e)(1), 94.4(e)(2), 94.4(e)(3), 94.4(f), 94.5(a)(1), 94.5 (a)(3), 94.5(a)(3)(i), 94.5(a)(3)(ii), 94.5(a)(4), 94.5(a)(5), 94.5(b)(1), 94.5(b)(2), 94.5(b)(3), 94.5(b)(4), 94.6(a), and 94.6(c) contain reporting and information collection requirements that are subject to OMB approval under the Paperwork Reduction Act.

Sections 50.604(i), and 94.4(i), contain recordkeeping requirements that are subject to OMB review under the Paperwork Reduction Act. The title, description, and respondent description of the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Other organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should send their comments to: (1) Mikia Currie, Project Clearance Officer, National Institutes of Health, Rockledge Center 1, 6705 Rockledge Drive, Room 3509, Bethesda, MD 20817, telephone 301–594–7949 (not a toll-free number); and (2) the Office of Information and Regulatory Affairs, OMB, *OIRA_submission@omb.eop* or by fax to 202–395–6974, and mark "*Attention:* Desk Officer for the National Institutes of Health, Department of Health and Human Services." After we obtain OMB

[15] Average burden hours × $35/hour based on recent NIH cost analyses.

[16] Number of respondents × estimated cost per response.

[17] Based on FY2008 numbers.

[18] Will be newly covered by the regulations under the proposed expansion to include the SBIR/STTR phase I program.

[19] Sum of all the columns below.

[20] Assumes 2,800 awardee Institutions and 19 hours per institution for formulating and maintaining the policy. Also assumes that all awardee Institutions already maintain a public Web site. Therefore, posting the policy to the Web site is an incremental cost.

[21] Assumes that 2,800 awardee institutions: 1. Inform investigators about the policy on an annual basis by sending a notification to all investigators = 1 hour and 2. Annually adapt NIH-provided training materials to Institutional needs = 2 hours.

[22] Assumes 40,500 Investigators undergo 1 hour of training every two years. This refers to FCOI training only and is based on the use of training materials developed by the NIH and adapted to the Institution's needs.

[23] An estimated maximum 25% of Institutions may have sub-recipients in any one year—assuming 1 hour per Institution to incorporate the requirement of the regulations into an already existing written agreement.

[24] Assumes that 2,800 awardee institutions solicit disclosures on an annual basis by sending a notification to all investigators.

[25] The financial disclosure burden estimate is based upon an investigator figure of 40,500 with an average response time of 2 hours.

[26] Assumes that updating a disclosure takes less time/effort and therefore costs less than creating a new one.

[27] Assumes that only a small number of the 40,500 investigators will have a new SFI in any year.

[28] Although not more than 1,000 reports of Conflict of Interest are expected annually, the 2,800 responding institutions must review all financial disclosures associated with PHS-funded awards to determine whether any conflicts of interest exist. Thus, the review cost of $1,417,500 is based upon estimates that it will take on the average 1 hour to review each of 40,500 financial disclosures associated with PHS-funded awards. The cost for developing a management plan for identified FCOI is estimated at 80 hours × 1,000 cases × $35/hour = $2,800,000.

[29] $4,252,500 for review plus $2,800,000 for developing management plans = $7,052,500.

[30] Based on 50.604/94.4 (e)(3) above.

[31] The cost is included in 50.605/94.5 (b)(2) below.

[32] Assumes that this is a rare occurrence, based on prior experience.

[33] Assumes only a fraction of the newly identified SFIs will constitute FCOI.

[34] Development of management plan.

[35] Assumes only a fraction of the newly identified SFIs will constitute FCOI.

[36] Assumes the mitigation plan will be adapted from the management plan developed in 50.605/94.5 (a)(3)(i) above and therefore will cost less than developing an entirely new plan.

[37] Based on previous assumption of 1,000 FCOI reports annually.

[38] Assumes that all awardee Institutions already maintain a public Web site. Adding the required information is an incremental cost. However, updating annually does have a cost.

[39] The cost of subsequent reports of conflicts is significantly less, because we do not expect many additional reportable conflicts and there will be only a limited number of disclosures to review.

[40] Assumes 1,000 FCOI reports annually × 1 hour × $35/hour to prepare the report/complete an NIH-provided web form.

[41] Assumes it takes less time to update a report than to create a new one.

[42] This was originally estimated in the 1995 Final Rule to be no more than 5 instances that the failure of an investigator to comply with the institution's conflict of interest policy has biased the design, conduct or reporting of the research. "Objectivity in Research, Final Rule" 60 FR 132 (July 11, 1995) pps. 35810–35819. This estimate, and others were increased in 2002 "due to increased numbers of institutions and investigators."

[43] Number based on 50.605/94.5 (a)(3)(i)—of those only a fraction will relate to a project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment, but we are calculating the maximum assumed cost.

[44] Assumes an average of 3 publications annually.

approval, we will publish the OMB control number in the **Federal Register**.

Following are details of the estimated burden of implementing the proposed regulations.

42 CFR Part 50 Subpart F/45 CFR Part 94	New proposed requirement?	Number of respondents	Frequency of response (annual)	Average burden hours	Annual burden hours [45]
50.602/94.2	Only for SBIR/STTR Phase I applicants.	Total: ~5,000 applicant Institutions and 2,800 awardee institutions [46] and an estimated 40,500 investigators. New: Approximately 2,000 applicant Institutions and 700 awardee Institutions.[47]	NA	NA	Total estimated burden hours: 344,215.[48]
50.604/94.4					
(a)	Only making the policy public.	2,800 [49]	1	19	53,200.
(b)	Only the training component.	Institutions: 2,800 [50] Investigators: 40,500.[51]	Institutions: 1 Investigators: 0.5	Institutions: 3 Investigators: 1	Institutions: 8,400. Investigators: 20,250.
(c)(1)	n-clarification of current requirements.	700 [52]	1	1	700.
(d)	y	2,800 [53]	1	1	2,800.
(e)(1)	n but scope has changed.	40,500 [54]	1	2	81,000.
(e)(2)	n	40,500	1	0.5 [55]	20,250.
(e)(3)	n	1,000 [56]	1	0.5	500.
(f)	n but scope has changed.	2,800 awardee Institutions.	1	1	2,800.
(i)	n	2,800 awardee Institutions.	1	4	11,200.
50.605/94.5					
(a)(1)	Requirement to develop a management plan.	2,800 awardee institutions.[57]	1	1 hour per disclosure to review plus 80 hours per identified FCOI to develop management plan.	120,500.[58]
(a)(2)	n	1,000 [59]	NA [60]	NA	NA.
(a)(3)	y	500 [61]	1	3	1500.
(a)(3)(i)	n	50 [62]	1	80 [63]	4,000.
(a)(3)(ii)	y	50 [64]	1	8 [65]	400.
(a)(4)	y	1,000 [66]	12	1	12,000.
(a)(5)	y	2,800	1 [67]	1	2,800.
(b)(1)	n but amount of information reported has changed.	Included in 50.605(b)(3)/94.5 (b)(3) below.	NA	NA	NA.
(b)(2)	y	100 [68]	1	2	200.
(b)(3)	y	1,000	1	1	1,000.[69]
(b)(4)	n-scope has been clarified.	1,000	1	0.5 [70]	500.
50.606/94.6					
(a)	n-scope has been clarified.	20 [71]	1	10	200.
(c)	n-only the addendum to previously published presentations.	50 [72]	3 [73]	0.3	15.

Environmental Impact

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

[45] Number of respondents × average burden hours × frequency of response.

[46] Based on FY2008 numbers.

[47] Will be newly covered by the regulations under the proposed expansion to include the SBIR/STTR phase I program.

[48] Sum of all the columns below.

[49] Assumes 2,800 awardee Institutions and 19 hours per institution for formulating and maintaining the policy. Also assumes that all awardee Institutions already maintain a public Web site. Therefore, posting the policy to the Web site is an incremental burden.

[50] Assumes that 2,800 awardee institutions: 1. Inform investigators about the policy on an annual basis by sending a notification to all investigators

Continued

= 1 hour, and 2. Annually adapt NIH-provided training materials to Institutional needs = 2 hours.

[51] Assumes 40,500 Investigators undergo 1 hour of training every two years. This refers to FCOI training only and is based on the use of training materials developed by the NIH and adapted to the Institution's needs.

[52] An estimated maximum 25% of Institutions may have sub-recipients in any one year—assuming 1 hour per Institution to incorporate the requirement of the regulations into an already existing written agreement.

[53] Assumes that 2,800 awardee institutions solicit disclosures on an annual basis by sending a notification to all investigators.

[54] The financial disclosure burden estimate is based upon an investigator figure of 40,500 with an average response time of 2 hours.

[55] Assumes that updating a disclosure takes less time/effort than creating a new one.

[56] Assumes that only a small number of the 40,500 investigators will have a new SFI in any year.

[57] Although not more than 1,000 reports of Conflict of Interest are expected annually, the 2,800 responding institutions must review all financial disclosures associated with PHS-funded awards to determine whether any conflicts of interest exist. Thus, the review burden of 40,500 hours is based upon estimates that it will take on the average 1 hour for an institutional official to review each of 40,500 financial disclosures associated with PHS funded awards.. The burden for developing a management plan for identified FCOI is estimated at 80 hours × 1,000 cases = 80,000 hours.

[58] 40,500 for reviewing disclosures from 40,500 Investigators plus 80,000 for developing management plans for 1,000 identified FCOI.

[59] Based on 50.604/94.4 (e)(3) above.

[60] The burden is included in 50.605/94.5 (b)(2) below.

[61] Assumes that this is a rare occurrence, based on prior experience.

[62] Assumes only a fraction of the newly identified SFIs will constitute FCOI.

[63] Development of management plan.

[64] Assumes only a fraction of the newly identified SFIs will constitute FCOI.

[65] Assumes the mitigation plan will be adapted from the management plan developed in 50.605/94.5(a)(3)(i) above and therefore will take less time/effort than developing an entirely new plan.

[66] Based on previous assumption of 1,000 FCOI reports annually.

[67] Assumes that all awardee Institutions already maintain a public Web site. Adding the required information is an incremental burden. However, updating annually does have a burden.

[68] The burden for subsequent reports of conflicts is significantly less, because we do not expect many additional reportable conflicts and there will be only a limited number of disclosures to review.

[69] Assumes 1,000 FCOI reports annually × 1 hour to prepare the report/complete an NIH-provided Web form.

[70] Assumes it takes less time to update a report than to create a new one.

[71] This burden was originally estimated in the 1995 Final Rule to be no more than 5 instances that the failure of an investigator to comply with the institution's conflict of interest policy has biased the design, conduct or reporting of the research. "Objectivity in Research, Final Rule" 60 FR 132 (July 11, 1995) pps. 35810–35819. This burden estimate and others was increased in 2002 "due to increased numbers of institutions and investigators."

[72] Number based on 50.605/94.5(a)(3)(i)—of those only a fraction will relate to a project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment, but we are calculating the maximum assumed burden/cost.

[73] Assumes an average of 3 publications annually.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance numbered programs applicable to this proposed rule are:

93.113—Environmental Health
93.121—Oral Diseases and Disorders Research
93.142—NIEHS Hazardous Waste Worker Health and Safety Training
93.143—NIEHS Superfund Hazardous Substances—Basic Research and Education
93.172—Human Genome Research
93.173—Research Related to Deafness and Communication Disorders
93.187—Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds
93.209—Contraception and Infertility Research Loan Repayment Program
93.213—Research and Training in Complementary and Alternative Medicine
93.220—Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds
93.233—National Center on Sleep Disorders Research
93.242—Mental Health Research Grants
93.271—Alcohol Research Career Development Awards for Scientists and Clinicians
93.272—Alcohol National Research Service Awards for Research Training
93.273—Alcohol Research Programs
93.279—Drug Abuse and Addiction Research Programs
93.280—National Institutes of Health Loan Repayment Program for Clinical Researchers
93.281—Mental Health Research Career/Scientist Development Awards
93.282—Mental Health National Research Service Awards for Research Training
93.285—National Institutes of Health Pediatric Research Loan Repayment Program
93.286—Discovery and Applied Research for Technological Innovations to Improve Human Health
93.307—Minority Health and Health Disparities Research
93.310—Trans-NIH Research Support
93.361—Nursing Research
93.389—National Center for Research Resources
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 Grants
93.398—Cancer Research Manpower
93.399—Cancer Control
93.701—Trans-NIH Recovery Act Research Support RECOVERY
93.702—National Center for Research Resources, Recovery Act Construction Support Recovery
93.837—Cardiovascular Diseases Research
93.838—Lung Diseases Research
93.839—Blood Diseases and Resources Research
93.846—Arthritis, Musculoskeletal and Skin Diseases Research
93.847—Diabetes, Digestive, and Kidney Diseases Extramural Research
93.853—Extramural Research Programs in the Neurosciences and Neurological Disorders
93.855—Allergy, Immunology and Transplantation Research
93.856—Microbiology and Infectious Diseases Research
93.859—Biomedical Research and Research Training
93.865—Child Health and Human Development Extramural Research
93.866—Aging Research
93.867—Vision Research
93.879—Medical Library Assistance
93.891—Alcohol Research Center Grants
93.989—International Research and Research Training

List of Subjects

42 CFR Part 50
45 CFR Part 94

Colleges and universities, Conflict of interests, Contracts, Financial disclosure, Grants-health, Grants programs, Non-profit organizations, Research, Scientists, Small businesses.

For the reasons set forth in the preamble, the Department proposes to amend 42 CFR chapter I, subchapter D, part 50, subpart F and 45 CFR subtitle A, subchapter A, part 94 as follows:

TITLE 42—GRANTS AND AGREEMENTS

PART 50—POLICIES OF GENERAL APPLICABILITY

1. Revise Subpart F to read as follows:

Subpart F—Promoting Objectivity in Research

Sec.
50.601 Purpose.
50.602 Applicability.
50.603 Definitions.
50.604 Responsibilities of Institutions regarding Investigator financial conflicts of interest.
50.605 Management and reporting of financial conflicts of interest.
50.606 Remedies.
50.607 Other HHS regulations that apply.

Subpart F—Promoting Objectivity in Research

Authority: 42 U.S.C. 216, 289b–1, 299c–4; Sec. 219, Tit. II, Div. D, Pub. L. 111–117, 123 Stat. 3034.

§ 50.601 Purpose.

This subpart promotes objectivity in research by establishing standards that provide a reasonable expectation that

the design, conduct, and reporting of research funded under PHS grants or cooperative agreements is free from bias resulting from Investigator financial conflicts of interest.

§ 50.602 Applicability.

This subpart is applicable to each Institution that is applying for, or that receives, PHS research funding by means of a grant or cooperative agreement and, through the implementation of this subpart by the Institution, to each Investigator participating in such research. In those few cases where an individual, rather than an Institution, is applying for, or receives, PHS research funding, PHS Awarding Components will make case-by-case determinations on the steps to be taken, consistent with this subpart, to provide a reasonable expectation that the design, conduct, and reporting of the research will be free from bias resulting from a financial conflict of interest of the individual.

§ 50.603 Definitions.

As used in this subpart:

Disclosure of significant financial interests means an Investigator's disclosure of significant financial interests to an Institution.

FCOI report means an Institution's report of a financial conflict of interest to a PHS Awarding Component.

Financial conflict of interest means a significant financial interest that could directly and significantly affect the design, conduct, or reporting of PHS-funded research.

Financial interest means anything of monetary value or potential monetary value.

HHS means the United States Department of Health and Human Services, and any components of the Department to which the authority involved may be delegated.

Institution means any domestic or foreign, public or private, entity or organization (excluding a Federal agency) that is applying for, or that receives, PHS research funding.

Institutional responsibilities means an Investigator's professional responsibilities on behalf of the Institution including, but not limited to, activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards.

Investigator means the PD/PI and any other person, regardless of title or position, who is responsible for the design, conduct, or reporting of research funded by the PHS, or proposed for such funding, including persons who are subgrantees, contractors, collaborators, or consultants.

Manage means to take action to address a financial conflict of interest, which includes reducing or eliminating the financial conflict of interest, to ensure that the design, conduct, or reporting of research is free from bias or the appearance of bias.

PD/PI means a project director or principal investigator of a PHS-funded research project.

PHS means the Public Health Service, an operating division of the U.S. Department of Health and Human Services, and any components of the PHS to which the authority involved may be delegated, including the National Institutes of Health.

PHS Awarding Component means the organizational unit of the PHS that funds the research that is subject to this subpart.

Public Health Service Act or *PHS Act* means the statute codified at 42 U.S.C. 201 *et seq.*

Research means a systematic investigation designed to develop or contribute to generalizable knowledge relating broadly to public health, including behavioral and social-sciences research. The term encompasses basic and applied research and product development. As used in this subpart, the term includes any such activity for which research funding is available from a PHS Awarding Component through a grant, cooperative agreement, or contract, whether authorized under the PHS Act or other statutory authority, such as a research grant, career development award, center grant, individual fellowship award, infrastructure award, institutional training grant, program project, or research resources award.

Significant financial interest means, except as otherwise specified in paragraph (1) of this definition:

(1) A financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities:

(i) With regard to any publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds $5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (*e.g.,* consulting fees, honoraria, paid authorship, travel reimbursement); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;

(ii) With regard to any non-publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds $5,000, or the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (*e.g.,* stock, stock option, or other ownership interest); or

(iii) Intellectual property rights (*e.g.,* patents, copyrights), royalties from such rights, and agreements to share in royalties related to such rights.

(2) The term *significant financial interest* does not include the following types of financial interests: Salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution; any ownership interest in the Institution held by the Investigator, if the Institution is a commercial or for-profit organization; income from seminars, lectures, or teaching engagements sponsored by a federal, state, or local government agency, or an institution of higher education as defined at 20 U.S.C. 1001(a); or income from service on advisory committees or review panels for a federal, state, or local government agency, or an institution of higher education as defined at 20 U.S.C. 1001(a).

§ 50.604 Responsibilities of Institutions regarding Investigator financial conflicts of interest.

Each Institution shall:

(a) Maintain an up-to-date, written, enforced policy on financial conflicts of interest that complies with this subpart, and make such policy available via a publicly accessible Web site. If an Institution maintains a policy on financial conflicts of interest that includes standards that are more stringent than this subpart (*e.g.,* that require a more extensive disclosure of financial interests), the Institution shall adhere to its policy and shall provide FCOI reports regarding identified financial conflicts of interest to the PHS Awarding Component in accordance with the Institution's own standards.

(b) Inform each Investigator of the Institution's policy on financial conflicts of interest, the Investigator's responsibilities regarding disclosure of significant financial interests, and of

these regulations, and require each Investigator to complete training regarding same prior to engaging in PHS-funded research and, thereafter, at least once every two years.

(c) If the Institution carries out the PHS-funded research through a subrecipient (*e.g.,* subgrantee, contractor, or collaborator):

(1) Incorporate as part of a written agreement with the subrecipient legally enforceable terms that establish whether the financial conflicts of interest policy of the awardee Institution or that of the subrecipient applies to the subrecipient's Investigators.

(i) If the subrecipient's financial conflicts of interest policy applies to subrecipient Investigators, the subrecipient shall certify as part of the agreement that its policy complies with this subpart. If the subrecipient cannot provide such certification, the agreement shall state that subrecipient Investigators are subject to the financial conflicts of interest policy of the awardee Institution;

(ii) If the subrecipient's financial conflicts of interest policy applies to subrecipient Investigators, the agreement shall specify time period(s) for the subrecipient to report all identified financial conflicts of interest to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to provide timely FCOI reports, as necessary, to the PHS;

(iii) If subrecipient Investigators are subject to the awardee Institution's financial conflicts of interest policy, the agreement shall specify time period(s) for the subrecipient to submit all Investigator disclosures of significant financial interests to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to comply timely with its review, management, and reporting obligations under this subpart.

(2) Provide FCOI reports to the PHS regarding all financial conflicts of interest of all subrecipient Investigators consistent with this subpart.

(d) Designate an institutional official(s), to solicit and review disclosures of significant financial interests from each Investigator who is planning to participate in the PHS-funded research.

(e)(1) Require that each Investigator who is planning to participate in the PHS-funded research disclose to the Institution's designated official(s) the Investigator's significant financial interests (and those of the Investigator's spouse and dependent children).

(2) Require that each Investigator who is participating in the PHS-funded research submit an updated disclosure of significant financial interests at least annually during the period of the award. Such disclosure shall include any information that was not disclosed initially to the Institution pursuant to paragraph (e)(1) of this section, or in a subsequent disclosure of significant financial interests, and shall include updated information regarding any previously-disclosed significant financial interest (*e.g.,* the updated value of a previously-disclosed equity interest).

(3) Require that each Investigator who is participating in the PHS-funded research submit an updated disclosure of significant financial interests within thirty days of acquiring a new significant financial interest (*e.g.,* through purchase, marriage, or inheritance).

(f) Provide guidelines consistent with this subpart for the designated institutional officials to determine whether an Investigator's significant financial interest is related to PHS-funded research and, if so related, whether the significant financial interest is a financial conflict of interest. An Investigator's significant financial interest is related to PHS-funded research when the Institution, through its designated officials, reasonably determines that the significant financial interest: Appears to be affected by the PHS-funded research; or is in an entity whose financial interest appears to be affected by the research. A financial conflict of interest exists when the Institution, through its designated officials, reasonably determines that the significant financial interest could directly and significantly affect the design, conduct, or reporting of the PHS-funded research.

(g) Take such actions as necessary to manage financial conflicts of interest, including any financial conflicts of a subrecipient Investigator pursuant to paragraph (c) of this section. Management of an identified financial conflict of interest requires development and implementation of a management plan and, if necessary, a mitigation plan pursuant to § 50.605(a).

(h) Provide initial and ongoing FCOI reports to the PHS as required pursuant to § 50.605(b).

(i) Maintain records relating to all Investigator disclosures of financial interests and the Institution's review of, or response to, such disclosures (whether or not a disclosure resulted in the Institution's determination of a financial conflict of interest), for at least three years from the date of submission of the final expenditures report or, where applicable, from other dates specified in 45 CFR 74.53(b) for different situations.

(j) Establish adequate enforcement mechanisms and provide for employee sanctions or other administrative actions to ensure Investigator compliance as appropriate.

(k) Certify, in each application for funding to which this subpart applies, that the Institution:

(1) Has in effect at that Institution an up-to-date, written, and enforced administrative process to identify and manage financial conflicts of interest with respect to all research projects for which funding is sought or received from the PHS;

(2) Shall promote and enforce Investigator compliance with this subpart's requirements including those pertaining to disclosure of significant financial interests;

(3) Shall manage financial conflicts of interest and provide initial and ongoing FCOI reports to the PHS consistent with this subpart;

(4) Agrees to make information available, promptly upon request, to the HHS relating to any Investigator disclosure of financial interests and the Institution's review of, or response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of a financial conflict of interest; and

(5) Shall fully comply with the requirements of this subpart.

§ 50.605 Management and reporting of financial conflicts of interest.

(a) Management of financial conflicts of interest.

(1) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the designated officials of an Institution shall, consistent with § 50.604(f): Review all Investigator disclosures of significant financial interests; determine whether any significant financial interests relate to PHS-funded research; determine whether a financial conflict of interest exists; and, if so, develop and implement a management plan that shall specify the actions that have been, and shall be, taken to manage such financial conflict of interest. Examples of conditions or restrictions that might be imposed to manage a financial conflict of interest include, but are not limited to:

(i) Public disclosure of financial conflicts of interest (*e.g.,* when presenting or publishing the research);

(ii) For research projects involving human subjects research, disclosure of financial conflicts of interest directly to participants;

(iii) Appointment of an independent monitor capable of taking measures to

protect the design, conduct, and reporting of the research against bias, or the appearance of bias, resulting from the financial conflict of interest;

(iv) Modification of the research plan;

(v) Change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the research;

(vi) Reduction or elimination of the financial interest (*e.g.,* sale of an equity interest); or

(vii) Severance of relationships that create actual or potential financial conflicts.

(2) Whenever, in the course of an ongoing PHS-funded research project, a new Investigator participating in the research project discloses a significant financial interest or an existing Investigator discloses a new significant financial interest to the Institution, the designated officials of the Institution shall, within sixty days: Review the disclosure of significant financial interests; determine whether it is related to PHS-funded research; determine whether a financial conflict of interest exists; and, if so, implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest. Depending on the nature of the significant financial interest, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date of disclosure and the completion of the Institution's review.

(3) Whenever an Institution identifies a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution during an ongoing PHS-funded research project (*e.g.,* was not timely reviewed or reported by a subrecipient), the designated officials shall, within sixty days: Review the significant financial interest; determine whether it is related to PHS-funded research; determine whether a financial conflict of interest exists; and, if so:

(i) Implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest going forward;

(ii) Implement, on at least an interim basis, a mitigation plan which shall include review and determination as to whether any PHS-funded research, or portion thereof, conducted prior to the identification and management of the financial conflict of interest was biased in the design, conduct, or reporting of such research. Depending on the nature of the significant financial interest, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date that the significant financial interest is identified and the completion of the Institution's review.

(4) Whenever an Institution implements a management plan pursuant to this subpart, the Institution shall monitor Investigator compliance with the management plan on an ongoing basis until the completion of the PHS-funded research project.

(5)(i) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall make available via a publicly accessible Web site information concerning any significant financial interest disclosed to the Institution that meets the following three criteria:

(A) The significant financial interest was disclosed and is still held by the PD/PI or any other Investigator who has been identified by the Institution as senior/key personnel for the PHS-funded research project in the grant application, contract proposal, contract, progress report, or other required report submitted to the PHS;

(B) The Institution determines that the significant financial interest is related to the PHS-funded research; and

(C) The Institution determines that the significant financial interest is a financial conflict of interest.

(ii) The information that the Institution makes available via a publicly accessible Web site shall include, at a minimum, the following: The Investigator's name; the Investigator's position with respect to the research project; the nature of the significant financial interest; and the approximate dollar value of the significant financial interest (dollar ranges are permissible: Less than $20,000; less than $50,000; less than $100,000; less than or equal to $250,000; greater than $250,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value.

(iii) The information that the Institution makes available via a publicly accessible Web site shall be updated at least annually. In addition, the Institution shall update the Web site within sixty days of the Institution's receipt or identification of information concerning any additional significant financial interest that was not previously disclosed by the PD/PI or senior/key personnel for the PHS-funded research project, or upon the disclosure of a significant financial interest by a new PD/PI or new senior/key personnel for the PHS-funded research project, if the Institution determines that the significant financial interest is related to the PHS-funded research and is a financial conflict of interest.

(iv) Information concerning the significant financial interests of an individual subject to this paragraph (a)(5) shall remain available via the Institution's publicly accessible Web site for at least five years from the date that the information was most recently updated.

(6) In addition to the types of financial conflicts of interest as defined in this subpart that must be managed pursuant to this section, an Institution may require the management of other financial conflicts of interest, as the Institution deems appropriate.

(b) Reporting of financial conflicts of interest.

(1) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall provide to the PHS Awarding Component a FCOI report regarding any Investigator significant financial interest found by the Institution to be conflicting and ensure that the Institution has implemented a management plan in accordance with this subpart.

(2) For any significant financial interest that the Institution identifies as conflicting subsequent to the Institution's initial FCOI report during an ongoing PHS-funded research project (*e.g.,* upon the participation of a new Investigator in the research project), the Institution shall provide to the PHS Awarding Component, within sixty days, a FCOI report regarding the financial conflict of interest and ensure that the Institution has implemented a management plan in accordance with this subpart. Where such FCOI report involves a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution (*e.g.,* was not timely reviewed or reported by a subrecipient), the Institution shall also provide with its FCOI report the mitigation plan implemented by the Institution to determine whether any PHS-funded research, or portion thereof, conducted prior to the identification and management of the financial conflict of interest was biased in the design, conduct, or reporting of such research.

(3) Any FCOI report required under paragraphs (b)(1) or (b)(2) of this section shall include sufficient information to enable the PHS Awarding Component to

understand the nature and extent of the financial conflict, and to assess the appropriateness of the Institution's management plan. Elements of the FCOI report shall include, but are not limited to the following:

(i) Project/Contract number;

(ii) PD/PI or Contact PD/PI if a multiple PD/PI model is used;

(iii) Name of the Investigator with the financial conflict of interest;

(iv) Nature of the financial interest (*e.g.,* equity, consulting fee, travel reimbursement, honorarium);

(v) Value of the financial interest (dollar ranges are permissible: $0–$4,999; $5,000–$9,999; $10,000–$19,999; amounts between $20,000–$100,000 by increments of $20,000; amounts above $100,000 by increments of $50,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value;

(vi) A description of how the financial interest relates to the PHS-funded research and the basis for the Institution's determination that the financial interest conflicts with such research;

(vii) A description of the key elements of the Institution's management plan, including:

(A) The role and function of the conflicted Investigator in the research project;

(B) The rationale for including the conflicted Investigator in the research project;

(C) The conditions of the management plan;

(D) How the management plan will safeguard objectivity in the research project;

(E) Confirmation of the Investigator's agreement to the management plan;

(F) How the management plan will be monitored to ensure Investigator compliance;

(G) Other information as needed.

(4) For any financial conflict of interest previously reported by the Institution with regard to an ongoing PHS-funded research project, the Institution shall provide an annual FCOI report that addresses the status of the financial conflict of interest and any changes to the management plan to the PHS Awarding Component for the duration of the PHS-funded research project. The annual FCOI report shall specify whether the financial conflict is still being managed or explain why the financial conflict of interest no longer exists. The Institution shall provide annual FCOI reports to the PHS Awarding Component for the duration of the project period (including extensions with or without funds) in the time and manner specified by the PHS Awarding Component.

(5) In addition to the types of financial conflicts of interest as defined in this subpart that must be reported pursuant to this section, an Institution may require the reporting of other financial conflicts of interest, as the Institution deems appropriate.

§ 50.606 Remedies.

(a) If the failure of an Investigator to comply with an Institution's financial conflicts of interest policy or a financial conflict of interest management plan appears to have biased the design, conduct, or reporting of the PHS-funded research, the Institution shall promptly notify the PHS Awarding Component of the corrective action taken or to be taken. The PHS Awarding Component will consider the situation and, as necessary, take appropriate action, or refer the matter to the Institution for further action, which may include directions to the Institution on how to maintain appropriate objectivity in the funded project.

(b) The HHS may inquire at any time (*i.e.,* before, during, or after award) into any Investigator disclosure of financial interests and the Institution's review of, or response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of a financial conflict of interest. An Institution is required to submit, or permit on site review of, all records pertinent to compliance with this subpart. To the extent permitted by law, HHS will maintain the confidentiality of all records of financial interests. On the basis of its review of records or other information that may be available, the PHS Awarding Component may decide that a particular financial conflict of interest will bias the objectivity of the PHS-funded research to such an extent that further corrective action is needed or that the Institution has not managed the financial conflict of interest in accordance with this subpart. The PHS Awarding Component may determine that imposition of special award conditions under 45 CFR 74.14 or suspension of funding or other enforcement action under 45 CFR 74.62 is necessary until the matter is resolved.

(c) In any case in which the HHS determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a financial conflict of interest that was not managed or reported by the Institution as required by this subpart, the Institution shall require the Investigator involved to disclose the financial conflict of interest in each public presentation of the results of the research and to request an addendum to previously published presentations.

§ 50.607 Other HHS regulations that apply.

Several other regulations and policies apply to this subpart. They include, but are not necessarily limited to:

2 CFR Part 376—Nonprocurement Debarment and Suspension (HHS)

42 CFR Part 50, Subpart D—Public Health Service Grant Appeals Procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations

45 CFR Part 79—Program Fraud Civil Remedies

45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments

TITLE 45—PUBLIC WELFARE

2. Revise Part 94 to read as follows:

PART 94—RESPONSIBLE PROSPECTIVE CONTRACTORS

Sec.
94.1 Purpose.
94.2 Applicability.
94.3 Definitions.
94.4 Responsibilities of Institutions regarding Investigator financial conflicts of interest.
94.5 Management and reporting of financial conflicts of interest.
94.6 Remedies.

Authority: 42 U.S.C. 216, 289b–1, 299c–4.

§ 94.1 Purpose.

This part promotes objectivity in research by establishing standards that provide a reasonable expectation that the design, conduct, and reporting of research performed under PHS contracts is free from bias resulting from Investigator financial conflicts of interest.

§ 94.2 Applicability.

This part is applicable to each Institution that solicits, or that receives, PHS research funding by means of a contract and, through the implementation of this part by the Institution, to each Investigator participating in such research.

§ 94.3 Definitions.

As used in this part:

Contractor means an entity that provides property or services under contract for the direct benefit or use of the Federal Government.

Disclosure of significant financial interests means an Investigator's disclosure of significant financial interests to an Institution.

FCOI report means an Institution's report of a financial conflict of interest to a PHS Awarding Component.

Financial conflict of interest means a significant financial interest that could directly and significantly affect the design, conduct, or reporting of PHS-funded research.

Financial interest means anything of monetary value or potential monetary value.

HHS means the United States Department of Health and Human Services, and any components of the Department to which the authority involved may be delegated.

Institution means any domestic or foreign, public or private, entity or organization (excluding a Federal agency) that solicits, or that receives, PHS research funding.

Institutional responsibilities means an Investigator's professional responsibilities on behalf of the Institution including, but not limited to, activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards.

Investigator means the PD/PI and any other person, regardless of title or position, who is responsible for the design, conduct, or reporting of research funded by the PHS, or proposed for such funding, including persons who are subcontractors, collaborators, or consultants.

Manage means to take action to address a financial conflict of interest, which includes reducing or eliminating the financial conflict of interest, to ensure that the design, conduct, or reporting of research is free from bias or the appearance of bias.

PD/PI means a project director or principal investigator of a PHS-funded research project.

PHS means the Public Health Service, an operating division of the U.S. Department of Health and Human Services, and any components of the PHS to which the authority involved may be delegated, including the National Institutes of Health.

PHS Awarding Component means the organizational unit of the PHS that funds the research that is subject to this subpart.

Public Health Service Act or *PHS Act* means the statute codified at 42 U.S.C. 201 *et seq.*

Research means a systematic investigation designed to develop or contribute to generalizable knowledge relating broadly to public health, including behavioral and social-sciences research. The term encompasses basic and applied research and product development. As used in this part, the term includes any such activity for which research funding is available from a PHS Awarding Component through a grant, cooperative agreement, or contract, whether authorized under the PHS Act or other statutory authority, such as a research grant, career development award, center grant, individual fellowship award, infrastructure award, institutional training grant, program project, or research resources award.

Significant financial interest means, except as otherwise specified in this definition:

(1) A financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities:

(i) With regard to any publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds $5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (*e.g.,* consulting fees, honoraria, paid authorship, travel reimbursement); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;

(ii) With regard to any non-publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds $5,000, or the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (*e.g.,* stock, stock option, or other ownership interest); or

(iii) Intellectual property rights (*e.g.,* patents, copyrights), royalties from such rights, and agreements to share in royalties related to such rights.

(2) The term *significant financial interest* does not include the following types of financial interests: Salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution; any ownership interest in the Institution held by the Investigator, if the Institution is a commercial or for-profit organization; income from seminars, lectures, or teaching engagements sponsored by a federal, state, or local government agency, or an institution of higher education as defined at 20 U.S.C. 1001(a); or income from service on advisory committees or review panels for a federal, state, or local government agency, or an institution of higher education as defined at 20 U.S.C. 1001(a).

§ 94.4 Responsibilities of Institutions regarding Investigator financial conflicts of interest.

Each Institution shall:

(a) Maintain an up-to-date, written, enforced policy on financial conflicts of interest that complies with this part, and make such policy available via a publicly accessible Web site. If an Institution maintains a policy on financial conflicts of interest that includes standards that are more stringent than this part (*e.g.,* that require a more extensive disclosure of financial interests), the Institution shall adhere to its policy and shall provide FCOI reports regarding identified financial conflicts of interest to the PHS Awarding Component in accordance with the Institution's own standards.

(b) Inform each Investigator of the Institution's policy on financial conflicts of interest, the Investigator's responsibilities regarding disclosure of significant financial interests, and of these regulations, and require each Investigator to complete training regarding same prior to engaging in PHS-funded research and, thereafter, at least once every two years.

(c) If the Institution carries out the PHS-funded research through a subrecipient (*e.g.,* subcontractor or collaborator):

(1) Incorporate as part of a written agreement with the subrecipient legally enforceable terms that establish whether the financial conflicts of interest policy of the awardee Institution or that of the subrecipient applies to the subrecipient's Investigators.

(i) If the subrecipient's financial conflicts of interest policy applies to subrecipient Investigators, the subrecipient shall certify as part of the agreement that its policy complies with this part. If the subrecipient cannot

provide such certification, the agreement shall state that subrecipient Investigators are subject to the financial conflicts of interest policy of the awardee Institution;

(ii) If the subrecipient's financial conflicts of interest policy applies to subrecipient Investigators, the agreement shall specify time period(s) for the subrecipient to report all identified financial conflicts of interest to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to provide timely FCOI reports, as necessary, to the PHS;

(iii) If subrecipient Investigators are subject to the awardee Institution's financial conflicts of interest policy, the agreement shall specify time period(s) for the subrecipient to submit all Investigator disclosures of significant financial interests to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to comply timely with its review, management, and reporting obligations under this part.

(2) Provide FCOI reports to the PHS regarding all financial conflicts of interest of all subrecipient Investigators consistent with this part.

(d) Designate an institutional official(s) to solicit and review disclosures of significant financial interests from each Investigator who is planning to participate in the PHS-funded research.

(e)(1) Require that each Investigator who is planning to participate in the PHS-funded research disclose to the Institution's designated official(s) the Investigator's significant financial interests (and those of the Investigator's spouse and dependent children).

(2) Require that each Investigator who is participating in the PHS-funded research submit an updated disclosure of significant financial interests at least annually during the period of the award. Such disclosure shall include any information that was not disclosed initially to the Institution pursuant to paragraph (e)(1) of this section, or in a subsequent disclosure of significant financial interests, and shall include updated information regarding any previously-disclosed significant financial interest (*e.g.,* the updated value of a previously-disclosed equity interest).

(3) Require that each Investigator who is participating in the PHS-funded research submit an updated disclosure of significant financial interests within thirty days of acquiring a new significant financial interest (*e.g.,* through purchase, marriage, or inheritance).

(f) Provide guidelines consistent with this part for the designated institutional officials to determine whether an Investigator's significant financial interest is related to PHS-funded research and, if so related, whether the significant financial interest is a financial conflict of interest. An Investigator's significant financial interest is related to PHS-funded research when the Institution, through its designated officials, reasonably determines that the significant financial interest: Appears to be affected by the PHS-funded research; or is in an entity whose financial interest appears to be affected by the research. A financial conflict of interest exists when the Institution, through its designated officials, reasonably determines that the significant financial interest could directly and significantly affect the design, conduct, or reporting of the PHS-funded research.

(g) Take such actions as necessary to manage financial conflicts of interest, including any financial conflicts of a subrecipient Investigator pursuant to paragraph (c) of this section. Management of an identified financial conflict of interest requires development and implementation of a management plan and, if necessary, a mitigation plan pursuant to § 94.5(a).

(h) Provide initial and ongoing FCOI reports to the PHS as required pursuant to § 94.5(b).

(i) Maintain records relating to all Investigator disclosures of financial interests and the Institution's review of, or response to, such disclosures (whether or not a disclosure resulted in the Institution's determination of a financial conflict of interest), for at least three years from the date of final payment or, where applicable, for the time periods specified in 48 CFR part 4, subpart 4.7.

(j) Establish adequate enforcement mechanisms and provide for employee sanctions or other administrative actions to ensure Investigator compliance as appropriate.

(k) Certify, in each contract proposal to which this part applies, that the Institution:

(1) Has in effect at that Institution an up-to-date, written, and enforced administrative process to identify and manage financial conflicts of interest with respect to all research projects for which funding is sought or received from the PHS;

(2) Shall promote and enforce Investigator compliance with this part's requirements including those pertaining to disclosure of significant financial interests;

(3) Shall manage financial conflicts of interest and provide initial and ongoing FCOI reports to the PHS consistent with this part;

(4) Agrees to make information available, promptly upon request, to the HHS relating to any Investigator disclosure of financial interests and the Institution's review of, or response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of a financial conflict of interest; and

(5) Shall fully comply with the requirements of this part.

§ 94.5 Management and reporting of financial conflicts of interest.

(a) Management of financial conflicts of interest.

(1) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the designated officials of an Institution shall, consistent with § 94.4(f): Review all Investigator disclosures of significant financial interests; determine whether any significant financial interests relate to PHS-funded research; determine whether a financial conflict of interest exists; and, if so, develop and implement a management plan that shall specify the actions that have been, and shall be, taken to manage such financial conflict of interest. Examples of conditions or restrictions that might be imposed to manage a financial conflict of interest include, but are not limited to:

(i) Public disclosure of financial conflicts of interest (*e.g.,* when presenting or publishing the research);

(ii) For research projects involving human subjects research, disclosure of financial conflicts of interest directly to participants;

(iii) Appointment of an independent monitor capable of taking measures to protect the design, conduct, and reporting of the research against bias, or the appearance of bias, resulting from the financial conflict of interest;

(iv) Modification of the research plan;

(v) Change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the research;

(vi) Reduction or elimination of the financial interest (*e.g.,* sale of an equity interest); or

(vii) Severance of relationships that create actual or potential financial conflicts.

(2) Whenever, in the course of an ongoing PHS-funded research project, a new Investigator participating in the research project discloses a significant financial interest or an existing Investigator discloses a new significant

financial interest to the Institution, the designated officials of the Institution shall, within sixty days: Review the disclosure of significant financial interests; determine whether it is related to PHS-funded research; determine whether a financial conflict of interest exists; and, if so, implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest. Depending on the nature of the significant financial interest, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date of disclosure and the completion of the Institution's review.

(3) Whenever an Institution identifies a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution during an ongoing PHS-funded research project (*e.g.,* was not timely reviewed or reported by a subrecipient), the designated officials shall, within sixty days: Review the significant financial interest; determine whether it is related to PHS-funded research; determine whether a financial conflict of interest exists; and, if so:

(i) Implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest going forward;

(ii) Implement, on at least an interim basis, a mitigation plan which shall include review and determination as to whether any PHS-funded research, or portion thereof, conducted prior to the identification and management of the financial conflict of interest was biased in the design, conduct, or reporting of such research. Depending on the nature of the significant financial interest, an Institution may determine that additional interim measures are necessary with regard to the Investigator's participation in the PHS-funded research project between the date that the significant financial interest is identified and the completion of the Institution's review.

(4) Whenever an Institution implements a management plan pursuant to this part, the Institution shall monitor Investigator compliance with the management plan on an ongoing basis until the completion of the PHS-funded research project.

(5)(i) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall make available via a publicly accessible Web site information concerning any significant financial interest disclosed to the Institution that meets the following three criteria:

(A) The significant financial interest was disclosed and is still held by the PD/PI or any other Investigator who has been identified by the Institution as senior/key personnel for the PHS-funded research project in the grant application, contract proposal, contract, progress report, or other required report submitted to the PHS;

(B) The Institution determines that the significant financial interest is related to the PHS-funded research; and

(C) The Institution determines that the significant financial interest is a financial conflict of interest.

(ii) The information that the Institution makes available via a publicly accessible Web site shall include, at a minimum, the following: The Investigator's name; the Investigator's position with respect to the research project; the nature of the significant financial interest; and the approximate dollar value of the significant financial interest (dollar ranges are permissible: Less than $20,000; less than $50,000; less than $100,000; less than or equal to $250,000; greater than $250,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value.

(iii) The information that the Institution makes available via a publicly accessible Web site shall be updated at least annually. In addition, the Institution shall update the Web site within sixty days of the Institution's receipt or identification of information concerning any additional significant financial interest that was not previously disclosed by the PD/PI or senior/key personnel for the PHS-funded research project, or upon the disclosure of a significant financial interest by a new PD/PI or new senior/key personnel for the PHS-funded research project, if the Institution determines that the significant financial interest is related to the PHS-funded research and is a financial conflict of interest.

(iv) Information concerning the significant financial interests of an individual subject to this paragraph (a)(5) of this section shall remain available via the Institution's publicly accessible Web site for at least five years from the date that the information was most recently updated.

(6) In addition to the types of financial conflicts of interest as defined in this part that must be managed pursuant to this section, an Institution may require the management of other financial conflicts of interest, as the Institution deems appropriate.

(b) Reporting of financial conflicts of interest.

(1) Prior to the Institution's expenditure of any funds under a PHS-funded research project, the Institution shall provide to the PHS Awarding Component a FCOI report regarding any Investigator significant financial interest found by the Institution to be conflicting and ensure that the Institution has implemented a management plan in accordance with this part.

(2) For any significant financial interest that the Institution identifies as conflicting subsequent to the Institution's initial FCOI report during an ongoing PHS-funded research project (*e.g.,* upon the participation of a new Investigator in the research project), the Institution shall provide to the PHS Awarding Component, within sixty days, a FCOI report regarding the financial conflict of interest and ensure that the Institution has implemented a management plan in accordance with this part. Where such FCOI report involves a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the Institution (*e.g.,* was not timely reviewed or reported by a subrecipient), the Institution shall also provide with its FCOI report the mitigation plan implemented by the Institution to determine whether any PHS-funded research, or portion thereof, conducted prior to the identification and management of the financial conflict of interest was biased in the design, conduct, or reporting of such research.

(3) Any FCOI report required under paragraphs (b)(1) or (b)(2) of this section shall include sufficient information to enable the PHS Awarding Component to understand the nature and extent of the financial conflict, and to assess the appropriateness of the Institution's management plan. Elements of the FCOI report shall include, but are not limited to the following:

(i) Project/Contract number;

(ii) PD/PI or Contact PD/PI if a multiple PD/PI model is used;

(iii) Name of the Investigator with the financial conflict of interest;

(iv) Nature of the financial interest (*e.g.,* equity, consulting fee, travel reimbursement, honorarium);

(v) Value of the financial interest (dollar ranges are permissible: $0–$4,999; $5,000–$9,999; $10,000–$19,999; amounts between $20,000–$100,000 by increments of $20,000; amounts above $100,000 by increments of $50,000), or a statement that the

interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value;

(vi) A description of how the financial interest relates to the PHS-funded research and the basis for the Institution's determination that the financial interest conflicts with such research;

(vii) A description of the key elements of the Institution's management plan, including:

(A) The role and function of the conflicted Investigator in the research project;

(B) The rationale for including the conflicted Investigator in the research project;

(C) The conditions of the management plan;

(D) How the management plan will safeguard objectivity in the research project;

(E) Confirmation of the Investigator's agreement to the management plan;

(F) How the management plan will be monitored to ensure Investigator compliance;

(G) Other information as needed.

(4) For any financial conflict of interest previously reported by the Institution with regard to an ongoing PHS-funded research project, the Institution shall provide an annual FCOI report that addresses the status of the financial conflict of interest and any changes to the management plan to the PHS Awarding Component for the duration of the PHS-funded research project. The annual FCOI report shall specify whether the financial conflict is still being managed or explain why the financial conflict of interest no longer exists. The Institution shall provide annual FCOI reports to the PHS Awarding Component for the duration of the project period (including extensions with or without funds) in the time and manner specified by the PHS Awarding Component.

(5) In addition to the types of financial conflicts of interest as defined in this part that must be reported pursuant to this section, an Institution may require the reporting of other financial conflicts of interest, as the Institution deems appropriate.

§ 94.6 Remedies.

(a) If the failure of an Investigator to comply with an Institution's financial conflicts of interest policy or a financial conflict of interest management plan appears to have biased the design, conduct, or reporting of the PHS-funded research, the Institution shall promptly notify the PHS Awarding Component of the corrective action taken or to be taken. The PHS Awarding Component will consider the situation and, as necessary, take appropriate action, or refer the matter to the Institution for further action, which may include directions to the Institution on how to maintain appropriate objectivity in the funded project.

(b) The HHS may inquire at any time (*i.e.,* before, during, or after award) into any Investigator disclosure of financial interests and the Institution's review of, or response to, such disclosure, whether or not the disclosure resulted in the Institution's determination of a financial conflict of interest. An Institution is required to submit, or permit on site review of, all records pertinent to compliance with this part. To the extent permitted by law, HHS will maintain the confidentiality of all records of financial interests. On the basis of its review of records or other information that may be available, the PHS Awarding Component may decide that a particular financial conflict of interest will bias the objectivity of the PHS-funded research to such an extent that further corrective action is needed or that the Institution has not managed the financial conflict of interest in accordance with this part. The PHS Awarding Component may determine that issuance of a Stop Work Order by the Contracting Officer or other enforcement action is necessary until the matter is resolved.

(c) In any case in which the HHS determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a financial conflict of interest that was not managed or reported by the Institution as required by this part, the Institution shall require the Investigator involved to disclose the financial conflict of interest in each public presentation of the results of the research and to request an addendum to previously published presentations.

Dated: March 26, 2010.

Francis S. Collins,

Director, National Institutes of Health.

Approved: April 14, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–11885 Filed 5–20–10; 8:45 am]

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Part III

Department of Education

34 CFR Subtitle B, Chapter II

Teacher Incentive Fund; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010; Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2010–OESE–0001]

RIN 1810–AB08

Teacher Incentive Fund

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.385 and 84.374.

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Secretary of Education (Secretary) establishes priorities, requirements, definitions, and selection criteria under the Teacher Incentive Fund (TIF) program. These priorities, requirements, definitions, and selection criteria will be used in two separate and distinct TIF grant competitions: The Main TIF competition, which will provide TIF funding to eligible entities to support their implementation of a performance-based compensation system (PBCS) in accordance with the priorities, the Main TIF competition requirements, the definitions, and the selection criteria established in this document; and the TIF Evaluation competition, which will provide, in accordance with the priorities, the Main TIF competition requirements, the definitions, and the selection criteria, as well as the Evaluation requirements established in this document, TIF funding to help pay the costs of implementing the eligible entity's PBCS in exchange for an agreement to participate in the national evaluation. The Secretary may use these TIF priorities, requirements, definitions, and selection criteria in fiscal year (FY) 2010 and subsequent years. We intend the priorities, requirements, definitions, and selection criteria announced in this document to help improve student achievement (as defined in this document) in high-need schools (as defined in this document) and provide incentives for effective teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) in these schools to take on additional responsibilities and leadership roles.

DATES: These priorities, requirements, definitions, and selection criteria are effective July 6, 2010.

FOR FURTHER INFORMATION CONTACT: April Lee, *Telephone:* (202) 205–5224; or by *e-mail: TIF@ed.gov;* or *by mail:* (*Attention:* Teacher Incentive Fund), U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E120, Washington, DC 20202.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the TIF program is to support projects that develop and implement PBCSs for teachers, principals, and other personnel in order to increase educator effectiveness and student achievement (as defined in this notice), measured in significant part by student growth (as defined in this notice), in high-need schools (as defined in this notice).

Program Authority: The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, Division G, Title III, Public Law 110–161; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2010, Division D, Title III, Public Law 111–117; and the American Recovery and Reinvestment Act of 2009, Division A, Title VIII, Public Law 111–5.

Background: Signed into law by President Obama on February 17, 2009, the American Recovery and Reinvestment Act of 2009 (ARRA) constitutes an unprecedented effort to revive the Nation's economy, create and save millions of jobs, and address long-neglected challenges so the Nation can thrive in the 21st century.

In addition to measures that modernize the Nation's infrastructure, enhance energy independence, preserve and improve affordable health care, provide tax relief, and protect those in greatest need, the ARRA provides an unprecedented sum—approximately $100 billion dollars—to fundamentally transform our public education system.

Section 14005(d) of the ARRA requires that this funding be used to promote effective school reform in four assurance areas: (1) Adopting internationally benchmarked standards and assessments that prepare students for success in college and the workplace; (2) Building data systems that measure student success and inform teachers and principals in how they can improve their practices; (3) Increasing teacher effectiveness and achieving equity in teacher distribution; and (4) Turning around our lowest-achieving schools.

The ARRA's second and third assurances are based on evidence that teachers are the single most critical in-school factor in improving student achievement. In addition, the ARRA recognizes the contribution a principal makes toward running an effective school. However, too many students, particularly those attending high-need schools, are provided instruction by unqualified or ineffective teachers. Accordingly, the ARRA requires the Department to promote efforts that ensure an equitable distribution of effective teachers between high- and low-poverty schools so that economically disadvantaged students have the same access to effective teachers as other students.

TIF is one such effort that advances the ARRA's third assurance of recruiting, developing, and retaining effective teachers. To meet this assurance, Congress appropriated an additional $200 million dollars of funding for the TIF program.

The Department plans, to the extent feasible and appropriate, to align TIF with the requirements of other ARRA programs, including the State Fiscal Stabilization Fund, Race to the Top, and Title I School Improvement Grants. The Department's intention in doing so is to maximize the efficient use of resources and encourage applicants to develop plans for evaluating educator effectiveness and for providing educators the useful feedback and professional development needed to improve classroom practice and student achievement that complement, and are consistent with, plans developed across other ARRA programs.

Along with appropriating TIF funds to be used to support projects that implement PBCSs, the ARRA also requires the Department to use some of the appropriated funds to conduct a "rigorous national evaluation * * * utilizing randomized controlled methodology to the extent feasible, that assesses the impact of performance-based teacher and principal compensation systems supported by the funds provided in this Act on teacher and principal recruitment and retention in high-need schools and subjects." The ARRA thus requires the Department to award funds in a way that will ensure adequate participation of both a treatment group and control group in the national evaluation. The TIF Evaluation competition is designed to permit the Department to meet this responsibility and, at the same time, to seek answers to research questions about the effect of PBCSs on student achievement in high-need schools that are of great importance to those who would implement such systems.

The Department published a notice of proposed priorities, requirements, definitions, and selection criteria (NPP) for this program in the **Federal Register** on February 26, 2010 (75 FR 8854). That notice contained background information and our reasons for proposing the particular priorities,

requirements, definitions, and selection criteria.

Public Comment: We received comments on the NPP from 40 commenters, including State educational agencies (SEAs), local educational agencies (LEAs), nonprofit organizations, teachers' unions, universities, professional associations, parents, and other public citizens. We used these comments to revise, improve, and clarify the priorities, requirements, definitions, and selection criteria.

Major Changes in the Final Priorities, Requirements, Definitions, and Selection Criteria

In addition to minor technical and editorial changes, there are several substantive differences between the priorities, requirements, definitions, and selection criteria proposed in the NPP and the final priorities, requirements, definitions, and selection criteria that we establish in this notice. Those substantive changes are summarized in this section and discussed in greater detail in the *Analysis of Comments and Changes* that follows. We do not discuss minor technical or editorial changes, nor do we address comments that suggested changes that we are not authorized to make under the law.

Priorities

We are making the following changes to the priorities for this program:

• In clause (b) of absolute priority 1 (Differentiated Levels of Compensation for Effective Teachers and Principals), we have clarified the need for observation-based assessments of both teachers and principals as part of the evaluation system used to support a TIF-funded PBCS. This change is in response to a recommendation from a commenter to amend proposed priority 1 to be consistent with core element (c), which requires classroom observations of teachers and principals at least twice during the school year.

• In competitive preference priority 4 (Use of Value-Added Measures of Student Achievement), we have changed the language to read: "Clearly explain the chosen value-added model to teachers to enable them to use the data generated through the model to improve classroom practices." This change was made in response to a commenter's request to provide clarification as to whether applicants could meet this priority by using value-added models only, or whether they also must provide feedback to teachers aimed at improving instruction.

• We have added a new competitive preference priority 6 to address the issue regarding whether current TIF grantees would be restricted from applying for TIF funds. Under this new competitive preference priority, the following applicants can receive additional points: Nonprofit organizations that are current TIF grantees that propose to work with a new eligible scope of SEAs and LEAs, and those applicants that do not already have a TIF grant in place. This competitive preference priority is titled *Competitive Preference Priority 6—New Applicants to the Teacher Incentive Fund.* Please see the Final Priorities section of this notice for the full language of this new competitive preference priority.

Requirements

We are making the following changes to the requirements for this program:

• The NPP stated that "[a]lthough [the applicable statutes] provide that Federal TIF funds may support PBCSs only for teachers and principals, grantees may extend their PBCSs to additional school personnel by using non-TIF funds to pay for additional compensation for non-instructional personnel." 75 FR 8856. Under the Department's FY 2010 Appropriations Act, Congress authorized FY 2010 TIF funds to be used for PBCSs for teachers, principals, and other school personnel. Therefore, while requiring TIF-supported PBCSs to extend to both teachers and principals, we have revised the requirements to permit applicants to propose the use of TIF funds to support PBCSs that also benefit such other school personnel as the applicants may identify. (This change does not otherwise affect the program's priorities, requirements, or selection criteria as proposed in the NPP.)

• For both the Main TIF competition and the TIF Evaluation competition, the proposed *Additional Eligibility Requirement* that would have precluded applications that proposed to implement their PBCSs in schools currently served by a TIF grant award has been revised to permit applicants who are already TIF grantees to propose expansion of their existing PBCSs to cover new categories of staff in schools currently served by TIF funding. Thus, for example, current TIF grantees whose projects focus only on principals could seek TIF funding to expand their PBCSs to teachers and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) as well.

• In paragraph (d) of the Core Elements, we have added a footnote to remind applicants that data systems that link teacher and principal incentives based on student growth (as defined in this notice) must comply with any applicable requirements under both the Family Educational Rights and Privacy Act (FERPA) and State and local privacy laws. This change was made in response to two commenters who urged the Department to ensure that the data management systems required by paragraph (d) of the Core Elements protect privacy of students and educators.

• Under the *TIF Evaluation Competition Requirements,* a new design that incorporates a 1 percent across-the-board bonus has been selected for the control schools. The requirement to provide a match that would have been required if *Comparison Design 2* was selected has been eliminated.

• We have added a *Local Evaluation* requirement. The new requirement clarifies (1) that, in order to be eligible to receive points under the *Quality of Local Evaluation* selection criterion, applicants must include a description of their local evaluation in their application although it will not be considered when ranking applicants under the TIF Evaluation competition, and (2) that applicants selected under the TIF Evaluation competition will not be required to conduct the local evaluation they propose in response to the selection criterion. This was in response to three commenters who expressed concern that some applicants might mistakenly believe that applying for the TIF Evaluation competition obviates the need to address the *Quality of Local Evaluation* criterion.

• We have clarified that the Department will waive the *Advance Notice* requirement under the TIF Evaluation competition for any applicant that is eligible to implement its PBCS in school year 2010–11 (*i.e.,* for applicants that meet the five core requirements) so long as the program is implemented according to the evaluator's assigned group status. (**Note:** The evaluator will be ready to assign group status immediately upon grant award.) We made this change in response to a commenter who expressed concern that, depending on when FY 2010 TIF grants are awarded, applicants might not be able to provide the two months notice to teachers and principals involved in the evaluation, as required under the proposed *Advance Notice* requirement.

• Under the *Evaluation Competition* requirements, the eligibility requirement was broadened to include consortia and intermediary units that have centralized coordination of data and that could meet the minimum requirement of 8 schools in grades 3 through 8.

Definitions

We have made no changes to the proposed definitions.

Selection Criteria

We have made the following change to the selection criteria for this program:

• We have added new sub-criterion to the Project Design selection criterion that concerns the extent to which an applicant provides a clear definition of how teachers, principals and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) are determined to be "effective" for the purposes of the proposed PBCS. We have added this sub-criterion because our proposed criterion would have had applicants address how effectiveness would be determined but had neglected to have reviewers examine the actual definition of teacher and principal effectiveness applicants would use.

Analysis of Comments and Changes

An analysis of the comments received on, and any changes to, the priorities, requirements, definitions, and selection criteria since publication of the NPP for this program follows.

Note about general comments: We received many comments expressing general support or making general recommendations for this program. In most cases, these comments were effectively duplicated by other comments expressing support or making specific recommendations for the program's proposed priorities, requirements, definitions, or selection criteria, which we discuss in the sections that follow. We accordingly do not discuss those general comments here. In other cases, we interpreted a general comment as applying to a specific priority, requirement, definition, or selection criterion. We address the comment in the discussion that relates to the relevant priority, requirement, definition, or selection criterion.

Note about comments on program issues not covered in the NPP: We received a number of comments relating to program issues that were not proposed for public comment in the NPP for this program. These issues include: specific funding ranges or award amounts for the grant categories, the number of grant awards, uses of funds, length of grant periods, and technical assistance for applicants. We do not address comments on these issues here. We note, however, that information on these issues will be made available through other Department documents, including the notice inviting applications for this program.

General Comments

Comment: Several commenters expressed strong support for the TIF program, as outlined in the NPP, both for the overall effort to improve recruitment, development, and retention of effective teachers and for specific components of the NPP, such as encouraging the use of value-added models as part of teacher evaluation systems and allowing planning periods for grantees.

Discussion: The Department appreciates the support of these commenters for the priorities, requirements, definitions, and selection criteria proposed in the NPP.

Changes: None.

Comment: Several commenters expressed concern that the NPP relied excessively on indicators of student achievement and student growth as meaningful predictive measures of teacher and principal effectiveness. These commenters cited research that cautions against the use of student test scores to predict future teacher performance and that discourages the use of assessment results for purposes for which they have not been validated. One commenter also objected to the Department's statement in the NPP that studies using value-added assessments indicate that individual teachers make a significant difference in student achievement, claiming that this statement was "an inaccurate summation of the research" on the use of value-added models to estimate individual teacher impact on student performance. Other commenters asserted that assessment data do not reflect other essential aspects of teacher performance, such as planning and preparation, the classroom environment, instructional methods, and other professional duties. In addition, two commenters claimed that the NPP ignored research and survey data showing that "nearly all teachers" would prefer supportive leadership and collaborative working environments to monetary rewards. These commenters noted that requiring payments "substantial enough" to change teacher behavior may be ineffective if leadership, climate, and other supports are lacking.

Discussion: As noted in the NPP, the Department believes that student achievement (as defined in this notice) and student growth (as defined in this notice) data are meaningful measures of teacher and principal effectiveness, and, therefore, should be a significant factor in the PBCSs funded by the TIF program as part of rigorous, transparent, and fair evaluation systems that include multiple measures. The Department's citation of research showing that value-added assessments can be used to demonstrate that individual teachers make a significant difference in student achievement was not intended to summarize all available research on the use of value-added models to measure teacher performance. Rather the citation was included in the NPP to emphasize research supporting the central premises of the TIF program: That since we know good teachers matter, it makes sense for compensation to take into account effectiveness, as measured by growth (as defined in this notice) in student achievement (as defined in this notice), and to offer financial incentives to encourage the most effective teachers to work in high-need schools. In addition, Congress has authorized and appropriated funding for the TIF program specifically to support the development and use of PBCSs that consider growth (as defined in this notice) in student achievement (as defined in this notice), among other factors. Thus, requiring growth (as defined in this notice) in student achievement (as defined in this notice) to be a significant factor in any PBCS supported with TIF funds is wholly consistent with the statutory authority for the TIF program.

Moreover, this final notice, like the NPP, heeds the conclusion of much of the research cited by commenters that student achievement, no matter how it is measured, should not be the sole basis for making consequential decisions about teachers. In particular, this final notice retains the proposed requirement for at least two observation-based assessments of teacher performance in TIF projects, while permitting an applicant to include other measures of its own choosing. This flexibility allows applicants to take into account other measures of teacher effectiveness and performance when developing teacher evaluation systems for use as part of their PBCSs. In addition, the final notice retains the emphasis on the need for each applicant to demonstrate that its PBCS is part of a coherent and integrated approach to strengthening the educator workforce, which may include efforts to improve school climate, create collaborative environments, and other support for teachers, as recommended by the commenters.

Changes: None.

Comment: Two commenters stated that the standard of reliability and validity for any teacher evaluation system must be higher when the results are used for high-stakes compensation, tenure, and termination decisions than when the results are used simply to identify and meet professional development needs. Another commenter recommended that the Department require multiple measures of teacher performance.

Discussion: The Department agrees that the teacher and principal evaluation systems used by TIF grantees as part of their PBCSs must be rigorous, transparent, and fair, in part through the use of multiple measures of performance. The Department believes that this goal was fully reflected in the NPP and has been retained in this final notice. For example, priority 1 requires LEAs to use a combination of student achievement (as defined in this notice), classroom observation, and other measures of the LEA's choosing to evaluate teacher and principal effectiveness. Priority 2 requires evidence that the proposed PBCS is aligned with a coherent and integrated strategy for strengthening the educator workforce, including the use of data and evaluations for professional development, retention, and tenure decisions. The core elements that all applicants must put into place before beginning to make incentive payments are specifically intended to ensure that teachers and principals are involved in developing a PBCS and understand how it works, that evaluation systems include objectively collected data on classroom performance, and that applicant data systems are sufficiently robust to accurately link student achievement (as defined in this notice) data to individual teachers and human resources systems. The Department believes that these priorities and requirements, collectively, will ensure that TIF grantees implement a PBCS that meets the higher standard of reliability and validity for teacher evaluation systems called for by the commenters.

Changes: None.

Comment: One commenter expressed the view that increasing funding for education, including for programs to support teachers, is not likely to improve the overall quality of our education system. According to this commenter, spending has increased dramatically since the 1960s, but test scores have not improved. The commenter also stated that teachers need respect and support from parents and administrators.

Discussion: The Department believes that increased resources for education, effectively used, will improve the quality of our education system. However, the TIF program is focused on improving the efficacy of existing State and local education resources by encouraging LEAs and other applicants to use a greater proportion of those resources to reward effective teaching and school leadership and provide new incentives for our best teachers and principals to work in our most challenging schools. The Department believes that one of the best ways to demonstrate respect and increase support for teachers and principals is to increase the compensation of those who demonstrate effectiveness, in particular, by raising student achievement (as defined in this notice).

Changes: None.

Comment: One commenter cautioned that while teacher evaluation is an essential component of a PBCS, effective teachers cannot be measured by test scores alone. Two other commenters emphasized the importance of collaborative partnerships of union leaders and administrators in the development of a successful PBCS, while another added that such collaboration is more important than the use of test scores. Other commenters asserted that changing the Nation's education system to improve teaching and learning requires more than just changes in compensation; they argued that it also requires professional teaching standards, standards for teaching and learning conditions, and standards for professional development.

Discussion: The Department agrees that effective teachers cannot be measured by test scores alone. The final requirements for this program, like those in the NPP, do not provide otherwise. Rather, as required by the program's authorizing legislation, a PBCS must include the use of student achievement (as defined in this notice) data, classroom observations, and other measures selected by the grantee. Moreover, paragraph (c) of the Core Elements requires "the involvement and support of unions in participating LEAs where they are the designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant." Finally, the *Professional Development* requirement provides that applicants must demonstrate that their PBCSs include high-quality professional development targeted to needs identified through an evaluation system. We, therefore, believe that the final notice adequately addresses the commenters' concerns.

Changes: None.

Comment: One commenter urged the Department to make publicly available all successful grant applications so that these applications can serve as templates for future applicants and promote the sharing of promising practices.

Discussion: The Department agrees with this commenter, and will post all successful TIF applications, for both the Main TIF competition and TIF Evaluation competitions, on its Web site at *www.ed.gov.*

Changes: None.

Comment: Two commenters asked for clarification as to whether the PBCSs required by the NPP must include both teachers and principals.

Discussion: The Department interprets the program's authorizing legislation as requiring each PBCS supported with TIF funds to cover both teachers and principals in high-need schools. However, this does not mean that TIF funds must be used to pay performance-based compensation to both teachers and principals. If an LEA's PBCS already provides compensation to either teachers or principals, the LEA may implement a TIF project that would benefit the other group, provided that the PBCS, as a whole, covers both groups of educators for the duration of the TIF project period.

Thus, in response to this commenter's question, the Department has revised the *Additional Eligibility Requirement* to extend eligibility to those applicants that have current PBCSs in their States or LEAs (including charter school LEAs), but currently provide performance-based compensation either only to principals or only to teachers. The requirement now allows an applicant to propose to expand an existing PBCS to cover teachers or principals who are not currently being served through the PBCS provided that TIF funds are used to expand the coverage of existing projects only in high-need schools (as defined in this notice). An applicant creating an entirely new PBCS must apply to use TIF funds to develop and implement a PBCS for both teachers and principals, as required by *absolute priority 1.*

Changes: The *Additional Eligibility Requirement* has been revised to allow applicants that are current TIF grantees with principal- or teacher-only projects to expand their current PBCSs to those teachers or principals who work in high-need schools (as defined in this notice) and who are not currently being served through the PBCS currently in place. If funded under the new competition, the PBCS for both teachers and principals must remain in place for the duration of the TIF project.

Comment: One commenter recommended adding a definition of the term "teacher" to the final notice, while two other commenters suggested clarifying that, under the TIF program, "teachers and principals" include other staff such as instructional specialists, counselors, librarians and media specialists, and assistant principals.

Discussion: As in prior TIF competitions, the Department interprets the term "teacher" to include resource teachers and other staff who provide direct instruction, such as

paraprofessionals and classroom aides. However, in general, because the term "teacher" is not defined in Federal statute or regulation, the Department believes the definition of "teacher" should reflect applicable State and local laws and policy regarding the inclusion of other school staff, such as counselors, librarians, and media specialists.

Moreover, during our review of public comments, we realized that the language authorizing the TIF program in the Department's FY 2010 Appropriations Act expressly provides that TIF funds may support PBCSs that benefit teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools).

Therefore, an applicant has flexibility to extend its PBCS to cover school personnel who are not teachers or principals and to define the range of other personnel who are eligible to participate in the PBCS.

Changes: We have revised the requirements for the program to clarify that an applicant's PBCS must cover teachers and principals and, at the discretion of the applicant, may cover other school personnel.

Comment: One commenter strongly recommended that the Department require teacher evaluators in the PBCS to have subject- or specialty-area expertise specific to the position or positions that they are evaluating.

Discussion: The Department believes that the language in paragraph (c) of the Core Elements, which specifies (1) that the evaluation process use objective evidence-based rubrics for observation, aligned with professional teaching standards, and (2) that evaluators have specialized training, is sufficient to ensure fair classroom observations of participating teachers. Moreover, requiring each evaluator to have the same subject or specialty area expertise as the individuals they are evaluating would be impracticable in many LEAs and would potentially limit the inclusion of classroom observations in teacher evaluation systems. For this reason, we do not believe it is appropriate to make the change requested by the commenter.

Changes: None.

Comment: One commenter recommended increasing to three the minimum number of observation-based assessments required each year under proposed priorities 1 and 4, believing that two observations are insufficient to obtain a fair review.

Discussion: While the requirement for multiple observations necessitates at least two observations per year, as was proposed in the NPP, the Department believes that the precise number of observation-based assessments should be left to the considered judgment of the applicant and its process of securing input from stakeholders. In particular, the quality of the observation-based assessment is likely to matter more than the number; two comprehensive observations by a well-prepared evaluator may provide a more accurate picture of teacher performance than five cursory classroom visits. For this reason, the Department declines to make the change recommended by the commenter. However, we note that grantees would have the flexibility to conduct additional assessments if desired.

Changes: None.

Comment: One commenter urged the Department to add statewide support, such as technical assistance, electronic networks, and regional meetings, to the list of activities described in the *Background* section of the NPP that may be supported with TIF funds.

Discussion: Our final notice does not include the background statements provided in the NPP, so we are not making the change requested by the commenter. That said, to the extent that SEAs apply for TIF funds in conjunction with eligible LEAs, the activities described by the commenter generally would be permitted under the statutory authority for the TIF program, which allows the use of TIF funds to develop or improve systems and tools that would enhance the quality and success of the PBCS. The Department does not believe it is necessary to create a separate "statewide support" category.

Changes: None.

Priority 1

Comment: Several commenters recommended modifications to proposed priority 1 regarding differentiated levels of compensation for effective teachers and principals. One commenter stated that the requirement to give "significant weight" to student growth exceeded statutory authority, while others interpreted the requirement that LEAs give "significant weight" to student growth as the equivalent of basing the evaluation of teacher performance "on a single test score." A few commenters also stated that because growth data are available for only 30 percent of the teaching force, a PBCS must use other measures to determine the effectiveness of most teachers and principals. One commenter suggested allowing applicants in States that do not have growth models to use status models to measure student learning. Other commenters recommended changing priority 1 to emphasize the use of multiple measures in a TIF-funded PBCS, such as classroom observations, portfolio reviews, student grades, and appraisals of lesson plans.

One commenter also urged inclusion of school climate, resources, and professional development in teacher evaluations. Another commenter recommended including certification by the National Board for Professional Teaching Standards (NBPTS) as a specific option for measuring teacher effectiveness. On the other hand, one commenter called for maintaining the requirement in a previous TIF competition that bonuses be based "primarily" on student achievement and urged that the final notice require applicants to "fully utilize" student achievement data by mandating a 50-percent weighting for such data. Another commenter recommended strengthening the program's emphasis on student achievement by changing "significant" to "predominant" so that student achievement will not "be obfuscated by multiple other objective and subjective criteria."

Discussion: The statute requires the Department to use TIF funds to support the development and implementation of PBCSs that use student achievement (as defined in this notice) and multiple classroom observations, as well as other factors, to determine incentive payments for teachers and principals. The Department believes that given the wide range of possible factors that might be included in their teacher evaluation systems, as well as the fact that improving student achievement is the underlying purpose of the TIF program, it is both appropriate and consistent with the statute to ensure that TIF grantees give student achievement "significant" weight among the factors included in such systems.

While the Department appreciates the concerns of commenters who argued for giving greater, "predominant" weight to student growth (as defined in this notice) in TIF-funded PBCSs, we continue to require that this factor be given "significant" weight in this final notice. We do so both (1) to emphasize, consistent with the Department's Race to the Top program, that teacher effectiveness for TIF should not be determined solely on the basis of standardized test scores, and (2) in the belief that, given the statutory requirement that grantees also base their evaluations on multiple annual observations, among other factors, the LEA, in consultation with school staff and with the support of any teacher's union that represents teachers in collective bargaining, is in the best

position to determine the relative weight to give these other factors. Hence, this final notice requires a TIF-supported PBCS to use (1) student growth (as defined in this notice), (2) multiple classroom observations, and (3) other measures selected by the grantee to inform the payment decisions of the PBCS. These other measures might include, for example, outputs such as student portfolios or grades and inputs such as NBPTS certification.

Congress established TIF as a competitive grant program to promote the use of PBCSs to improve student achievement (as defined in this notice) in high-need schools (as defined in this notice). Therefore, it is necessary only that LEAs that wish to apply for TIF funds be able to use the required student achievement (as defined in this notice) and growth (as defined in this notice) data for their teachers. Moreover, States or LEAs may, as a part of the TIF program, determine how to use assessments such as annual district assessments, interim assessments, or pre-tests/post-tests, to generate growth (as defined in this notice) data for a larger percentage of teachers and principals. However, the use of status model assessment data alone is not consistent with the emphasis of the TIF program on using student growth (as defined in this notice) to inform the decisions made under a PBCS.

Changes: None.

Comment: One commenter stated that priority 1 and paragraph (c) of the Core Elements are inconsistent with regard to the need to include principal observations in determinations of principal effectiveness. This commenter recommended revising priority 1 to reflect the requirement for at least two yearly observations of principals in paragraph (c) of the Core Elements. Another commenter recommended emphasizing "growth" in graduation and postsecondary enrollment rates in the examples of supplemental measures for determining the effectiveness of principals, while a third commenter proposed including in those examples nine separate "measures of highly effective school leaders."

Discussion: The Department agrees that proposed absolute priority 1 was unclear on the need for observation-based assessments of both teachers and principals as part of the evaluation system used to support a TIF-funded PBCS. In the final notice, we have changed the priority to include principal observations in determinations of principal effectiveness. We believe this change is fully consistent with the statutory requirement that a PBCS for teachers and principals include multiple classroom observations. We decline, however, to modify or add any other examples of specific measures of principal performance, as the absolute priority is not meant to provide an exhaustive list of all possible supplemental measures an LEA might use. We will, however, consider including such examples in any non-regulatory guidance that we may issue for the TIF program.

Changes: In paragraph (b) of priority 1, we have changed "include observation-based assessments of teacher performance at multiple points in the year" to read "include observation-based assessments of teacher and principal performance at multiple points in the year."

Comment: One commenter recommended adding to proposed priority 1 a requirement that each applicant describe how its PBCS will include educators of both students with disabilities and gifted and talented students.

Discussion: We do not believe that the Department should require an LEA to ensure that its PBCS apply to any specific group of teachers. Rather we believe that the LEA, in consultation with school staff and any teachers' union that represents teachers for the purpose of collective bargaining, where applicable, should extend to all teachers in a high-need school or to a subset of those teachers based on hard-to-staff subjects or needs in particular specialty areas.

We note that in the NPP, and now in this notice, we describe several ways in which a PBCS may include educators of both students with disabilities and gifted and talented students. First, under paragraph (a)(1)(i) of the selection criteria, the Department considers the extent to which the applicant demonstrates that the high-need schools that would participate in its PBCS have difficulty in recruiting highly qualified or effective teachers, particularly in hard-to-staff subject and specialty areas such as special education (these specialty areas also could include gifted and talented education).

Second, under priority 5, the Department will give a competitive preference to an applicant showing that its proposed PBCS is designed to assist high-need schools to (1) serve high-need students (which, as defined in this notice, includes students with disabilities); (2) retain effective teachers in teaching positions in hard-to-staff subjects and specialty areas, such as mathematics, science, special education, and English language acquisition, and (3) fill vacancies with teachers of those subjects or specialty areas who are effective or likely to be effective. By implication, an LEA with a particular need for special education teachers could use its PBCS specifically to hire and retain such teachers. The Department has retained both of these provisions in this final notice, and believes that no additional language is needed to respond to the commenter's concern.

Changes: None.

Priority 2

Comment: Commenters had mixed reactions to absolute priority 2's requirements regarding the fiscal sustainability of a PBCS. For example, while one commenter stated that the current fiscal climate will make it difficult to meet this priority, other commenters supported the priority for the same reason, suggesting that current budget constraints make it even more important for each applicant to demonstrate a strong commitment to sustaining its PBCS. One commenter also expressed concern that requiring grantees to demonstrate sustainability could "aggravate serious problems of school finance" in States with school funding equity problems. Another commenter urged the Department to acknowledge the dependence of sustainability plans on economic and budget factors and to include "contingency options" for LEAs that may face extreme financial hardship both during and after the grant period.

Other commenters objected to the priority's reference to the "redeployment" of other existing resources, stating that most LEAs already have reallocated available resources to meet the current budget crisis, that such redeployment may undermine other LEA program priorities, that resources used to support continuing education for teachers and principals are essential to improving the skills of these staff, and that redeploying resources used for salary increments potentially would lower the standard of living for teachers and make it more difficult to obtain mortgages and own their own homes.

Discussion: The Department acknowledges all of the concerns raised by commenters regarding the difficulty of ensuring the fiscal sustainability of TIF-funded PBCSs. However, in Public Law 111–117, the FY 2010 Appropriations Act that included funding for TIF, Congress provided that all applications for TIF grants "shall include a plan to sustain financially the activities conducted and systems developed under the grant once the grant period has expired." We do not

believe any credible plan for financial sustainability is likely to succeed without a demonstration by an applicant of its readiness to make the hard choices needed to ensure that the funding will be available to sustain the PBCS after the TIF grant ends. For this reason, the Department also is extending this requirement to TIF awards made with ARRA funds.

In addition, this final notice, like the NPP, does take into account the economic conditions facing the Nation's school systems. Unlike previous TIF awards, which required an increasing non-TIF share in years in which performance-based compensation is provided and established a percentage ceiling on the amount of TIF funds that could be used for incentive payments during the last year of the grant period, this notice requires only an increasing non-TIF share in years when performance-based compensation is provided. For all of these reasons, the Department declines to make the recommended changes to priority 2.

Changes: None.

Comment: One commenter requested clarification regarding the duration of an applicant's fiscal sustainability plan, *i.e.,* how many years following the end of TIF funding must a PBCS be sustained?

Discussion: Applicants have flexibility regarding the length of their sustainability plans. As a practical matter, we understand that the difficulty of making long-term predictions of economic conditions, State and local funding, and political factors may limit the required fiscal sustainability plans to no more than three to five years.

Changes: None.

Priority 3

Comment: Several commenters expressed support for priority 3 regarding programmatic sustainability of the PBCS. One commenter also urged that the priority include a focus on strategies for supporting educators, such as professional development, mentoring, and induction programs. Similarly, another commenter cautioned against too much emphasis on the PBCS when other approaches related to recruiting, inducting, mentoring, evaluating, and retaining teachers may be more effective in improving student achievement. Another commenter encouraged the Department to require, as part of priority 3, professional development strategies designed to improve the identification and instruction of students with disabilities and gifted and talented students. In addition, this commenter recommended that the Department promote mentoring and induction programs supporting collaboration between general and special education.

Discussion: Priority 3 is based on the idea that a PBCS works best in conjunction with a coherent and integrated approach to strengthening the educator workforce that specifically includes many of the strategies suggested by the commenters, such as teacher and principal recruitment, induction, professional development, evaluation, retention, and advancement into instructional leadership roles (as defined in this notice). Contrary to the second commenter's warning about "too much emphasis" on the PBCS, we believe the opportunity to receive incentive payments and other rewards from the PBCS will encourage educators to take full advantage of the various strategies and supports made available through the applicant's coherent and integrated approach to strengthening the educator workforce.

Moreover, the Department also expects that, particularly as part of an overall strategy to improve instruction for high-need students, TIF grantees will provide professional development related to meeting the needs of students with disabilities and gifted and talented students, including induction and mentoring programs aimed at supporting collaboration between general and special education. However, the Department declines to add specific requirements in this area as we believe that TIF grantees should implement site-specific professional development opportunities for teachers and principals designed based on their specific needs, which may include professional development related to serving students with disabilities and gifted and talented students.

Changes: None.

Priority 4

Comment: Three commenters expressed strong support for priority 4, a competitive priority on the use of value-added measures of student achievement for purposes of determining differentiated levels of compensation in a PBCS. Two of these commenters recommended making this priority an absolute priority, "since improving student achievement is the underlying purpose for all these incentives." Another commenter stated that the use of value-added models will address the problem of non-random assignment of students to individual teachers by helping to ensure that teachers with the highest-achieving students do not benefit disproportionately from a PBCS.

However, several other commenters raised strong objections to the use of value-added models as part of a PBCS, citing research that shows significant variability in the results of such models, particularly for individual teachers, the limited availability of data to support such models for most teachers, the limited number of vendors experienced in developing and implementing value-added models, and the lack of evidence that such models are fair, reliable, and valid when used to evaluate teacher effectiveness or determine compensation levels. One commenter, for example, stated that value-added systems are not appropriate for "high-stakes decisions regarding employee evaluation and compensation." Another commenter stated that the use of value-added models in PBCSs generally would exclude both educators of students with disabilities and the impact of regular instructors on students with disabilities, leading to "two separate systems for judging teacher performance." As a result of these various concerns, three commenters recommended eliminating priority 4 altogether. Other commenters suggested replacing the priority with a competitive preference for programs that enhance teaching and leadership skills through professional development or the pursuit of advanced certification or degrees, as well as the addition of multiple measures to value-added models. Finally, one commenter asked whether TIF funds could be used to refine a value-added model.

Discussion: We appreciate the expressions of support for encouraging applicants to incorporate value-added measures into their PBCSs, in particular due to the potential for such measures to isolate the improved achievement that may be attributed to individual teachers regardless of the starting point of their students. The Department understands and, to some extent, shares the concerns of some commenters regarding the need to be judicious about the use of value-added models due to the public's limited experience with them. We also recognize that many researchers have expressed concern about the use of value-added models to evaluate teacher performance. However, one purpose of a competitive grant program like the TIF program is to encourage innovation and the Department believes that a competitive preference on the use of value-added models as part of a PBCS is consistent with this purpose.

We also note that many of the research-based concerns expressed by commenters focus on the potential use of value-added models as the sole or predominant indicator of teacher performance, an approach that is not required under either the statutory

authority for the TIF program or this final notice, which states that, in determining teacher effectiveness, the LEA must give significant weight to student growth (as defined in this notice) and must include observation-based assessments of performance. Moreover, we believe that priority 4 is fully consistent with the observation of one study cited by a commenter that value-added approaches "may be appropriate for wider use as student assessment systems and value-added models evolve." One purpose of priority 4 is to promote such evolution by encouraging grantees to adapt value-added models to their PBCSs consistent with the safeguards for all PBCSs required by this final notice (*i.e.,* the use of multiple measures in teacher evaluation systems, teacher involvement in developing such systems, and robust data systems).

In addition, value-added models have the potential to improve the measurement of academic growth (as defined in this notice) for many students with learning disabilities, and thus should not be dismissed simply because they may not be appropriate for all students with disabilities. TIF funds also may be used to improve tools to measure growth (as defined in this notice) in student achievement (as defined in this notice), such as value-added models, and thus could be used to refine a value-added model, addressing some of the concerns raised by commenters. For this reason the Department does not agree with the commenters who suggested that we eliminate priority 4. Similarly, the Department does not agree that a competitive preference for programs that enhance teaching and leadership skills through professional development or attainment of professional credentials holds the same promise of improving our ability to measure teacher effectiveness as value-added measures of student achievement (as defined in this notice). We say this largely because such programs are not designed or intended to measure teacher effectiveness, as is statutorily required for the TIF program.

Changes: None.

Comment: One commenter requested clarification as to whether applicants could meet priority 4 by using value-added models only to evaluate teacher performance or whether they also must provide to teachers feedback aimed at improving instruction.

Discussion: In the NPP, the background section for proposed priority 4 clearly stated that one goal of this competitive preference priority is to ensure that applicants have a plan to enable teachers "to use the data generated through the models to improve classroom practices." However, the language of the proposed priority inadvertently omitted any reference to improving classroom practice. The Department has revised priority 4 to require TIF applicants seeking to meet this priority to ensure that they will use value-added data to improve classroom instruction as well as to evaluate teacher performance. As these activities are directly related to providing feedback educators need to improve their performance, and thus are part of a coherent and integrated approach to strengthening the educator workforce (*see* priority 2), TIF funds may be used to pay for activities needed to help educators use the value-added data to improve classroom practices, including the development or enhancement of systems and tools used to generate feedback to teachers for the purpose of improving instruction.

Changes: The Department has revised clause (2) of priority 4 to clarify that an applicant must demonstrate in its application that, as part of its PBCS, it has the capacity to clearly explain the chosen value-added model to teachers to enable them to use the data generated through the model to improve classroom practices.

Comment: One commenter recommended that priority 4 be revised to require LEAs to have a plan for including career and technical education (CTE) teachers in value-added systems, although the commenter acknowledged that value-added measures are problematic in CTE due to the lack of comparative data for the end-of-course assessments typically used in CTE courses.

Discussion: The Department declines, for the reason cited by the commenter, to require applicants to have a plan for including CTE courses in their value-added systems. However, applicants that have the capability to use such measures for CTE programs certainly may include them to meet the requirements of priority 4.

Changes: None.

Priority 5

Comment: One commenter recommended changing priority 5, the competitive preference priority on increased recruitment and retention of teachers in hard-to-staff subjects and specialty areas in high-need schools, to an absolute priority. Another commenter called for giving priority to applications that propose to increase recruitment or retention of teachers in hard-to-staff subjects in high-need schools. A third commenter sought clarification that an applicant could receive points for priority 5 by including an emphasis on recruiting and retaining teachers in hard-to-staff subjects and specialty areas as part of an overall PBCS for all teachers, rather than a PBCS focused solely on the goals of priority 5.

Discussion: We agree with the first commenter that increased recruitment and retention of teachers in hard-to-staff subjects and specialty areas in high-need schools is an important goal; however, we also believe that designing and implementing a good PBCS is difficult, and that some LEAs may be reluctant to add to the challenge by making recruitment and retention bonuses a required component of the system. Consistent with our overall policy of establishing mandatory requirements only when necessary, we believe that retaining priority 5 as a competitive preference priority is the appropriate way to encourage applicants to consider ways to use the PBCS to promote increased recruitment and retention of teachers in hard-to-staff subjects and specialty areas in high-need schools. The Department declines to give a competitive preference to an applicant that proposes to increase recruitment *or* retention, because we believe that it is the combination of the two strategies that is likely to be both most needed and most effective in serving high-need students in high-need schools. Finally, we agree that the components and activities required to meet priority 5 may be part of a broader TIF proposal for developing and implementing a PBCS that fulfills the full range of an applicant's recruitment and retention needs, not just those related to teachers in hard-to-staff subjects and specialty areas.

Changes: None.

Comment: Two commenters objected to what they described as the premise of priority 5—that an effective teacher will be effective in any school without regard to the school's conditions and climate. These commenters recommended that we address factors such as poor leadership and support, inadequate professional development, discipline and safety concerns, and planning time. The commenters argued that addressing these factors could help remove the "hard-to-staff" label from the school. A third commenter stated that any effort to attract and retain teachers should invest in teacher support and development.

Discussion: Priority 5 is not premised on the assumption that an effective teacher will be effective in any school; rather, it is based on the premise that a teacher who has demonstrated the

ability to raise student achievement (as defined in this notice) in one school is more likely to be effective in another school than a teacher who has not demonstrated such effectiveness in any school setting. In addition, an applicant seeking to meet priority 5 will be expected to incorporate the strategies for doing so into its coherent and integrated strategy for strengthening the educator workforce, which may, and whenever necessary should, include efforts to address the other conditions described by the commenters.

Changes: None.

Comment: One commenter objected to the use of the terms "effective" or "likely to be effective" in the context of priority 5 because of concerns about the use of growth measures to determine "effectiveness." Another commenter recommended that the priority be revised to include NBPTS certification as one measure that could demonstrate whether a teacher who is filling a hard-to-staff vacancy is effective or likely to be effective.

Discussion: We have addressed concerns about the use of student growth (as defined in this notice) measures to determine teacher and principal effectiveness under the General Comments section of this preamble. In addition, priority 5 requires applicants to provide an explanation for how they will determine that a teacher filling a vacancy is effective or likely to be effective. We believe that this language provides flexibility for an applicant to propose appropriate measures of effectiveness or likely effectiveness, including NBPTS certification, under priority 5.

Changes: None.

Comment: Three commenters provided suggestions about how to define "hard-to-staff" subjects under priority 5. One commenter recommended that we add CTE to the list of hard-to-staff subjects and specialty areas. Another commenter requested that the priority provide flexibility to allow LEAs to change their lists of hard-to-staff subjects and specialty areas over the 5-year grant period. The last commenter asked the Department to clarify that LEAs have the authority to determine which subjects are hard-to-staff and which areas constitute "specialty areas," and that specialty areas could include extended day, pre-K, or other areas in high-need schools that are difficult to staff.

Discussion: Priority 5 requires applicants to demonstrate, in their applications, the extent to which the subjects or specialty areas they propose to target are hard-to-staff. The language of the priority leaves the determination of hard-to-staff subjects and specialty areas up to applicants and the LEAs that administer the affected high-need schools. The Department, therefore, believes that, under priority 5, applicants have the flexibility to define "hard-to-staff" subjects consistent with the suggestions made by the commenters, including flexibility to change their definitions over the 5-year grant period. Also, because of this flexibility, we do not believe that any of the specific suggestions for additions to the list of hard-to-staff subjects and specialty areas are necessary, and therefore decline to make any changes to the priority.

Changes: None.

Comment: One commenter stated that paying the teachers of some subjects more than teachers of other subjects undermines the basic equity of existing compensation systems. Instead, this commenter recommended that we address gaps in subject and specialty areas through scholarships, tuition assistance, and loan forgiveness programs.

Discussion: The TIF program is premised on the belief that existing compensation systems do not serve the goal of increasing the number and proportion of effective teachers serving low-income, minority, and low-achieving students, and the belief that providing financial rewards for both effectiveness and willingness to work in challenging schools is a promising education reform. Many high-need schools have particular need for teachers of certain subjects and specialty areas (*e.g.,* mathematics, science, and special education), and we believe that higher pay for effective teachers in these areas who agree to work in high-need schools could help to alleviate this problem. We are confident that performance-based compensation available through TIF can be one means of addressing this problem. The Department agrees that other kinds of rewards and incentives described by the commenter also may be effective, but they fall outside the scope of the TIF program.

Changes: None.

Comment: One commenter asserted that the school intervention models required by the School Improvement Grants (SIG) program, some of which require the replacement of a school's teachers, could be a disincentive for teachers to take jobs in hard-to-staff schools.

Discussion: Except for school closure, none of the school intervention models required by the SIG program mandates the replacement of all effective teachers. Moreover, the Department believes that the significant resources potentially made available through the SIG program (up to $6 million per school over 3 years) will, in many cases, create a strong incentive for effective teacher and leaders seeking the challenge of turning around a persistently lowest-achieving school.

Changes: None.

Comment: One commenter asked whether priority 5 includes principals as well as teachers.

Discussion: Priority 5 is a competitive preference priority focused on recruiting and retaining teachers in hard-to-staff subjects and specialty areas and does not apply to principals. That said, applicants may include strategies and incentives to recruit and retain effective principals in high-need schools as part of the overall design of their PBCSs, but would not receive priority consideration for doing so under either the Main TIF or TIF Evaluation competitions.

Changes: None.

Suggested Priorities

Comment: Three commenters recommended that the Department establish additional absolute priorities for the TIF program. Two commenters called for an absolute priority on incentives to take on additional responsibilities and leadership roles, a recommendation that these commenters described as consistent with the treatment of other statutory mandates for this program. The third commenter suggested a new absolute priority on establishing and sustaining a competitive compensation schedule for school personnel that is comparable to compensation schedules of similar professions in the region. The commenter stated that such a priority is needed to avoid a situation in which a PBCS is perceived as preventing any teachers eligible for the PBCS from receiving a competitive, professional, or living wage, and that the schedule would need to be based on educational and professional attainment and provide annual increases that double the base salary within 10 years.

Discussion: Under the *Application Requirements,* each applicant is required to describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles (as defined in this notice). The Department believes that this requirement adequately addresses the commenters' concern, and that it is unnecessary to add a new absolute priority on additional responsibilities and leadership roles (as defined in this notice). The recommendation to use the

TIF program to establish uniform higher compensation schedules that are not linked to student achievement (as defined in this notice) is inconsistent with the TIF program's authorizing legislation, which requires eligible entities to use TIF funds to develop and implement PBCSs that consider growth (as defined in this notice) in student achievement (as defined in this notice), as well as classroom evaluations conducted multiple times during each school year. The law does not give the Department authority to require changes in an LEA's regular staff compensation system.

Changes: None.

Comment: Three commenters recommended that the final notice include two new invitational priorities. Two of these commenters called for an invitational priority for applications from SEAs in order to ensure the sustainability and broader impact of TIF awards. One commenter requested an invitational priority for PBCSs in which effective teachers are required to share their instructional practices prior to receiving incentive payments or bonuses.

Discussion: SEAs, like other eligible entities, must use TIF funds awarded to them to develop and implement a PBCS in high-need schools, a requirement that could involve efforts to ensure the sustainability and broader impact of TIF awards. However, the TIF program statute does not authorize TIF funds to be used to promote statewide support and broader impact of local TIF projects, and hence an invitational priority in this area does not seem appropriate. Furthermore, the Department agrees that having teachers share effective instructional practices could be a useful element of a TIF project, but declines to add an invitational priority to make incentive payments contingent on such practices because the primary purpose of the incentive payments required by the TIF program is to reward teachers for improving student achievement (as defined in this notice), not for sharing effective practices.

Changes: None.

Application Requirements

Comment: One commenter stated that the application process described in the NPP was unnecessarily complex due to "repetitive and inconsistent" priorities, application requirements, and selection criteria. The commenter recommended that because paragraphs (c) and (d) of the Core Elements already are covered by priorities 1 and 3, incorporating the remaining core elements into a new priority 6 regarding input from and communication with teachers would permit the elimination of the "core elements" section in the final notice.

Discussion: The Department acknowledges that proposed priorities 1 and 3 and paragraphs (c) and (d) of the Core Elements share some elements and language, but believes that there are differences in emphasis and detail that favor retention of the proposed structure of priorities, application requirements, core elements, selection criteria, and definitions. In addition, this structure facilitates the implementation of a planning period when necessary. For these reasons, the Department declines to change that structure in this final notice.

Changes: None.

Comment: One commenter was concerned that many of the terms used in paragraph (c) of the Core Elements related to professional development and evaluation systems are not defined (*e.g.,* "multiple," "professional teaching standards," and "inter-rater reliability"). One commenter proposed the use of a specific model of teacher evaluation for the TIF program, while another commenter called for replacing the requirement in paragraph (c) of the Core Elements that principal and teacher effectiveness be measured in significant part by student achievement with a system that (1) uses multiple measures of educator performance based on clear and comprehensive professional expectations and (2) is linked to continuous professional development and opportunities to demonstrate newly acquired knowledge and skills.

Another commenter asserted that few current performance evaluation systems are fair, valid, and reliable and recommended that the Department reconsider requiring the use of performance evaluation systems as part of a PBCS unless funding and other support (especially at the SEA level) is available to develop and implement new performance evaluation systems. Similarly, one commenter also suggested that, for a small LEA, the data management system called for in paragraph (d) of the Core Elements should be required to link student achievement data only to the teacher evaluation system and not to payroll and human resources systems.

Discussion: The Department believes that applicants should have some flexibility to define the terms cited by the first commenter, and that, if necessary, the Department may clarify such terms through non-regulatory guidance. We also believe that TIF applicants should be able to develop their own teacher evaluation systems in response to their own needs and circumstances, and thus we decline to require the use of any particular model for teacher evaluation. The recommendation that teacher evaluations should be based not on student achievement (as defined in this notice), but only on professional expectations and participation in professional development activities is not consistent with the statutory requirement that PBCSs take into account student achievement (as defined in this notice), and the Department, therefore, declines to make this change.

The Department generally agrees that few States or LEAs have implemented high-quality teacher evaluation systems; this is why building such systems is both a priority and a prerequisite under priorities 1 and 4, all five core elements, and selection criterion (b). Moreover, as the NPP made clear, grantees may use TIF funds to develop or improve systems and tools (which may be developed and used either for the entire LEA or only for schools served under the grant) that would enhance the quality and success of the PBCS, such as linkages that may not otherwise exist in the data systems used in small LEAs. For this reason, the Department does not believe it is necessary to permit exceptions to the requirements of paragraph (d) of the Core Elements for small LEAs.

Changes: None.

Comment: One commenter recommended adding a paragraph to the Core Elements that would require the PBCS to be aligned with an LEA's coherent and integrated strategy for strengthening its educator workforce, because without such a strategy, an applicant cannot meet priorities 1 and 3, and is therefore not eligible to receive a grant under the TIF program. Making the strategy one of the core elements would allow an LEA that does not already have such a strategy to use the planning period to develop one, thereby allowing them to meet priorities 1 and 3.

Discussion: To the extent that an eligible LEA does not already have a coherent and integrated strategy for strengthening its educator workforce, it must develop and document such a strategy as part of its application process. Moreover, an applicant would also be able to propose further work needed to design and implement its strategy for strengthening the educator workforce as part of its work during the Planning Period on Core Element (c). Therefore, we decline to follow the commenter's recommendation.

Changes: None.

Comment: One commenter requested clarification of the requirement that the

proposed PBCS provide participating teachers and principals with professional development that is shown to be effective.

Discussion: The specific language cited by the commenter that the professional development must be "shown to be effective" was included as background material in the *Requirements* section of the NPP and does not appear in this final notice. However, under paragraphs (3), (4), and (5) of the *Professional Development* requirement in the *Requirements* section of this notice, an applicant must demonstrate, in its application, that it provides effective professional development to teachers and principals covered by the PBCS and include a process for regularly assessing the effectiveness of this professional development in improving teacher practice and student achievement (as defined in this notice) and making the modifications necessary to improve its effectiveness. Therefore, we believe that the language in the *Requirements* section of this notice provides clarification and no additional language has been added.

Changes: None.

Comment: Several commenters expressed concern about ensuring involvement by and input from teachers, principals, and other school staff, as well as the involvement of unions representing these individuals, during the development of each LEA's PBCS. One commenter requested that the Department clarify that developing, communicating, and implementing a PBCS is a joint process involving teachers, administrators, and other school personnel. In other words, the commenter asserted, involvement in developing the PBCS must precede communicating its elements. Another commenter stated that the timing of the application process could make it difficult to obtain required input from teachers and principals. Two commenters recommended replacing the reference to unions in paragraph (b) of the core elements with "local teacher associations," to ensure that there is a mechanism for local teacher input in right-to-work States.

Discussion: The Department believes that the language included in paragraph (b) of the Core Elements, which states that PBCSs must be developed with the involvement and support of teachers, principals, and other personnel, including unions in participating LEAs where they are designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant, is sufficiently clear to meet the concerns of the commenters. The Department also believes that while an applicant will certainly want to discuss its proposal with affected educators and their union representatives as it develops its application, concerns about the availability of sufficient time to provide such input are addressed by the Planning Period provision, which allows a successful applicant to take up to one year during which it will use its TIF funds to develop the core element or elements it lacks. The Department certainly agrees that including local teacher input is important; however, the Department believes that the existing language in the notice is sufficient to address the need to involve both educators and union representatives in developing a PBCS and a TIF application.

Changes: None.

Comment: One commenter recommended that the final notice require that both the LEA and the collective bargaining representative involved in a TIF proposal certify that they understand the proposals reflected in the TIF program application and will negotiate terms and conditions needed to implement a TIF award without reopening for negotiation other contract provisions that are not implicated by the program. In addition, three commenters recommended that the Department require 75 percent of teachers in non-bargaining LEAs to approve a TIF project in order to demonstrate the significant buy-in from those affected by the plan that is needed to ensure successful implementation. Another commenter objected to the requirement for support from teacher unions to receive a TIF grant because it would give unions effective veto power over an LEA decision to apply for and carry out a Federal grant. Instead, this commenter called for the Department to require evidence of support from teachers and principals for the proposed PBCS, as well as a description of any legal barriers to carrying out a proposed PBCS and plans to overcome those barriers.

Discussion: The Department believes that, in general, the issues raised by the commenters about the TIF application and negotiating its terms and conditions for successful implementation should be the subject for local negotiation rather than Federal requirement. In addition because the creation of a PBCS directly affects employee compensation, which is a key issue in local collective bargaining agreements, the Department believes that cooperation from and agreement with local union representatives, where a union is a representative in collective bargaining, is essential to successful implementation of a PBCS. For these reasons, the Department has determined that it is not appropriate to revise the requirements as requested by the commenters.

Changes: None.

Comment: One commenter expressed concern about the complexity of many growth and value-added models and recommended that the Department add language to paragraph (e) of the Core Elements to ensure that the pay formulas used in a PBCS are transparent and understandable by teachers and principals.

Discussion: The Department believes that paragraphs (a), (b), and (e) of the Core Elements, which contain specific requirements related to communicating the components of the PBCS to teachers and principals, involving teachers and principals and ensuring their support for the PBCS, and ensuring that teachers and principals understand the measures of effectiveness included in the PBCS, are sufficient to ensure that PBCSs and related teacher evaluation systems are transparent and understandable by teachers and principals.

Changes: None.

Comment: Two commenters urged the Department to ensure that the data management systems required by paragraph (d) of the Core Elements protect the privacy of students and educators.

Discussion: The Department is committed to protecting the privacy of students and educators and, therefore, has added a clarifying footnote to paragraph (d) of the Core Elements to remind applicants that data systems used to pay incentives based on student growth (as defined in this notice) to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) must comply with any applicable requirements under FERPA. Privacy of data in these systems also is subject to any applicable State or local law.

Changes: We have added a footnote to paragraph (d) of the Core Elements stating that each successful applicant will need to ensure that its PBCS, including related data systems, complies with FERPA and applicable State or local privacy laws.

Comment: Two commenters expressed concern that limiting participation to high-need schools could make it difficult for many LEAs to implement a PBCS, and is inconsistent with the requirement that a PBCS be part of a district-wide coherent and integrated approach to strengthening the educator workforce. In addition, these commenters stated that limiting the

program to high-need schools would prevent a comparison of the impact of PBCSs in high-need and non-high-need schools.

Discussion: Public Law 111–117, which contains the Department's FY 2010 appropriation, authorizes the Department to use TIF funds to make competitive grants to eligible entities to develop and implement a PBCS in high-need schools. While this statute authorizes grantees to use TIF funds to develop or improve systems and tools, such as high-quality teacher evaluations and measurements of growth (as defined in this notice) in student achievement (as defined in this notice), that would enhance the quality and success of the PBCS either district-wide or only for participating high-need schools, it does not authorize the use of TIF funds to implement the PBCS in schools that are not high-need. Limiting the use of TIF funds to implement PBCSs in high-need schools does not necessarily prevent a grantee from evaluating the impact of having a PBCS in high-need schools versus non-high-need schools. If a grantee wishes to evaluate the impact of its PBCS on staff in high-need schools relative to staff in schools that are not high-need, however, it would need to ensure that (1) its use of TIF funds to conduct the study is reasonable and necessary to its implementation of its PBCS for staff in high-need schools, and (2) it does not use TIF funds for any of the costs associated with implementing the PBCS in non-high-need schools.

Changes: None.

Planning Year

Comment: In general, commenters praised the Department for proposing a planning year provision in the NPP, during which TIF applicants that need additional time to put in place the five core elements of a PBCS can do so. However, there were many suggestions for modifying or providing flexibility in the requirements of the planning period. A few commenters recommended that all grantees use a planning year to prepare to implement their PBCSs. Two commenters sought flexibility to begin implementing some core elements before plans for all five elements are in place. One commenter recommended that members of a consortium be permitted to have different starting points reflecting different levels of preparedness. Another commenter requested clarification regarding the portion of TIF funds that may be used for activities carried out during an approved planning year, whether TIF funds are available only for planning, and any other technical assistance and support that may be available during a planning period.

Discussion: The Department appreciates expressions of support from commenters for the proposed planning period of up to one year for grantees to put in place the five core elements prior to beginning incentive payments. We disagree with the recommendation to mandate a planning year, as such a requirement would needlessly delay implementation of a PBCS in a site that has all the key requirements in place and is ready to move forward. We agree that grantees should be able to begin implementing some core elements before all five elements are in place, as long as the grantee does not begin making incentive payments before all five core elements are completed. For example, an LEA might begin conducting observation-based assessments before it is able to link student achievement data to individual teachers. While the LEA may begin conducting observation-based assessments using TIF funds, it may not begin making incentive payments solely on the basis of these observation-based assessments. We believe that the Planning Period provision allows for this flexibility and that no changes are necessary in the final notice.

In addition, the Department agrees that members of a consortium could have different starting dates depending on their respective readiness relative to the five core elements and believes that, as proposed, the Planning Period provision and Core Elements would allow this and that no changes to the final notice are necessary. With respect to the portion of TIF funds that may be used for a planning year, whether TIF funds are available only for planning, and any other technical assistance and support that may be available during a planning period, an applicant may propose to use a specific amount of its TIF awards for a planning period, subject to negotiation and approval by the Department; however, TIF awards are not available solely for planning purposes. The Department may be able to provide limited technical assistance during a planning period.

Changes: None.

Comment: One commenter asserted that the Planning Period provision is unnecessary and "potentially unlawful" because a grantee that does not meet requirements, including the core elements, after the planning period may have spent grant funds unlawfully. For this reason, the commenter recommended that the Department eliminate the Planning Period in the final notice.

Discussion: The Department disagrees with this interpretation of the authorizing statutes; provided that it expends its TIF funds properly during the Planning Period to implement its planning responsibilities, a grantee that fails to complete the required core elements during its planning period simply would become ineligible to receive or otherwise obligate the remainder of its five-year grant amount.

Changes: None.

Eligibility

Comment: A large number of commenters objected to excluding current TIF grantees from the Main TIF and TIF Evaluation competitions, as proposed in the NPP. In particular, commenters stated that the prohibition on awarding new TIF funds to existing grantees would prevent the expansion of many promising PBCSs. One commenter added that excluding current grantees from the new competitions appeared to be contrary to the Department's emphasis on rewarding and replicating successful practices. Commenters recommended several alternatives to the exclusion of existing TIF grantees from these competitions, including extending eligibility to current grantees but giving priority to new applicants, limiting eligibility for the TIF Evaluation competition to new applicants but allowing existing grantees to apply for the Main TIF competition, and permitting awards to existing grantees that want to expand their programs to cover teachers or other educators who currently are not served (*e.g.,* a PBCS currently in place in high-need schools for principals only could be expanded to serve teachers).

Discussion: The Department did not propose to exclude existing TIF grantees from applying for new TIF awards; instead, the NPP proposed to limit eligibility for the Main TIF competition and the TIF Evaluation competition to applicants proposing to serve schools not already served (or to be served) under current TIF grants. A grantee, for example, that is serving only some of its high-need schools would have been eligible for a new award to expand coverage of its PBCS to additional high-need schools. The intention, as stated in the NPP, was to use new TIF funding to extend PBCSs to new high-need schools, rather than to provide more funding for PBCSs in schools already supported by the TIF program. Nonetheless, the Department is persuaded by the commenters that this proposal might have a negative impact upon the continued success of existing PBCSs. Because we do not want to impede the expansion of current TIF-funded PBCSs

to cover additional groups of educators in high-need schools, we have revised the eligibility requirement to permit existing TIF grantees that want to expand their PBCSs to cover unserved staff (as in the example cited by the last commenter) to expand a PBCS currently serving only principals to cover teachers as well. However, because we believe existing TIF grantees generally will have a competitive advantage in applying for new TIF funds, we also are adding a new competitive preference priority for new TIF applicants to promote a more level playing field for both existing grantees and new applicants. We have extended this competitive preference priority to the nonprofit organizations that (1) had previously received a TIF grant as part of a partnership, and (2) apply in partnership with one or more new LEAs or States. We do so because we believe that, given the focus of the TIF application requirements on conditions within the implementing LEA(s), these nonprofit organizations will not likely have a competitive advantage over other applicants.

Changes: We have revised the *Additional Eligibility Requirement* to allow existing TIF grantees to propose expanding their PBCSs to high-need schools not currently funded by TIF, as well as to include new categories of staff in schools currently funded by TIF. We have also added a new competitive preference priority that would give additional points to those applicants not currently funded by TIF. For this reason, we extend the availability of these competitive preference points to these nonprofit organizations as well. This new competitive preference priority is called *Competitive Preference Priority 6—New Applicants to the Teacher Incentive Fund*

Comment: One commenter recommended expanding the TIF program to include high schools.

Discussion: There is no restriction on serving high schools under the TIF program as long as applicants are able to meet all applicable requirements, including the use of data on student growth (as defined in this notice) as a significant factor in the evaluation of teachers, principals, and other school personnel that applicants may choose to include in the PBCS. Issues affecting high school participation in the evaluation are discussed in the following section under the sub-heading *TIF Evaluation Competition.*

Changes: None.

TIF Evaluation Competition

Comment: A few commenters noted that the NPP appears to limit participation in the TIF Evaluation competition to schools that have grades covered by assessment requirements under the Elementary and Secondary Education Act of 1965, as amended (ESEA) (*i.e.,* tested grades 3 through 8), and recommended that the Department should consider expanding the range of allowable tests to include advanced placement tests or the ACT to encourage greater participation by high schools, as well as the inclusion of a broader variety of subjects. Other commenters added that excluding high schools from the TIF Evaluation competition unfairly penalizes States and LEAs with assessment systems capable of providing value-added data for all teachers at all grade levels.

Discussion: The Department agrees that some high school tests would be suitable for the national evaluation. However, we also believe that the circumstances under which these tests would meet the requirements of the national evaluation are too complicated and varied to describe fully in this notice. The suitability of high school tests would depend upon the psychometric properties of the tests and the alignment between the subject matter taught by individual teachers and their students. In addition, the Department's Institute of Education Sciences (IES) evaluator would need to investigate whether the circumstances in which each high school test is used is consistent with the evaluation design. For example, tracking of courses at the high school level makes such comparisons more complicated and less reliable within the current study design. Also, because the expected effects of PBCSs on the issues to be studied are lower at higher grade levels, efforts to evaluate the effects of PBCSs on recruitment and retention of staff and student achievement at high school grade levels would require the evaluator to add significant numbers of new schools to the evaluation in order to assess the areas that are the pivotal to the study design.

Therefore, the Department believes it is neither cost-efficient nor practical to include high schools in the national evaluation plan, and therefore has limited the evaluation to the effects of the PBCSs on recruitment and retention of staff and student achievement in schools with grades 3 through 8. An applicant to the TIF Evaluation competition may propose a PBCS that also covers staff who work in high-need high schools and, if selected for the evaluation competition, may use TIF funds for PBCSs in those schools. However, for reasons we summarize in the preceding paragraph, we have determined that an LEA's high-need high schools will not count toward the minimum of eight schools required under the TIF Evaluation competition.

Changes: None.

Comment: Three commenters cited the potential for confusion regarding the evaluation requirements for both the Main TIF competition and the TIF Evaluation competition; in particular, these commenters expressed concern that some applicants may believe that applying for the TIF Evaluation competition obviates the need for a local project evaluation required under the Main TIF competition.

Discussion: The Department agrees that the local project evaluation described in the selection criteria of the Main TIF competition would add little or no utility for participants in the national evaluation selected under the TIF Evaluation competition and so does not believe that applicants selected under the TIF Evaluation competition should be required to conduct the local evaluations they propose in response to the *Quality of Local Evaluation* selection criteria. However, in the event that an applicant is not selected under the TIF Evaluation competition, the applicant's response to the local evaluation selection criteria will be reviewed as part of the Main TIF competition. For this reason, we are adding a *Local Evaluation* requirement to the TIF Evaluation requirements.

Changes: We have added a new requirement, called the *Local Evaluation* requirement in the TIF Evaluation competition requirements. This new requirement clarifies that, in order to be eligible to receive points under the selection criteria of the Main TIF competition, applications must include a description of its local evaluation, demonstrated in its response to the selection criterion *Quality of Local Evaluation.* If an applicant is selected under the TIF Evaluation competition, the local evaluation plan will not be reviewed and will not be applicable for program implementation.

Comment: Several commenters expressed concern about various aspects of the TIF Evaluation competition, including: The timeline and high matching requirements that could prevent many LEAs from applying, possible unfairness resulting from the selection of TIF Evaluation grantees before making awards under the Main TIF competition, lack of support in the statute for additional funding for Evaluation grantees, and unintended consequences on teacher employment decisions at control schools (*e.g.,* teachers may leave control schools if they know that they cannot receive performance pay regardless of their

effectiveness). Finally, one commenter recommended an independent validation and peer-review of the IES evaluation.

Discussion: The Department recognizes that the challenge of conducting an evaluation of the TIF program that uses randomized controlled methodology to the extent feasible, as required by the statute, has created a variety of concerns among commenters, including the fair treatment of applicants for both the Main TIF and TIF Evaluation competitions, tight timelines and high non-TIF program costs, and the difficulty of ensuring adequate participation by control schools that, by definition, will not be able to offer incentive payments to their teachers for the duration of the grant period. In response to many of these concerns, and to ensure high-quality evaluation results consistent with the statute, the Department has decided to implement, as outlined in this final notice, a hybrid of proposed comparison designs 1 and 2 that would provide a comparison between PBCSs implementing differentiated effectiveness incentive payments and PBCSs providing a small (*i.e.,* 1 percent) across-the-board bonus to all teachers and principals. Through the TIF program, the Department will pay the full cost of this modest across-the-board bonus in order to make participation in the TIF Evaluation competition more appealing to potential applicants. This approach will permit a study design that examines the effectiveness of substantial differentiated payments on teacher and principal performance while keeping program costs reasonable and providing a sufficient incentive for participation by control schools.

The Department does not believe, however, that additional financial support for TIF Evaluation grantees is inconsistent with the statutory authority for the TIF program, because this additional funding is essential to ensure the feasibility of the randomized controlled methodology specifically required by the statute. Finally, IES, which will manage the evaluation contract, will be guided by the expertise of an external technical working group to ensure the integrity and rigor of its study design, and all IES evaluations are subject to a rigorous external review process before the release of any findings.

Changes: We have revised the study design in this final notice to include a comparison of the implementation of differentiated effectiveness incentive payments in Group 1 schools with the payment of annual, 1 percent across-the-board bonuses in Group 2 schools. Under the new hybrid comparison design, the IES evaluator will select, by lottery, one-half of the evaluation schools within an LEA to implement the applicant's proposed differentiated effectiveness incentive payment component of the PBCS. The other half of the schools within the LEA participating in the evaluation will implement a 1 percent across-the-board annual bonus for teachers and principals, without implementing the differentiated effectiveness payment component. Both sets of schools would implement all of the non-payment components of the PBCS. Under this design, both treatment and control schools will receive additional TIF funds they may use for bonuses to attract educators as well as to pay for PBCS components. The evaluation will use a random assignment design consistent with the statute. Furthermore, we have removed the non-TIF match requirement that would have been applicable to proposed comparison design 2; there is no match requirement for the new hybrid design.

Comment: Two commenters requested clarification regarding IES's data collection plans, as well as when collected information would be available to grantees.

Discussion: IES's current data collection plan is designed to provide rich information about participating schools and staff, grant implementation, and rigorous impact data on educator recruitment, mobility, and student achievement. Data instruments will include grantee surveys and interviews, teacher and principal surveys, and student administrative records. IES expects to provide Evaluation competition grantees with regular and continuous evaluation results as they become available during and beyond the life of the 5-year grant period.

Changes: None.

Evaluation Models

Comment: A few commenters expressed a preference for comparison design 1 in the proposed TIF Evaluation competition, largely due to the higher cost of proposed comparison design 2, which would have required across-the-board salary increases that could be difficult to sustain beyond the grant period. In addition, one commenter expressed concern about predicting the required level of the across-the-board increases in the control schools before data are available on the actual size of incentive payments in the treatment schools.

Discussion: As discussed earlier in this notice, upon consideration of the public comments, the Department has determined that neither proposed comparison design 1 nor proposed comparison design 2 is likely to produce the high-quality evaluation results that the law anticipates for the required randomized study. Consequently, the final TIF Evaluation competition requirements reflect a hybrid of these two designs, described elsewhere in this notice, which will compare the outcomes obtained by PBCSs implementing differentiated effectiveness incentive payments and PBCSs providing a small (*i.e.,* 1 percent) across-the-board bonus to all teachers and principals. In particular, this new hybrid approach addresses the cost concerns raised by the commenters about the need for LEAs to be able to accurately predict their capacity to provide across-the-board salary increases.

Changes: None.

Comment: A number of commenters cited concerns about the proposed TIF Evaluation competition requirements, including the potential for high payouts (*e.g.,* 15 percent of salary) limiting the number of applicants that can afford to participate in the TIF Evaluation program, uncertainty about defining "significantly" better performance, and doubts that two months provides sufficient advance notice to change behavior.

Discussion: The Department believes that the potential for highly effective teachers and principals to receive substantially larger incentive rewards is essential both (1) to producing the measurable treatment effects required for meaningful and reliable evaluation results and (2) to implementing absolute priority 1. Hence, we envision that TIF Evaluation grantees and Main TIF grantees will have comparable differentiated incentive payment amounts.

Moreover, certainly not all teachers who are eligible to participate in the PBCS will likely earn the additional compensation. The issue really is the amount that, on average, an LEA must set aside for performance-based compensation per teacher (*i.e.,* higher incentive payments for the highest-performing teachers and principals will be offset by lower or no incentive payments for modestly performing teachers and principals), a context that we believe many if not most LEAs will find manageable.

With regard to the meaning of "significantly better" performance, the Department believes that this definition will vary from one teacher evaluation system to another, and that it is appropriate to allow applicants to

propose their own locally based criteria for determining what constitutes "significantly better."

Finally, while we agree that applicants should work with the IES evaluator to provide as much advance notice as possible of each school's status under the TIF Evaluation grant implementation plan, we believe that a minimum of two months notice is sufficient for affected teachers and principals to learn about the potential impact of the proposed PBCS and change their teaching practice in response. The Department also notes that a significant potential benefit of the planning period will be to give teachers and principals considerably more time to learn about a proposed PBCS prior to its implementation.

Changes: None.

Comment: Several commenters expressed concern about (1) the possible unintended consequences of the TIF Evaluation model designs, including the motivational effects on teachers of seeing performance-based compensation withheld from them while it is granted to teachers in other high-need schools; (2) the possibility of incentives luring both effective and ineffective teachers to treatment schools, where they have a chance to earn more money through bonus and incentive payments; and (3) the reluctance of teachers to participate in a lottery-based selection process that would make only some of them eligible for increased compensation.

Discussion: The Department agrees that these are legitimate concerns about the likely feasibility of the proposed comparison designs in the proposed TIF Evaluation competition; indeed, similar concerns led the Department to invite comment on two different proposed study designs. Ultimately, in considering public comment, the Department decided to implement a hybrid evaluation study design, described elsewhere in this final notice, which we believe is the best approach to minimizing the concerns raised by the commenters within the context of the TIF statute's requirement of a randomized design.

Changes: None.

Comment: Three commenters expressed concern that requiring eight schools with students in grades 3 through 8 would eliminate many small and medium-sized LEAs from consideration for TIF Evaluation awards. These commenters recommended that the selected evaluation design should ensure that a representative sample of schools (small, large, urban, rural, suburban) can meet the final design requirements. One commenter suggested that smaller LEAs could join consortia for purpose of reaching the eight-school requirement.

Discussion: The Department agrees that larger LEAs are more likely to meet the proposed minimum number of schools requirement, but believes that this limitation is necessary due to the need to conduct a rigorous evaluation with limited resources. Extending the evaluation design to better accommodate LEAs with a smaller number of high-need schools in grades 3 through 8 will make the evaluation prohibitively complicated and expensive. For this reason, the study design emphasizes rigor over representativeness. We acknowledge that although the national evaluation will not provide representative estimates of the effect of the TIF program on all LEAs in the Nation, it will provide descriptive information on all grantees funded under the FY 2010 competition. Also, we do agree that including consortia or intermediary units in the Evaluation design would be consistent with the needs of the evaluation design. Specifically, we believe it is appropriate to permit consortia or intermediary units that are considered LEAs under State law and that serve a coordinating function (*i.e.,* where data are available from a centralized or coordinating entity) to participate in the TIF Evaluation competition.

Changes: Consortia or intermediary units that are considered LEAs under State law and serve a coordinating function (*i.e.,* data are available from a centralized or coordinating entity) are now eligible for the TIF Evaluation competition. The minimum number of schools required for the overall consortia or intermediary unit is still eight and proposed consortia or intermediary unit schools must meet other requirements (*i.e.,* within the eight, each school is at least paired with another school at the same grade level and within the same State).

Comment: Several commenters recommended changes to the IES evaluation plan. These changes included: (1) Gathering data about the preparation of teachers who receive incentive payments to help determine the effectiveness of such preparation; (2) requiring a letter from each participating LEA's superintendent, board, principals, and research office indicating agreement to comply with evaluation requirements; (3) measuring the impact of PBCSs on teachers of students with disabilities and gifted and talented students; (4) protecting the rights of students and other participants in the TIF Evaluation; and (5) ensuring that key decisions regarding the conduct of the evaluation are made in the best interests of students and staff in participating schools.

Discussion: The Department believes that the data that will be collected as part of the rigorous, fair, and valid teacher evaluation systems required of TIF grantees will provide an excellent source for investigating the relative effectiveness of various forms of teacher preparation. However, investigations of factors affecting the preparation of teachers who receive incentive payments, while potentially important, are outside the scope of the TIF Evaluation competition, which is statutorily focused on the impact that PBCSs have on teacher and principal performance in high-need schools. We also note that the *Commitment to Evaluation* requirement of the proposed TIF Evaluation, which is retained unchanged in this final notice, requires letters from LEA superintendents, principals, and research offices indicating agreement to comply with all applicable TIF Evaluation requirements. In addition, to the extent that applicant PBCSs cover teachers of students with disabilities and teachers of gifted and talented students, the Department expects that these teachers will be included in the national TIF evaluation. As for protecting the rights and interests of students and other participants in the TIF Evaluation program, IES follows accepted ethical study procedures and its study designs and data collections are approved by both the Office of Management and Budget (OMB) and an independent Institutional Review Board. In addition, the statute authorizing IES requires protections related to data security and confidentiality, which IES follows. Also, IES is guided by the expertise of an external technical working group to ensure the integrity and rigor of its study design. Therefore, the Department believes that the IES evaluation plan already adequately addresses the commenters' concerns.

Changes: None.

Matching Funds

Comment: One commenter recommended that the Department allow prior investments in the planning and design of a PBCS to count as matching funds under new TIF awards.

Discussion: The primary purpose of requiring a matching contribution under the TIF program is to encourage grantees to commit, over time, the resources they need to continue making incentive payments once the period of Federal funding has ended. Funding or other resources expended on planning prior to receipt of a TIF grant would not

promote this purpose. Moreover, the Department's regulations regarding matching contributions (34 CFR 74.23(a)(4) and 80.24) and cost principles issued by the OMB in its Circulars A–21 and A–87 (codified in 2 CFR parts 20 and 225) require that, to be allowable, a matching contribution must be something that would be an allowable cost if paid with Federal grant funds. A grantee's prior investment in other services or activities is not such a cost. For these reasons, the Department declines to permit such prior investments to count toward the required non-TIF match.

Changes: None.

Comment: One commenter requested flexibility, in recognition of the current State and local budget climate, to allow a greater contribution from TIF grant funds toward incentive payments in the initial award years. Another commenter noted that the percentage of an applicant's budget used for incentives may not increase in a linear fashion due to such factors as uneven assessment results and local budget issues such as declining enrollments and school closures. This commenter recommended that the final notice include instead the expectation for "an upward trend" in both student achievement growth and the percentage of the applicant's budget used for incentive payments.

Discussion: The NPP specifically proposed allowing grantees to begin with a small contribution in the early years of a TIF project, stating in the *Background* section that while there is no required minimum percentage local contribution, the Department "would expect that as an LEA's PBCS becomes institutionalized, the percentage of its budget that is used for incentive payments would increase throughout the five-year grant period." In addition, priority 2 requires an applicant to provide, in its application, evidence that the applicant will provide, from non-TIF funds over the course of the five-year project period, an increasing share of performance-based compensation paid to teachers and principals in those project years in which the LEA provides such payments as part of its PBCS.

With regard to the concern that the need for an increasing annual match may not materialize if actual need for compensation payments decreases from one year to another, we note that the costs of implementing a PBCS involve more than the performance-based compensation payments themselves. Beyond this, should the level of a grantee's contribution to supplemental staff compensation costs decrease from year to year because an LEA's overall level of compensation payments under its PBCS also decreases, the Department will be able to work with the grantee to adjust the level of match so that it corresponds to the amount of TIF funds needed for compensation payments compared to the amount that had been budgeted and anticipated.

Changes: None.

Compensation Plans

Comment: Three commenters stated that there is no research to support paying bonuses to individual teachers who increase student test scores and urged the Department to revise the final notice to encourage school-wide incentive systems. On the other hand, one commenter objected to mixed-group compensation, largely for the reason cited in the NPP—that the incentive for individuals to perform better potentially is weakened if their compensation depends on the performance of others.

Discussion: The NPP proposed to allow, and not require, a grantee to use individual, group, or mixed-group incentives in its PBCS, and the Department sees no reason to prohibit any of these approaches, as each may have benefits and advantages depending on local circumstances. Moreover, permitting a variety of incentive models will encourage greater innovation and provide data to help determine which models work best and under what circumstances.

Changes: None.

Comment: One commenter recommended that the final notice permit an applicant to focus its PBCS on certain subjects or grade levels (or both) because, the commenter claimed, focusing on high-need subject areas could have greater impact than systems targeting other subjects. Another commenter asked whether an LEA could focus a PBCS on particular staff or schools (*e.g.,* new teachers or elementary schools).

Discussion: Applicants have flexibility under the final priorities, requirements, definitions, and selection criteria to design their PBCSs to reflect and meet local needs, including the selection of subjects and grade levels that will be included in the PBCSs. For example, an applicant with growth (as defined in this notice) or value-added data for certain subjects and grades would be permitted to develop a PBCS covering only teachers and principals responsible for those subjects and grades. An applicant also could choose to include only certain high-need schools, such as elementary schools, in its PBCS.

Changes: None.

Comment: One commenter urged that the final notice allow the use of TIF funds to pay at least a portion of master, mentor, or lead teacher salaries, while another recommended allowing payment of salaries for principal coaches.

Discussion: As discussed in the NPP, the notice inviting applications (NIA) will demonstrate the Department's commitment to limiting the use of TIF funding awarded in the Main TIF competition to paying the salary of only one master, mentor, lead teacher, or academic coach per school. Paying for more than one such salary per school could significantly reduce the resources available for the performance-based incentives and rewards that are by law the primary focus of the TIF program. That said, grantees may use TIF funds for bonuses paid to such staff if the staff assume additional responsibilities under the PBCS. TIF Evaluation grantees, on the other hand, will receive at least $1 million in additional funding over their five-year grant period that they can use to pay other TIF-related costs, and these funds may be used to pay the salaries of multiple master teachers, mentors, lead teachers or academic coaches in participating schools.

Changes: None.

Comment: One commenter requested that the Department clarify that incentives for taking on additional responsibilities and leadership roles could include financial incentives, such as salary increases and bonus payments.

Discussion: The Application Requirements require each applicant to describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles (as defined in this notice). This language encompasses both financial and non-financial incentives.

Changes: None.

Comment: One commenter asserted that LEA-wide PBCSs are essential to obtain the "complete buy-in" from both local unions and school boards necessary for successful outcomes; this commenter recommended that the final notice allow use of TIF funds to support a PBCS for an entire LEA, not just specific schools within an LEA. In such cases, the commenter added, the PBCS could support teacher quality and improved student achievement broadly across an LEA while providing specific incentives for hard-to-staff schools and high-need students.

Discussion: While the Department does not dispute the potential advantages of LEA-wide PBCSs, the statutory authority for the TIF program does not allow TIF funds to be used for incentive payments in such broad-based

systems. Instead, TIF funds may be used only for incentives and rewards provided to teachers, principals, and other school personnel who work in high-need schools (as defined in this notice) within an LEA. TIF funds also may be used more generally to help develop and implement the tools and systems required for a LEA-wide PBCS; however, incentive payments to teachers, principals, and other school personnel who work in non-high-need schools (as defined in this notice) must be paid for with non-TIF funds.

Changes: None.

Comment: One commenter suggested that meeting TIF program requirements could be difficult for resource-poor high-need schools and might have a negative impact on other reform efforts.

Discussion: The Department recognizes that meeting all the requirements of the TIF program, as proposed in the NPP and described in this final notice, may be challenging for many high-need schools (as defined in this notice). However, while TIF funds are specifically intended to help high-need schools overcome such challenges, the Department believes that the development and implementation of an appropriate PBCS necessitates the requirements proposed in the NPP and retained in this final notice.

Changes: None.

Incentives

Comment: Two commenters asked for clarification regarding the size of incentive payments required by the TIF program; in particular, the commenters wanted to know if there is any research suggesting an appropriate incentive amount, or if the overall average of 5 percent of teacher salaries suggested in the TIF Evaluation requirements was the minimum required amount.

Discussion: The Department is not aware of any definitive research regarding the optimal size of incentive payments for an effective PBCS and believes that a wide range of such payment amounts may be effective, depending on local circumstances and market conditions. The figure of 5 percent of the average teacher salary was provided only as an example; perhaps more important was the suggestion that creating meaningful differences in performance could require that the top-performing teachers and principals receive 3 times this average amount, or 15 percent of a salary. In any case, this final notice, like the NPP, makes clear in priority 1 that the Department is not requiring a minimum incentive amount, but expects applicants to clearly explain why the amounts they choose for their PBCSs are "high enough to create change in the behavior of current and prospective teachers and principals."

Changes: None.

Comment: Several commenters recommended providing additional flexibility with respect to the types and amounts of incentives used in an LEA's PBCS. In particular, the commenters highlighted the importance of non-financial incentives such as professional development, time for collaboration and leadership opportunities, uncertainty about the precise level of financial incentive needed to change educator behavior and performance, and local market needs and requirements.

Discussion: An applicant has flexibility to design its PBCS so that financial incentives and rewards are provided in combination with other incentives and support. In particular, as proposed in the NPP and finalized in this notice, the TIF program not only encourages, but also requires, high-quality professional development that is linked to the specific measures of teacher and principal effectiveness included in the PBCS, as well as opportunities to take on additional responsibilities and leadership roles (as defined in this notice).

Changes: None.

Comment: One commenter urged the Department to consider allowing TIF grantees to pay incentives only after positive student outcomes are obtained.

Discussion: The priorities and requirements proposed in the NPP and announced in this final notice require grantees to develop and implement PBCSs that pay incentives based on improved student learning. Under paragraph (a) of priority 1, the PBCS must give significant weight to student growth (as defined in this notice) in determining and rewarding teacher and principal effectiveness. However, other important goals of the TIF program, such as encouraging effective teachers and principals to work in the most challenging schools and recruiting and retaining teachers for hard-to-staff subjects and specialty areas, may require incentive payments independent of improved student outcomes, because the positive outcome desired is improved recruitment and retention of effective teachers and principals.

Changes: None.

Comment: Two commenters recommended allowing incentive pay and other additional compensation for teachers who obtain further education, professional development, national certification, or who work in challenging schools, or serve as mentors or on school improvement committees.

Discussion: The recommended factors described by the commenters are permitted as supplemental multiple measures that may be used when evaluating teacher and principal effectiveness under paragraph (c) of Priority 1. However, because such evaluations must give significant weight to student growth (as defined in this notice), these factors alone could not be the only measures used for compensating a teacher or principal under the proposed PBCS.

Changes: None.

Definition of High-Need School

Comment: Two commenters agreed with the definition of high-need school proposed in the NPP, which defines such a school as a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use. However, several other commenters recommended that the definition be changed to reflect the 40-percent poverty threshold used for schoolwide program eligibility under title I, part A of the ESEA. Other commenters also recommended that the definition be structured to consider academic need, and not just poverty status, to determine the eligibility of schools to participate in TIF-funded projects. For example, one commenter suggested that schools and LEAs in ESEA improvement status should be eligible for participation under the TIF program, regardless of poverty status. One commenter recommended using the persistently lowest-achieving schools definition from the SIG program. Two commenters urged the Department to change the definition so that high-need status is based only on academic factors. Finally, other commenters recommended defining need for the purposes of the TIF program at the LEA level rather than at the school level, as well as giving LEAs flexibility to determine need, particularly in cases where a school may miss the poverty threshold by one or two percentage points.

Discussion: The Department gave careful consideration to the alternative definitions of high-need school recommended by commenters, but ultimately decided to retain the definition of high-need school that was proposed in the NPP. In Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended, Congress authorized the lower 40-percent schoolwide program threshold in order to expand flexibility for schools to participate in Title I schoolwide

programs. However, the purpose of our definition of a high-need school in the NPP is to focus the limited funding that Congress has appropriated for TIF on assisting schools that serve the neediest communities. We are very concerned that lowering the poverty threshold for this program from 50 to 40 percent eligibility for free-and reduced-price lunch subsidies, as some commenters desire, will dilute the program's emphasis on helping such schools use PBCSs as one means to help increase student academic achievement. Moreover, the available data shows that even at the 50-percent poverty threshold, a regrettably large number of LEAs and States, in all parts of the Nation and in both urban and rural areas, will be able to identify enough high-need schools to support participation in the TIF program. Incorporating academic measures would dilute this focus on high-poverty schools, as many schools identified for improvement under the ESEA are low-poverty schools. Also, schools may be identified for ESEA improvement due to the performance of one or two relatively small subgroups of students, rather than the broader weaknesses in student achievement more commonly associated with our neediest schools. Finally, defining need at the LEA level would be inconsistent with the statutory authority for the TIF program, which clearly requires that the need for TIF program funds be measured at the school and not the LEA level.

Changes: None.

Definition of Student Achievement

Comment: One commenter suggested adding industry-recognized certificates and college credit to the alternative measures of student learning in the definition of student achievement.

Discussion: Paragraph (b) of the definition of student achievement permits the use of alternative measures of student learning, which could include those suggested by the commenter, provided that they are rigorous and comparable across schools. Therefore, we do not believe that a change to the definition is necessary.

Changes: None.

Comment: One commenter urged the Department to delete from the definition of student achievement the requirement that alternative measures of student learning must be "rigorous and comparable across schools," because the requirement effectively limits other measures to assessment results.

Discussion: The Department declines to make the requested change because ensuring that alternative measures of student learning are rigorous and comparable across schools is essential if student achievement data based on such measures are to be part of a fair, valid, and reliable teacher evaluation system. Using non-comparable achievement data could result in unfair teacher ratings.

Changes: None.

Definition of Student Growth

Comment: One commenter argued that applicants for the TIF program should be able to use "status" measures of student achievement to evaluate teacher effectiveness if the LEAs in which the PBCS is to be implemented are in States that do not currently have assessment systems capable of measuring student growth (as defined in this notice).

Discussion: Student achievement alone, as measured, for example, on the annual assessments required by the ESEA, is not sufficient for measuring the change in individual student achievement over time, which is an essential element of the teacher evaluation systems required by the TIF program. For this reason, all TIF applicants must be able to measure individual student growth (as defined in this notice), and may not use the "snapshot" of student achievement provided by ESEA assessments as a substitute for measuring growth (as defined in this notice).

Changes: None.

Definition of Additional Responsibilities and Leadership Roles

Comment: One commenter stated that the proposed definition of additional responsibilities and leadership roles in the NPP is too prescriptive. Another commenter recommended that the Department change this definition so that it is targeted specifically at improving teacher capacity and is linked to increasing student achievement, rather than student-focused activities, such as tutoring or mentoring individual students.

Discussion: The Department believes that the definition of additional responsibilities and leadership roles is sufficiently broad to provide applicants with flexibility to define which duties and roles satisfy the definition. Moreover, as we acknowledged in the NPP, the list of additional responsibilities and leadership opportunities in the definition is not intended to be exhaustive, and we encourage applicants to develop opportunities for additional responsibilities and leadership roles (as defined in this notice) for their teachers, principals, and, at the applicant's discretion, other school personnel.

Changes: None.

Selection Criteria

Comment: One commenter recommended adding a new selection criterion related to sustainability, to encourage and reward the creation of LEA consortia that support PBCS sustainability. Another commenter suggested that an applicant's previous progress and achievements in developing or implementing a PBCS should be taken into account in scoring applications.

Discussion: The Department believes that the sustainability goal recommended by the commenter is amply supported by priorities 2 and 3, related to financial sustainability and comprehensive approaches needed for PBCSs, and that adding an additional sustainability requirement to the selection criteria is unnecessary. We also believe that, in general, applicants that have started or completed various elements of a PBCS will likely be in a position to submit stronger applications than applicants that have not, and that therefore there is no need to give additional weight or priority to these "early adopters."

Changes: None.

Comment: None.

Discussion: In reviewing the proposed selection criteria, the Department determined that in order to address criterion (b)(i), applicants would have to explain how the effectiveness of teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) would be determined. However, the notice of proposed priorities did not specifically provide for applicants to submit this information. In order to ensure that peer reviewers may review this key information, the Department has decided to request it as part of the selection criteria.

Changes: The Department has added sub-criterion (b)(1)(iii) to the selection criterion that asks applicants to provide a clear explanation of how teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) are determined to be "effective" for the purposes of the proposed PBCS.

Comment: None.

Discussion: In reviewing the proposed selection criteria, the Department has determined that it is necessary to change (b)(1)(ii) to request an applicant's proposed methodology for determining the effectiveness of teachers, principals, and other personnel (in those sites in which the

grantee wishes to expand the PBCS to additional staff in its schools) using measures of student growth (as defined in this notice) instead of student achievement (as defined in this notice). The Department would like to be consistent in promoting student growth (as defined in this notice) as a significant component of an applicant's measure of effectiveness, as noted throughout the notice as well as in selection criterion (b)(1). Given this change, under selection criterion (b)(1)(ii), the Department has also removed the reference to norm- and criterion-referenced statewide assessment scores as valid and reliable measures of student growth. This reference is redundant with the definition of student growth (as defined in this notice), which references student achievement as a student's score on the State's assessments under the ESEA.

Changes: Under selection criterion (b)(1)(ii), the term student achievement (as defined in this notice) has been replaced with student growth (as defined in this notice) and the statement regarding norm- and criterion-referenced statewide assessment scores has been removed.

Final Priorities

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational 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

The Secretary establishes the following priorities for the TIF program. We may apply these priorities in any year in which this program is in effect. All of the priorities are applicable under both the Main TIF competition and the TIF Evaluation competition.

Absolute Priorities

Priority 1 (Absolute)—Differentiated Levels of Compensation for Effective Teachers and Principals

To meet this absolute priority, an applicant must demonstrate, in its application, that it will develop and implement a PBCS that rewards, at differentiated levels, teachers and principals who demonstrate their effectiveness by improving student achievement (as defined in this notice) as part of the coherent and integrated approach of the local educational agency (LEA) to strengthening the educator workforce. In determining teacher and principal effectiveness as part of the PBCS, the LEA—

(a) Must give significant weight to student growth (as defined in this notice), based on objective data on student performance;

(b) Must include observation-based assessments of teacher and principal performance at multiple points in the year, carried out by evaluators trained in using objective evidence-based rubrics for observation, aligned with professional teaching standards; and, if applicable, as part of the LEA's coherent and integrated approach to strengthening the educator workforce; and

(c) May include other measures, such as evidence of leadership roles (as defined in this notice), that increase the effectiveness of other teachers in the school or LEA.

In determining principal effectiveness as part of a PBCS, the LEA must give significant weight to student growth (as defined in this notice) and may include supplemental measures such as high school graduation and college enrollment rates.

In addition, the applicant must demonstrate that the differentiated effectiveness incentive payments will provide incentive amounts that are substantial and provide justification for the level of incentive amounts chosen. While the Department does not propose a minimum incentive amount, the Department encourages applicants to be thorough in their explanation of why the selected incentive amounts are likely high enough to create change in the behavior of current and prospective teachers and principals in order to ultimately improve student outcomes.

Priority 2 (Absolute)—Fiscal Sustainability of the Performance-Based Compensation System (PBCS)

To meet this absolute priority, the applicant must provide, in its application, evidence that:

(a) The applicant has projected costs associated with the development and implementation of the PBCS, during the project period and beyond, and has accepted the responsibility to provide such performance-based compensation to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) who earn it under the system; and

(b) The applicant will provide from non-TIF funds over the course of the five-year project period an increasing share of performance-based compensation paid to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) in those project years in which the LEA provides such payments as part of its PBCS.

Priority 3 (Absolute)—Comprehensive Approaches to the Performance-Based Compensation System (PBCS)

To meet this absolute priority, the applicant must provide, in its application, evidence that the proposed PBCS is aligned with a coherent and integrated strategy for strengthening the educator workforce, including in the use of data and evaluations for professional development and retention and tenure decisions in the LEA or LEAs participating in the project during and after the end of the TIF project period.

Competitive Preference Priorities (Priorities 4 through 6) Priority 4 (Competitive Preference)—Use of Value-Added Measures of Student Achievement

To meet this competitive preference priority, the applicant must demonstrate, in its application, that the proposed PBCS for teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) will use a value-added measure of the impact on student growth (as defined in this notice) as a significant factor in calculating differentiated levels of compensation provided to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools).

Under this priority, the applicant must also demonstrate that it has a plan to ensure that, as part of the PBCS, it has

the capacity to (1) implement the proposed value-added model (*e.g.,* through robust data systems that collect the necessary data and ensure data quality), and (2) clearly explain the chosen value-added model to teachers to enable them to use the data generated through the model to improve classroom practices.

Priority 5 (Competitive Preference)—Increased Recruitment and Retention of Effective Teachers to Serve High-Need Students and in Hard-to-Staff Subjects and Specialty Areas in High-Need Schools

To meet this competitive preference priority, the applicant must demonstrate in its application that its proposed PBCS is designed to assist high-need schools (as defined in this notice) to (1) serve high-need students (as defined in this notice), (2) retain effective teachers in teaching positions in hard-to-staff subjects and specialty areas, such as mathematics, science, special education, and English language acquisition, and (3) fill vacancies with teachers of those subjects or specialty areas who are effective or likely to be effective. The applicant must provide an explanation for how it will determine that a teacher filling a vacancy is effective or likely to be effective. In addition, applicants must demonstrate, in their applications, the extent to which the subjects or specialty areas they propose to target are hard-to-staff. Lastly, applicants must demonstrate, in their applications, that they will implement a process for effectively communicating to teachers which of the LEA's schools are high-need and which subjects and specialty areas are considered hard-to-staff.

Priority 6 (Competitive Preference)—New Applicants to the Teacher Incentive Fund

To meet this competitive preference priority, an applicant must be a new applicant to the TIF program. For the purposes of this priority, a new applicant is (1) an eligible entity that has not previously been awarded a grant under the TIF program, or (2) a nonprofit organization that previously received funding through TIF, as part of a partnership with one or more LEAs or SEAs, but that is applying to work with a different group of eligible LEAs or SEAs than it worked with under any previous TIF grant. Under this competitive preference priority, a current nonprofit grantee may not propose to use new TIF funds to compensate for any activities related to the development and implementation of its PBCS in LEAs and high-need schools (as defined in this notice) already served under the current grant. Rather, a nonprofit organization that is a current TIF grantee may only use new TIF funds for the costs of implementing the PBCS in high-need schools (as defined in this notice) that have not previously received TIF funds.

Final Main TIF Competition Requirements

The Secretary establishes the following requirements for the Main TIF competition. We may apply these requirements in any year in which this program is in effect.

Selection of Competition. An applicant may submit an application for either the Main TIF competition or the TIF Evaluation competition. Each applicant must identify in its application the competition for which it is applying. Decisions regarding awards for the TIF Evaluation program will be made prior to doing so for the Main TIF competition, so that applicants not funded in the TIF Evaluation competition will still be eligible for funding under the Main TIF competition.

Application Requirement. Each applicant must describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles (as defined in this notice).

Core Elements of a PBCS and a Potential Planning Period. Each applicant must either—

(a) Demonstrate in its application that it has in place the five core elements that follow; or

(b) If the applicant cannot demonstrate in its application that it has in place each of the five core elements—

(1) Agree, as part of its application, to implement a planning period of up to one year, during which it will use its TIF funds to develop the core element or elements it lacks; and

(2) Include, in its application, a plan for how it will implement the core element or elements it lacks during the planning period.

Core Elements.

(a) A plan for effectively communicating to teachers, administrators, other school personnel, and the community at-large the components of its PBCS;

(b) The involvement and support of teachers, principals, and other personnel (including input from teachers, principals, and other personnel in the schools and LEAs to be served by the grant) and the involvement and support of unions in participating LEAs (where they are the designated exclusive representatives for the purpose of collective bargaining) that is needed to carry out the grant;

(c) Rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate effectiveness using multiple rating categories that take into account student growth (as defined in this notice) as a significant factor, as well as classroom observations conducted at least twice during the school year. The evaluation process must: (1) Use an objective, evidence-based rubric aligned with professional teaching or leadership standards and the LEA's coherent and integrated approach to strengthening the educator workforce; (2) provide for observations of each teacher or principal at least twice during the school year by individuals (who may include peer reviewers) who are provided specialized training; (3) incorporate the collection and evaluation of additional forms of evidence; and (4) ensure a high degree of inter-rater reliability (*i.e.,* agreement among two or more raters who score approximately the same);

(d) A data-management system [1] that can link student achievement (as defined in this notice) data to teacher and principal payroll and human resources systems; and

(e) A plan for ensuring that teachers and principals understand the specific measures of teacher and principal effectiveness included in the PBCS, and receive professional development that enables them to use data generated by these measures to improve their practice.

Planning Period Requirements. Each grantee that implements a planning period to develop the core element or elements it lacks, is—

(a) Required to demonstrate in its annual performance report or other interim performance report that it has implemented any of the five core elements it had lacked at the start of the project; and

(b) Prohibited from using TIF program funds to provide incentive payments to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) until it has implemented a PBCS that, to the Secretary's satisfaction, has all five core elements.

Professional Development. Each applicant must demonstrate, in its

[1] Successful applicants that receive Teacher Incentive Fund program grant awards must ensure that the program's PBCS, including the necessary data systems, complies with the Family Educational Rights and Privacy Act (FERPA), including the regulations in 34 CFR Part 99, as well as any applicable State and local requirements regarding privacy.

application, that its proposed PBCS will include a high-quality professional development component for teachers and principals consistent with the definition of the term *professional development* in section 9101(34) of the ESEA.

The applicant must demonstrate that its PBCS has a professional development component in place, or a specific plan for developing one, that is directly linked to the specific measures of teacher and principal effectiveness included in the PBCS. The professional development component of the PBCS must—

(1) Be based on needs assessed either at the high-need schools (as defined in this notice) participating in the applicant's proposed PBCS or LEA-wide;

(2) Be targeted to individual teachers' and principals' needs as identified in the evaluation process;

(3) Provide—

(a) Those teachers and principals in participating TIF schools who do not receive differentiated compensation based on effectiveness under the PBCS with the tools and skills they need to improve their effectiveness in the classroom or school and be able to raise student achievement (as defined in this notice); and

(b) Those teachers and principals who are deemed to be effective and who, therefore, receive differentiated compensation under the PBCS, with the tools and skills they need to (1) continue effective practices in the classroom or school and raise student achievement (as defined in this notice), and (2) successfully assume additional responsibilities and leadership roles (as defined in this notice);

(4) Support teachers and principals to better understand and use the measures of effectiveness in the PBCS to improve practice and student achievement (as defined in this notice); and

(5) Include a process for regularly assessing the effectiveness of this professional development in improving teacher and leadership practice to increase student achievement (as defined in this notice) and making modifications necessary to improve its effectiveness.

High-Need Schools Documentation. Each applicant must demonstrate, in its application, that the schools to be served by the proposed PBCS are high-need schools (as defined in this notice). Each applicant must provide, in its application, a list of schools in which the proposed PBCS will be implemented as well as the most current data on the percentage of each identified school's students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that the LEA uses (*see* section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Data provided to demonstrate eligibility as a high-need school (as defined in this notice) must be school-level data; the Department will not accept LEA- or State-level data for purposes of documenting whether a school is a high-need school (as defined in this notice).

Additional Eligibility Requirement. Each applicant that currently participates in a TIF project must confirm in its application either that—

(a) Its proposed PBCS would be available to educators in high-need schools (as defined in this notice) in which the LEA does not currently make a TIF-supported PBCS available; or

(b) If the applicant's current TIF project serves only principals or only teachers, its proposed project would add teachers or principals, respectively, who work in high-need schools (as defined in this notice) and who are not eligible for performance-based compensation under the applicant's current TIF project's PBCS.

If awarded a grant, the grantee must maintain its PBCS for teachers and principals in high-need schools (as defined in this notice) for the duration of the new TIF project period. An applicant may also propose to have other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) who work in high-need schools (as defined in this notice) benefit from the PBCS.

Final TIF Evaluation Competition Requirements

In addition to the requirements and priorities for the Main TIF competition, which applicants for the TIF Evaluation competition are also required to meet, the Secretary includes the following requirements for the TIF Evaluation competition only:

Budget Information. In exchange for its agreement to participate in the national TIF Evaluation, a successful applicant for the TIF Evaluation competition will receive a minimum of $1 million of additional funding over the 5-year grant period (above the amount of funding awarded to it to implement the PBCS proposed in its application) for the four pairs of schools selected to participate in the evaluation. For each additional pair of schools participating in the evaluation, a successful applicant will receive an additional $250,000, up to a maximum total additional award of $2 million.

An applicant for the TIF Evaluation competition must provide, in its application, a proposed budget that indicates how it plans to use the additional funds the Department would award. While these additional funds must be used for TIF-related activities, examples of acceptable expenses include the costs of:

(1) Academic coaches such as mathematics and reading coaches, and Master, Mentor, or Lead Teacher salaries beyond those the Department will otherwise fund under the Main TIF competition (the Department approves expenses related to one salary, per position, per high-need school (as defined in this notice) within the project scope);

(2) Activities such as expenses related to release time for teachers to attend professional development beyond those the Department will otherwise fund under the Main competition (the Department does not allow for an unreasonable amount of substitute teacher salaries to compensate for this release time);

(3) Support for the PBCS that would otherwise need to be paid with non-TIF funds in order to implement the applicant's plan for fiscal sustainability under absolute priority 2; and

(4) Costs associated with participating in the national evaluation, such as preparing administrative student records for use by the national evaluator.

Incentive Amounts. Consistent with absolute priority 1, an applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS that uses—

(1) Incentive payments to principals based on differentiated levels of effectiveness in which—

(a) The average principal payout (defined as the total amount of principal payments divided by the total number of principals in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5 percent of the average principal salary);

(b) The criteria for determining whether a principal is eligible for payment are challenging (*e.g.,* payments are made to only those who perform significantly better than the current average performance among study schools within the LEA) [2] and

(c) There is an expectation of meaningful differences in resulting principal pay (*e.g.,* at least some principals could reasonably expect to receive an incentive payment of three

[2] For the purposes of the TIF Evaluation competition, an "LEA" includes consortia and intermediary units, so long as they are considered an LEA under State law.

times the average principal payout, and the applicant's documentation of cost projections is consistent with this expectation); and

(2) Incentive payments to teachers based on differentiated levels of effectiveness in which—

(a) The average teacher payout (defined as the total amount of teacher payments divided by the total number of teachers in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5 percent of the average teacher salary);

(b) The criteria for determining whether a teacher is eligible for payment are challenging (*e.g.,* payments are made only to those who perform significantly better than the current average performance among study schools within the LEA); and

(c) There is an expectation of meaningful differences in resulting teacher pay (*e.g.,* at least some teachers could reasonably expect to receive an incentive payment of three times the average teacher payout and the applicant's documentation of cost projections is consistent with this expectation).

Implementation of Evaluation. Each applicant under the TIF Evaluation competition must agree, in its application, to implement its differentiated effectiveness incentive component of the PBCS and a 1 percent across-the-board annual bonus in at least one LEA in accordance with the implementation plan developed by the Institute of Education Sciences (IES) evaluator, Mathematica Policy Research (*http://www.mathematica-mpr.com/education/tifgrantee.asp*). Specifically, the IES evaluator will select by lottery one-half of the evaluation schools within the LEA (*i.e.,* "Group 1") to implement the applicant's proposed differentiated effectiveness incentive payment component of the PBCS. The other half of the schools within the LEA (*i.e.,* "Group 2") participating in the evaluation will implement a 1 percent across-the-board annual bonus for teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools). The applicant must identify, in its application, the schools that are proposed for participation in the evaluation.

In participating LEAs that have the five core elements in place at the time of the initial grant award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS at the beginning of the 2010–2011 school year. In a participating LEA that does not yet have in place the five core elements necessary to implement a successful PBCS at the time of award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS no later than the 2011–2012 school year.

The following table illustrates the TIF Evaluation random assignment plan, depending on the amount of planning time an applicant needs:

	Random assignment [a]	Pay component of PBCS [b]
LEAs Ready for 2010–11 Implementation	Group 1	Differentiated pay implemented starting in 2010–11.
	Group 2	Across-the-board annual 1 percent bonus implemented starting in 2010–11 through 2014–15.
LEAs Ready for 2011–12 Implementation	Group 1	Differentiated pay implemented starting in 2011–12.
	Group 2	Across-the-board annual 1 percent bonus implemented starting in 2011–12 through 2014–15.

[a] For each LEA, the IES evaluator will randomly assign the schools participating in the Evaluation into 2 groups (Groups 1 and 2).
[b] The school year listed is the first year in which the differentiated effectiveness incentive component of the PBCS will be implemented in the LEA's schools participating in the designated group.

Commitment to Evaluation. An applicant for the TIF Evaluation competition must demonstrate, in its application, that each participating LEA and school is willing to participate in the TIF Evaluation. Documentation demonstrating this commitment must include, for each participating LEA—

(1) A letter from the LEA superintendent and the principals of the participating schools stating that those officials agree to meet the TIF Evaluation competition requirements, including adhering to the implementation plan of the IES evaluator, which involves selection through a lottery of those schools to implement the differentiated effectiveness component among the schools participating in the evaluation.

(2) A letter from the research office or research board of the participating LEA that expresses an agreement to comply with the TIF Evaluation requirements (if the LEA requires such research office approval).

Advance Notice. Each applicant must agree, in its application, to work with the IES evaluator to notify all eligible schools participating in the TIF Evaluation at least two months prior to the assigned Group 1 implementation schedule. The Department will waive this advance notice for any applicants that are eligible to implement their PBCS in 2010–11 (*i.e.,* meet the five core requirements) so long as the program is implemented according to the evaluator's assigned group status (**Note:** The evaluator will be ready to assign group status immediately upon grant award, or if the applicant prefers, the applicant can discuss with Mathematica prior to grant award how to comply with the evaluation requirements by contacting Mathematica at *http://www.mathematica-mpr.com/education/tifgrantee.asp*).

Implementation of All Non-differentiated Effectiveness Incentive Components. Each applicant must agree, in its application, to implement the non-differentiated effectiveness incentive components of its PBCS (*e.g.,* bonuses for leadership or additional responsibilities and professional development activities) in all of the LEA's participating schools (those in Groups 1 and 2) starting at the same time as the differentiated effectiveness incentive component of its PBCS is implemented in the Group 1 schools. The schools in Group 2 must not implement the differentiated effectiveness incentive component of its PBCS for the duration of the TIF grant.

Scope of Schools. An applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS in eight or more high-need schools (as defined in this notice) in an LEA that has students in tested subjects or grades (*i.e.,* students in grades three through eight). At least two of the schools proposed to participate in the TIF Evaluation must be from within the same grade configuration (*i.e.,* if elementary schools are proposed there are at least two elementary schools among the minimum of eight schools all within the same LEA; if middle schools are proposed there are at least two middle schools among the minimum of eight

schools all within the same LEA). Applicants that include multiple LEAs must meet the scope of schools requirement in at least one LEA. In addition, no LEA will have more than 16 high-need schools (as defined in this notice) selected for the TIF Evaluation.

An applicant that is a consortium of small LEAs or an intermediary unit that is considered an LEA under State law does not have to have eight eligible schools in a participating LEA provided that the consortium or intermediary unit serves a coordinating function (*i.e.,* data are available from a centralized or coordinating entity). In this case, the minimum number of schools required for the consortium or intermediary unit is still eight, and within the eight, each school is at least paired with another school at the same grade level and within the same State. The Department will use the number of eligible schools, up to 16 per LEA, that a successful applicant makes available for the TIF Evaluation.

Local Evaluation. In order to be eligible to receive points under the selection criteria, TIF Evaluation competition applicants must include a description of its local evaluation, demonstrated in its response to the selection criterion *Quality of Local Evaluation.* For the purposes of the TIF Evaluation competition, the score for this part of the application will not be used to rank the application. For the purposes of the Main TIF competition, if applicable, the score for this part of the application will be used to rank the application. If an applicant is selected under the TIF Evaluation competition, the local evaluation plan will not be reviewed and will not be applicable for program implementation.

Final Definitions

The Secretary establishes the following definitions for the TIF program. We may apply these definitions in any year in which this program is in effect.

High-need school means a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (*see* section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-need school under this definition is determined on the basis of the most currently available data.

Student achievement means—

(a) For tested grades and subjects—

(1) A student's score on the State's assessments under the ESEA; and

(2) As appropriate, other measures of student learning, such as those described in paragraph (b) of this definition, provided that they are rigorous and comparable across schools; and

(b) For non-tested grades and subjects, alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State or LEA may also include other measures that are rigorous and comparable across schools.

High-need students means students at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who have left school before receiving a regular high-school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Additional responsibilities and leadership roles means additional duties teachers may voluntarily accept, such as: (1) Serving as master or mentor teachers who are chosen through a performance-based selection process (including through assessment of their teaching effectiveness and the ability to work effectively with other adults and students) and who have responsibilities to share effective instructional practices and/or to assess and improve the teaching effectiveness of other teachers in the school; (2) roles in induction and mentoring of novice teachers or high-need students (as defined in this notice); (3) tutoring students; or (4) roles in establishing and developing learning communities designed to continually improve the capacity of all teachers in a school to advance student learning, using a shared set of practices, instructional principles, or teaching strategies.

Selection Criteria

The Secretary establishes the following selection criteria for evaluating an application under the TIF program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications, we will announce the maximum possible points assigned to each criterion.

(a) *Need for the project.* In determining the need for the proposed project, the Secretary will consider the extent to which the applicant establishes that—

(1) The high-need schools (as defined in this notice) whose educators would be part of the PBCS have difficulty—

(i) Recruiting highly qualified or effective teachers, particularly in hard-to-staff subjects or specialty areas, such as mathematics, science, English language acquisition, and special education; and

(ii) Retaining highly qualified or effective teachers and principals.

(2) Student achievement (as defined in this notice) in each of the schools whose educators would be part of the PBCS is lower than in what the applicant determines are comparable schools in the LEA, or another LEA in its State, in terms of key factors such as size, grade levels, and poverty levels;

(3) A definition of what it considers a "comparable" school for the purposes of paragraph (2) of this selection criterion is established.

(b) *Project design.* The Secretary will consider the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary will consider the extent to which the proposed PBCS—

(1) Is part of a proposed LEA or statewide strategy, as appropriate, for improving the process by which each participating LEA rewards teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) in high-need schools (as defined in this notice) based upon their effectiveness as determined in significant part by student growth (as defined in this notice). With regard to the effectiveness of teachers, principals, and other personnel, the Secretary will consider whether—

(i) The methodology the LEA or SEA proposes to use in its PBCS to determine the effectiveness of a school's teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) includes valid and reliable measures of student growth (as defined in this notice);

(ii) The participating LEA would use the proposed PBCS to provide performance awards to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) that are of sufficient size to affect the behaviors of teachers,

principals, and other personnel and their decisions as to whether to go to, or remain working in, the high-need school; and

(iii) The applicant provides a clear explanation of how teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) are determined to be "effective" for the purposes of the proposed PBCS.

(2) Has the involvement and support of teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools), including input from teachers, and principals, and other personnel in the schools and LEAs to be served by the grant, and the involvement and support of unions in participating LEAs where they are the designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant;

(3) Includes rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate levels of effectiveness using multiple rating categories that take into account data on student growth (as defined in this notice) as a significant factor, as well as classroom observations conducted at least twice during the school year;

(4) Includes a data-management system, consistent with the LEA's proposed PBCS, that can link student achievement (as defined in this notice) data to teacher and principal payroll and human resources systems; and

(5) Incorporates high-quality professional development activities that increase the capacity of teachers and principals to raise student achievement (as defined in this notice) and are directly linked to the specific measures of teacher and principal effectiveness included in the PBCS.

(c) *Adequacy of Support for the Proposed Project.* In determining the adequacy of the support for the proposed project, the Secretary considers the extent to which—

(1) The management plan is likely to achieve the objectives of the proposed project on time and within budget, and includes clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks;

(2) The project director and other key personnel are qualified to carry out their responsibilities, and their time commitments are appropriate and adequate to implement the project effectively;

(3) The applicant will support the proposed project with funds provided under other Federal or State programs and local financial or in-kind resources; and

(4) The requested grant amount and project costs are sufficient to attain project goals and reasonable in relation to the objectives and design of the project.

(d) *Quality of Local Evaluation.* In determining the quality of the local project evaluation, the Secretary considers the extent to which the applicant's evaluation plan—

(1) Includes the use of strong and measurable performance objectives (that are clearly related to the goals of the project) for raising student achievement (as defined in this notice), increasing the effectiveness of teachers, principals and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools), and retaining and recruiting effective teachers, principals, and other personnel;

(2) Will produce evaluation data that are quantitative and qualitative; and

(3) Includes adequate evaluation procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

This notice does not preclude the Department 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, requirements, definitions, and selection criteria, we invite applications through a notice inviting applications published in the **Federal Register.**

Executive Order 12866:

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the president's priorities, or the principles set forth in the Executive order.

Pursuant to the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through the TIF program will exceed that amount. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of the Executive order.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the final priorities, requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Need for Federal Regulatory Action

These final priorities, requirements, definitions, and selection criteria are needed to implement the TIF program. The Secretary does not believe that the statute, by itself, provides a sufficient level of detail to ensure that the program achieves the greatest national impact in promoting educational innovation. The authorizing language is very brief and provides only broad parameters governing the program. The final priorities, requirements, definitions, and selection criteria established in this notice provide greater clarity on the types of activities the Department seeks to fund, and permit the Department to fund projects that are closely aligned with the Secretary's priorities.

In the absence of specific selection criteria for the TIF program, the Department would use the general selection criteria in 34 CFR 75.210 in selecting grant recipients. The Secretary does not believe the use of those general criteria would be appropriate for the Main TIF grant and TIF Evaluation competitions, because they do not focus on the development of PBCSs or activities most likely to increase the quality of teaching and school administration and improve educational outcomes for students.

Regulatory Alternatives Considered

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to establish those included in

this notice. The final priorities, requirements, definitions, and selection criteria are those that the Secretary believes best capture the purposes of the program while clarifying what the Secretary expects the program to accomplish and ensuring that program activities are aligned with Departmental priorities. The final priorities, requirements, definitions, and selection criteria also provide eligible applicants with flexibility in selecting activities to apply to carry out under the program. The Secretary believes that the final priorities, requirements, definitions, and selection criteria thus appropriately balance a limited degree of specificity with broad flexibility in implementation.

Summary of Costs and Benefits

The Secretary believes that the final priorities, requirements, definitions, and selection criteria do not impose significant costs on eligible applicants. The Secretary also believes that the benefits of the final priorities, requirements, definitions, and selection criteria outweigh any associated costs.

The Secretary believes that the final priorities, requirements, definitions, and selection criteria will result in the selection of high-quality applications to implement activities that are most likely to improve the quality of teaching and educational administration. The final priorities, requirements, definitions, and selection criteria are intended to provide clarity as to the scope of activities the Secretary expects to support with program funds and the expected burden of work involved in preparing an application and implementing a project under the program. Eligible applicants need to consider carefully the effort that will be required to prepare a strong application, their capacity to implement a project successfully, and their chances of submitting a successful application.

The Secretary believes that the costs imposed on applicants by the final priorities, requirements, definitions, and selection criteria will be limited to paperwork burden related to preparing an application and that the benefits of the final priorities, requirements, definitions, and selection criteria outweigh any costs incurred by applicants. The costs of carrying out activities will be paid for with program funds and with matching funds. Thus, the costs of implementation are not a burden for any eligible applicants, including small entities. However, under the final selection criteria the Secretary will assess the extent to which an eligible applicant is able to sustain a project once Federal funding through the TIF program is no longer available. Thus, eligible applicants should propose activities that they will be able to sustain without funding from the program and, thus, in essence, should include in their project plan the specific steps they will take for sustained implementation of the proposed project.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whithouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final regulatory action. This table provides our best estimate of the Federal payments to be made to States, LEAs, and nonprofit organizations under this program as a result of this final regulatory action. This table is based on funds available for new awards under this program from the ARRA supplemental appropriation and the fiscal year 2010 appropriation. Expenditures are classified as transfers to those entities.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Annual Monetized Transfers.	$437.0.
From Whom to Whom	Federal Government to States, LEAs, and nonprofits.

Paperwork Reduction Act of 1995: The requirements and selection criteria established in this notice require the collection of information that is subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Department has received approval to submit the information collections described in this section for OMB review under emergency processing.

We estimate that each applicant will spend approximately 248 hours of staff time to address the requirements and selection criteria, prepare the application, and obtain necessary clearances. Based on the number of applications the Department received in the first competition it held (in FY 2006), we expect to receive approximately 120 applications for these funds. The total number of hours for all expected applicants is an estimated 29,760 hours. We estimate the total cost per hour of the applicant-level staff who carry out this work to be $30 per hour. Therefore, the total estimated cost for all applicants will be $892,800.

Waiver of Congressional Review Act: These regulations have been determined to be major for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, *et seq.*). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register.** Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

These final priorities, requirements, definitions, and selection criteria are needed to implement the new TIF authority provided by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2010 and the ARRA. The Department must award TIF funds authorized under both the Appropriations Act and the ARRA to qualified applicants by September 30, 2010, or the funds will lapse. Even on an extremely expedited timeline, it is impracticable for the Department to adhere to a 60-day delayed effective date for the final priorities, requirements, definitions, and selection criteria and make grant awards to qualified applicants by the September 30, 2010 deadline. When the 60-day delayed effective date is added to the time the Department will need to receive applications (approximately 45 days), review the applications (approximately 21 days), and finally approve applications (approximately 65 days), the Department will not be able to award funds authorized under the Appropriations Act and ARRA to applicants by September 30, 2010. The delayed effective date would be impracticable and contrary to the public interest. The Department has therefore determined that, pursuant to section 808(2) of the CRA, the 60-delay in the effective date generally required for congressional review is impracticable, contrary to the public interest, and waived for good cause.

Regulatory Flexibility Act Certification

The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action may affect are (1) small LEAs, and (2) nonprofit organizations applying for and receiving funds under this program in partnership with an LEA or SEA. The Secretary

believes that the costs imposed on an applicant by the final priorities, requirements, definition, and selection criteria will be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals outweigh any costs incurred by the applicant.

Participation in the TIF program is voluntary. For this reason, the final priorities, requirements, definitions, and selection criteria impose no burden on small entities unless they apply for funding under a TIF program using the priorities, requirements, definitions, and selection criteria established in this notice. We expect that in determining whether to apply for TIF funds, an eligible entity will evaluate the requirements of preparing an application and implementing a TIF project, and any associated costs, and weigh them against the benefits likely to be achieved by implementing the TIF project. An eligible entity will probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a TIF program grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of its TIF application to spur development and implementation of PBCSs without Federal funding through the TIF program.

The U.S. Small Business Administration (SBA) Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 146,802 nonprofit organizations that had an educational mission and reported revenue to the Internal Revenue Service (IRS) by January 2010, 142,357 (97 percent) had revenues of $5 million or less. In addition, there are 12,484 LEAs in the country that meet the SBA's definition of small entity. While these entities are eligible to apply for funding under the TIF program, the Secretary believes that only a small number of them will be interested in applying, thus reducing the likelihood that the priorities, requirements, definitions, and selection criteria proposed in this notice will have a significant economic impact on small entities. In the first TIF competition that the Department held in FY 2006, approximately 21 nonprofit organizations applied for funding in partnership with an LEA or SEA, and few of these organizations appeared to be a small entity. The Secretary has no reason to believe that a future competition under this program would be different. To the contrary, we expect that the competitions run under Public Law 111–8 and the ARRA will be similar to the FY 2006 competition because only a limited number of nonprofit organizations are working actively on the development of teacher and school leader PBCSs and many of these organizations are larger organizations.

In addition, the Secretary believes that the priorities, requirements, definitions, and selection criteria established in this notice do not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application would likely be the same.

Further, this final regulatory action may help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it will be able to meet the costs of compliance using the funds provided under this program and with any matching funds provided by private-sector partners.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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.*

Dated: May 18, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–12218 Filed 5–20–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education: Overview Information; Teacher Incentive Fund: Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.385 and 84.374.

Dates:

Applications Available: May 21, 2010.

Deadline for Notice of Intent to Apply: June 1, 2010.

Deadline for Transmittal of Applications: July 6, 2010.

Dates of Pre-Application Workshops: Visit the Teacher Incentive Fund's Web site at: *http://www2.ed.gov/programs/teacherincentive/applicant.html* for more information.

Deadline for Intergovernmental Review: September 3, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Teacher Incentive Fund (TIF) program is to support projects that develop and implement performance-based compensation systems (PBCSs) for teachers, principals, and other personnel in order to increase educator effectiveness and student achievement (as defined in this notice), measured in significant part by student growth (as defined in this notice), in high-need schools (as defined in this notice).

Priorities: These priorities are from the notice of final priorities, requirements, definitions, and selection criteria (NFP) for this program, published elsewhere in this issue of the **Federal Register**. This notice contains six priorities for the Main TIF Competition and the TIF Evaluation Competition. Priorities 1 through 3 are absolute priorities. Priorities 4 through 6 are competitive preference priorities and are aligned with other key education reform goals of the Department.

Absolute Priorities: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that address these priorities.

Applicants for each type of grant must address all three absolute priorities in their applications. These priorities are:

Priority 1 (Absolute)—Differentiated Levels of Compensation for Effective Teachers and Principals:

To meet this absolute priority, an applicant must demonstrate, in its application, that it will develop and implement a PBCS that rewards, at differentiated levels, teachers and principals who demonstrate their effectiveness by improving student achievement (as defined in this notice), as part of the coherent and integrated approach of the local educational agency (LEA) to strengthening the educator workforce.

In determining teacher and principal effectiveness as part of the PBCS, the LEA—

(a) Must give significant weight to student growth (as defined in this notice), based on objective data on student performance;

(b) Must include observation-based assessments of teacher and principal performance at multiple points in the year, carried out by evaluators trained in using objective evidence-based rubrics for observation, aligned with professional teaching standards; and, if applicable, as part of the LEA's coherent and integrated approach to strengthening the educator workforce; and

(c) May include other measures, such as evidence of leadership roles (as defined in this notice), that increase the effectiveness of other teachers in the school or LEA.

In determining principal effectiveness as part of a PBCS, the LEA must give significant weight to student growth (as defined in this notice) and may include supplemental measures such as high school graduation and college enrollment rates.

In addition, the applicant must demonstrate that the differentiated effectiveness incentive payments will provide incentive amounts that are substantial and provide justification for the level of incentive amounts chosen. While the Department does not propose a minimum incentive amount, the Department encourages applicants to be thorough in their explanation of why the selected incentive amounts are likely high enough to create change in the behavior of current and prospective teachers and principals in order to ultimately improve student outcomes.

Priority 2 (Absolute)—Fiscal Sustainability of the Performance-Based Compensation System (PBCS):

To meet this absolute priority, the applicant must provide, in its application, evidence that:

(a) The applicant has projected costs associated with the development and implementation of the PBCS, during the project period and beyond, and has accepted the responsibility to provide such performance-based compensation to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) who earn it under the system; and

(b) The applicant will provide from non-TIF funds over the course of the five-year project period an increasing share of performance-based compensation paid to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) in those project years in which the LEA provides such payments as part of its PBCS.

Priority 3 (Absolute)—Comprehensive Approaches to the Performance-Based Compensation System (PBCS):

To meet this absolute priority, the applicant must provide, in its application, evidence that the proposed PBCS is aligned with a coherent and integrated strategy for strengthening the educator workforce, including in the use of data and evaluations for professional development and retention and tenure decisions, in the LEA or LEAs participating in the project, during and after the end of the TIF project period.

Competitive Preference Priorities: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Applicants may choose to address one or more of the three competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) applicants will be awarded points for competitive preference priorities 4 and 5 depending on how well the application addresses the priority. The number of points to be awarded are indicated in parenthesis following the criterion.

These priorities are:

Priority 4 (Competitive Preference)—Use of Value-Added Measures of Student Achievement. (Up to 5 points)

To meet this competitive preference priority, the applicant must demonstrate, in its application, that the proposed PBCS for teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) will use a value-added measure of the impact on student growth (as defined in this notice) as a significant factor in calculating differentiated levels of compensation provided to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools).

Under this priority, the applicant must also demonstrate that it has a plan to ensure that, as part of the PBCS, it has the capacity to (1) implement the proposed value-added model (*e.g.,* through robust data systems that collect

the necessary data and ensure data quality), and (2) clearly explain the chosen value-added model to teachers to enable them to use the data generated through the model to improve classroom practices.

Priority 5 (Competitive Preference)—Increased Recruitment and Retention of Effective Teachers to Serve High-Need Students and in Hard-to-Staff Subjects and Specialty Areas in High-Need Schools. (Up to 5 points)

To meet this competitive preference priority, the applicant must demonstrate in its application that its proposed PBCS is designed to assist high-need schools (as defined in this notice) to (1) serve high-need students (as defined in this notice), (2) retain effective teachers in teaching positions in hard-to-staff subjects and specialty areas, such as mathematics, science, special education, and English language acquisition, and (3) fill vacancies with teachers of those subjects or specialty areas who are effective or likely to be effective. The applicant must provide an explanation for how it will determine that a teacher filling a vacancy is effective or likely to be effective. In addition, applicants must demonstrate, in their applications, the extent to which the subjects or specialty areas they propose to target are hard-to-staff. Lastly, applicants must demonstrate, in their applications, that they will implement a process for effectively communicating to teachers which of the LEA's schools are high-need and which subjects and specialty areas are considered hard-to-staff.

Priority 6 (Competitive Preference)—New Applicants to the Teacher Incentive Fund. (2 points)

To meet this competitive preference priority, an applicant must be a new applicant to the TIF program. For the purposes of this priority, a new applicant is (1) an eligible entity that has not previously been awarded a grant under the TIF program, or (2) a nonprofit organization that previously received funding through TIF, as part of a partnership with one or more LEAs or SEAs, but that is applying to work with a different group of eligible LEAs or SEAs than it worked with under any previous TIF grant. Under this competitive preference priority, a current nonprofit grantee may not propose to use new TIF funds to compensate for any activities related to the development and implementation of its PBCS in LEAs and high-need schools (as defined in this notice) already served under the current grant. Rather, a nonprofit organization that is a current TIF grantee may only use new TIF funds for the costs of implementing the PBCS in high-need schools (as defined in this notice) in the new LEAs or SEAs (including charter schools) that have not previously received TIF funds.

Requirements: The following sections provide requirements for both the Main TIF and TIF Evaluation competitions.

Requirements for Main TIF competition:

The following requirements are from the notice of final priorities, requirements, definitions, and selection criteria (NFP) for this program, published elsewhere in this issue of the **Federal Register**, and apply to the Main TIF competition.

Selection of Competition. An applicant may submit an application for either the Main TIF competition or the TIF Evaluation competition. Each applicant must identify in its application the competition for which it is applying. Decisions regarding awards for the TIF Evaluation program will be made prior to doing so for the Main TIF competition, so that applicants not funded in the TIF Evaluation competition will still be eligible for funding under the Main TIF competition.

Application Requirement. Each applicant must describe in its application how its proposed PBCS will provide educators with incentives to take on additional responsibilities and leadership roles (as defined in this notice).

Core Elements of a PBCS and a Potential Planning Period. Each applicant must either—

(a) Demonstrate in its application that it has in place the five core elements that follow; or

(b) If the applicant cannot demonstrate in its application that it has in place each of the five core elements—

(1) Agree, as part of its application, to implement a planning period of up to one year, during which it will use its TIF funds to develop the core element or elements it lacks; and

(2) Include, in its application, a plan for how it will implement the core element or elements it lacks during the planning period.

Core Elements.

(a) A plan for effectively communicating to teachers, administrators, other school personnel, and the community-at-large the components of its PBCS;

(b) The involvement and support of teachers, principals, and other personnel (including input from teachers, principals, and other personnel in the schools and LEAs to be served by the grant) and the involvement and support of unions in participating LEAs (where they are the designated exclusive representatives for the purpose of collective bargaining) that is needed to carry out the grant;

(c) Rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate effectiveness using multiple rating categories that take into account student growth (as defined in this notice) as a significant factor, as well as classroom observations conducted at least twice during the school year. The evaluation process must: (1) Use an objective, evidence-based rubric aligned with professional teaching or leadership standards and the LEA's coherent and integrated approach to strengthening the educator workforce; (2) provide for observations of each teacher or principal at least twice during the school year by individuals (who may include peer reviewers) who are provided specialized training; (3) incorporate the collection and evaluation of additional forms of evidence; and (4) ensure a high degree of inter-rater reliability (*i.e.,* agreement among two or more raters who score approximately the same);

(d) A data-management system [1] that can link student achievement (as defined in this notice) data to teacher and principal payroll and human resources systems; and

(e) A plan for ensuring that teachers and principals understand the specific measures of teacher and principal effectiveness included in the PBCS, and receive professional development that enables them to use data generated by these measures to improve their practice.

Planning Period Requirements. Each grantee that implements a planning period to develop the core element or elements it lacks, is—

(a) Required to demonstrate in its annual performance report or other interim performance report that it has implemented any of the five core elements it had lacked at the start of the project; and

(b) Prohibited from using TIF program funds to provide incentive payments to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) until it has implemented a PBCS that, to the Secretary's satisfaction, has all five core elements.

Professional Development. Each applicant must demonstrate, in its

[1] Successful applicants that receive Teacher Incentive Fund grant awards must ensure that the program's PBCS, including the necessary data systems, complies with the Family Educational Rights and Privacy Act (FERPA), including the regulations in 34 CFR Part 99, as well as any applicable State and local requirements regarding privacy.

application, that its proposed PBCS will include a high-quality professional development component for teachers and principals consistent with the definition of the term *professional development* in section 9101(34) of the ESEA.

The applicant must demonstrate that its PBCS has a professional development component in place, or a specific plan for developing one, that is directly linked to the specific measures of teacher and principal effectiveness included in the PBCS. The professional development component of the PBCS must—

(1) Be based on needs assessed either at the high-need schools (as defined in this notice) participating in the applicant's proposed PBCS or LEA-wide;

(2) Be targeted to individual teachers' and principals' needs as identified in the evaluation process;

(3) Provide—

(a) Those teachers and principals in participating TIF schools who do not receive differentiated compensation based on effectiveness under the PBCS with the tools and skills they need to improve their effectiveness in the classroom or school and be able to raise student achievement (as defined in this notice); and

(b) Those teachers and principals who are deemed to be effective and who, therefore, receive differentiated compensation under the PBCS, with the tools and skills they need to (1) continue effective practices in the classroom or school and raise student achievement (as defined in this notice), and (2) successfully assume additional responsibilities and leadership roles (as defined in this notice);

(4) Support teachers and principals to better understand and use the measures of effectiveness in the PBCS to improve practice and student achievement (as defined in this notice); and

(5) Include a process for regularly assessing the effectiveness of this professional development in improving teacher and leadership practice to increase student achievement (as defined in this notice) and making modifications necessary to improve its effectiveness.

High-Need Schools Documentation. Each applicant must demonstrate, in its application, that the schools to be served by the proposed PBCS are high-need schools (as defined in this notice). Each applicant must provide, in its application, a list of schools in which the proposed PBCS will be implemented as well as the most current data on the percentage of each identified school's students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that the LEA uses (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Data provided to demonstrate eligibility as a high-need school (as defined in this notice) must be school-level data; the Department will not accept LEA-or State-level data for purposes of documenting whether a school is a high-need school (as defined in this notice).

Additional Eligibility Requirement. Each applicant that currently participates in a TIF project must confirm in its application either that—

(a) Its proposed PBCS would be available to educators in high-need schools (as defined in this notice) in which the LEA does not currently make a TIF-supported PBCS available; or

(b) If the applicant's current TIF project serves only principals or only teachers, its proposed project would add teachers or principals, respectively, who work in high-need schools (as defined in this notice) and who are not eligible for performance-based compensation under the applicant's current TIF project's PBCS.

If awarded a grant, the grantee must maintain its PBCS for teachers and principals in high-need schools (as defined in this notice) for the duration of the new TIF project period. An applicant may also propose to have other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) who work in high-need schools (as defined in this notice) benefit from the PBCS.

Requirements for the TIF Evaluation Competition:

In addition to the requirements and priorities for the Main TIF competition, which applicants for the TIF Evaluation competition are also required to meet, the Secretary includes the following requirements for the TIF Evaluation competition only:

Budget Information. In exchange for its agreement to participate in the national TIF Evaluation, a successful applicant for the TIF Evaluation competition will receive a minimum of $1 million of additional funding over the 5-year grant period (above the amount of funding awarded to it to implement the PBCS proposed in its application) for the four pairs of schools selected to participate in the evaluation. For each additional pair of schools participating in the evaluation, a successful applicant will receive an additional $250,000, up to a maximum total additional award of $2 million.

An applicant for the TIF Evaluation competition must provide, in its application, a proposed budget that indicates how it plans to use the additional funds the Department would award. While these additional funds must be used for TIF-related activities, examples of acceptable expenses include the costs of:

(1) Academic coaches such as mathematics and reading coaches, and Master, Mentor, or Lead Teacher salaries beyond those the Department will otherwise fund under the Main TIF competition. Under the Main TIF competition, the Department approves expenses related to one salary, per position, per high-need school (as defined in this notice) within the project scope);

(2) Activities such as expenses related to release time for teachers to attend professional development beyond those the Department will otherwise fund under the Main competition (the Department does not allow for an unreasonable amount of substitute teacher salaries to compensate for this release time);

(3) Support for the PBCS that would otherwise need to be paid with non-TIF funds in order to implement the applicant's plan for fiscal sustainability under absolute priority 2; and

(4) Costs associated with participating in the national evaluation, such as preparing administrative student records for use by the national evaluator.

Incentive Amounts. Consistent with absolute priority 1, an applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS that uses—

(1) Incentive payments to principals based on differentiated levels of effectiveness in which—

(a) The average principal payout (defined as the total amount of principal payments divided by the total number of principals in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5 percent of the average principal salary);

(b) The criteria for determining whether a principal is eligible for payment are challenging (*e.g.,* payments are made to only those who perform significantly better than the current average performance among study schools within the LEA),[2] and;

(c) There is an expectation of meaningful differences in resulting principal pay (*e.g.,* at least some principals could reasonably expect to receive an incentive payment of three

[2] For the purposes of the TIF Evaluation Competition, an "LEA" includes consortia and intermediary units, so long as they are considered an LEA under State law.

times the average principal payout and the applicant's documentation of cost projections is consistent with this expectation); and

(2) Incentive payments to teachers based on differentiated levels of effectiveness in which—

(a) The average teacher payout (defined as the total amount of teacher payments divided by the total number of teachers in the schools participating in the differentiated effectiveness incentive payment component of the PBCS) is substantial (*e.g.,* 5 percent of the average teacher salary);

(b) The criteria for determining whether a teacher is eligible for payment are challenging (*e.g.,* payments are made only to those who perform significantly better than the current average performance among study schools within the LEA); and

(c) There is an expectation of meaningful differences in resulting teacher pay (*e.g.,* at least some teachers could reasonably expect to receive an incentive payment of three times the average teacher payout and the applicant's documentation of cost projections is consistent with this expectation).

Implementation of Evaluation. Each applicant under the TIF Evaluation competition must agree, in its application, to implement its differentiated effectiveness incentive component of the PBCS and a 1 percent across-the-board annual bonus in at least one LEA in accordance with the implementation plan developed by the Institute of Education Sciences (IES) evaluator, Mathematica Policy Research (*http://www.mathematica-mpr.com/education/tifgrantee.asp*). Specifically, the IES evaluator will select by lottery one-half of the evaluation schools within the LEA (*i.e.,* "Group 1") to implement the applicant's proposed differentiated effectiveness incentive payment component of the PBCS. The other half of the schools within the LEA (*i.e.,* "Group 2") participating in the evaluation will implement a 1 percent across-the-board annual bonus for teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools). The applicant must identify, in its application, the schools that are proposed for participation in the evaluation.

In participating LEAs that have the five core elements in place at the time of the initial grant award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS at the beginning of the 2010–2011 school year. In a participating LEA that does not yet have in place the five core elements necessary to implement a successful PBCS at the time of award, the first group of schools in that LEA (Group 1 schools) must begin implementation of all components of the PBCS no later than the 2011–2012 school year.

The following table illustrates the TIF Evaluation random assignment plan, depending on the amount of planning time an applicant needs:

	Random assignment [a]	Pay component of PBCS [b]
LEAs Ready for 2010–11 Implementation.	Group 1	Differentiated pay implemented starting in 2010–11.
	Group 2	Across-the-board annual 1 percent bonus implemented starting in 2010–11 through 2014–15.
LEAs Ready for 2011–12 Implementation.	Group 1	Differentiated pay implemented starting in 2011–12.
	Group 2	Across-the-board annual 1 percent bonus implemented starting in 2011–12 through 2014–15.

[a] For each LEA, the IES evaluator will randomly assign the schools participating in the Evaluation into 2 groups (Groups 1 and 2).
[b] The school year listed is the first year in which the differentiated effectiveness incentive component of the PBCS will be implemented in the LEA's schools participating in the designated group.

Commitment to Evaluation. An applicant for the TIF Evaluation competition must demonstrate, in its application, that each participating LEA and school is willing to participate in the TIF Evaluation. Documentation demonstrating this commitment must include, for each participating LEA—

(1) A letter from the LEA superintendent and the principals of the participating schools stating that those officials agree to meet the TIF Evaluation competition requirements, including adhering to the implementation plan of the IES evaluator, which involves selection through a lottery of those schools to implement the differentiated effectiveness component among the schools participating in the evaluation.

(2) A letter from the research office or research board of the participating LEA that expresses an agreement to comply with the TIF Evaluation requirements (if the LEA requires such research office approval).

Advance Notice. Each applicant must agree, in its application, to work with the IES evaluator to notify all eligible schools participating in the TIF Evaluation at least two months prior to the assigned Group 1 implementation schedule. The Department will waive this advance notice for any applicants that are eligible to implement their PBCS in 2010–11 (*i.e.,* meet the five core requirements) so long as the program is implemented according to the evaluator's assigned group status (**Note:** The evaluator will be ready to assign group status immediately upon grant award, or if the applicant prefers, the applicant can discuss with Mathematica prior to grant award how to comply with the evaluation requirements by contacting Mathematica at *http://www.mathematica-mpr.com/education/tifgrantee.asp*).

Implementation of All Non-differentiated Effectiveness Incentive Components. Each applicant must agree, in its application, to implement the non-differentiated effectiveness incentive components of its PBCS (*e.g.,* bonuses for leadership or additional responsibilities and professional development activities) in all of the LEA's participating schools (those in Groups 1 and 2) starting at the same time as the differentiated effectiveness incentive component of its PBCS is implemented in the Group 1 schools. The schools in Group 2 must not implement the differentiated effectiveness incentive component of its PBCS for the duration of the TIF grant.

Scope of Schools. An applicant for the TIF Evaluation competition must demonstrate, in its application, that it will implement a PBCS in eight or more high-need schools (as defined in this notice) in an LEA that has students in

tested subjects or grades (*i.e.,* students in grades three through eight). At least two of the schools proposed to participate in the TIF Evaluation must be from within the same grade configuration (*i.e.,* if elementary schools are proposed there are at least two elementary schools among the minimum of eight schools all within the same LEA; if middle schools are proposed there are at least two middle schools among the minimum of eight schools all within the same LEA). Applicants that include multiple LEAs must meet the scope-of-schools requirement in at least one LEA. In addition, no LEA will have more than 16 high-need schools (as defined in this notice) selected for the TIF Evaluation.

An applicant that is a consortium of small LEAs or an intermediary unit that is considered an LEA under State law does not have to have eight eligible schools in a participating LEA provided that the consortium or intermediary unit serves a coordinating function (*i.e.,* data are available from a centralized or coordinating entity). In this case, the minimum number of schools required for the consortium or intermediary unit is still eight, and within the eight, each school is at least paired with another school at the same grade level and within the same State. The Department will use the number of eligible schools, up to 16 per LEA, that a successful applicant makes available for the TIF Evaluation.

Local Evaluation. In order to be eligible to receive points under the selection criteria, TIF Evaluation competition applicants must include a description of its local evaluation, demonstrated in its response to the selection criterion Quality of Local Evaluation. For the purposes of the TIF Evaluation competition, the score for this part of the application will not be used to rank the application. For the purposes of the Main TIF competition, if applicable, the score for this part of the application will be used to rank the application. If an applicant is selected under the TIF Evaluation competition, the local evaluation plan will not be reviewed and will not be applicable for program implementation.

Definitions:

The following definitions are from the NFP for this program, published elsewhere in this issue of the **Federal Register,** and apply to the competitions announced in this notice.

High-need school means a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-need school under this definition is determined on the basis of the most currently available data.

Student achievement means—

(a) For tested grades and subjects—

(1) A student's score on the State's assessments under the ESEA; and

(2) As appropriate, other measures of student learning, such as those described in paragraph (b) of this definition, provided that they are rigorous and comparable across schools; and

(b) For non-tested grades and subjects, alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Student growth means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State or LEA may also include other measures that are rigorous and comparable across schools.

High-need students means students at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who have left school before receiving a regular high-school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Additional responsibilities and leadership roles means additional duties teachers may voluntarily accept, such as: (1) Serving as master or mentor teachers who are chosen through a performance-based selection process (including through assessment of their teaching effectiveness and the ability to work effectively with other adults and students) and who have responsibilities to share effective instructional practices and/or to assess and improve the teaching effectiveness of other teachers in the school; (2) roles in induction and mentoring of novice teachers or high-need students (as defined in this notice); (3) tutoring students; or (4) roles in establishing and developing learning communities designed to continually improve the capacity of all teachers in a school to advance student learning, using a shared set of practices, instructional principles, or teaching strategies.

Program Authority: The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, Division G, Title III, Public Law 110–161; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2010, Division D, Title III, Public Law 111–117; and the American Recovery and Reinvestment Act of 2009, Division A, Title VIII, Public Law 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The notice of final priorities, requirements, definitions, and selection criteria (NFP) for this program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Types of Award: Discretionary grants.

Estimated Available Funds: $437,000,000 in total. $300,000,000 million from the FY 2010 appropriations and $137,000,000 from FY 2009 American Recovery and Reinvestment Act (ARRA) funds.

Estimated Range of Awards: $5,000,000–$10,000,000.*

Estimated Average Size of Awards: $7,500,000.*

Estimated Number of Awards: 40–80.

* Successful applicants for the TIF Evaluation competition can anticipate award amounts at least $1,000,000 more than for the Main TIF competition.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months, including the planning period, if applicable.

III. Eligibility Information and Program Requirements

1. *Eligible Applicants:* Eligible entities for these funds are:

(a) State educational agencies (SEAs),

(b) Local educational agencies (LEAs), including charter schools that are LEAs, or

(c) Partnerships of—

(1) An SEA, LEA, or both; and

(2) At least one nonprofit organization.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.ed.gov* or at its *e-mail address: edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.385.

Also, you can download the application package at the Teacher Incentive Fund Web site: *http://www2.ed.gov/programs/teacherincentive/index.html.*

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by calling the program contact number or by writing to the e-mail address listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: June 1, 2010.

We will be able to develop a more efficient process for reviewing grant applications if we understand the number of applicants that intend to apply for funding under these competitions. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by sending a short e-mail message. This short e-mail should provide (1) the applicant organization's name and address, (2) the type of grant for which the applicant intends to apply, (3) the one absolute priority the applicant intends to address, and (4) all competitive preference priorities the applicant intends to address. The Secretary requests that this e-mail be sent to *tif@ed.gov* with "Intent to Apply" in the e-mail subject line. Applicants that do not provide this e-mail notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative (Part III) to not more than 60 pages using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The suggested page limit does not apply to Part 1, the cover sheet; Part 2, the budget section, including the narrative budget justification; Part 7, the assurances and certifications; the one-page abstract; or appendices, such as the resumes, the bibliography, or the letters of support. However, the suggested page limit does apply to all of the application narrative section [Parts 3, 4, and 5].

3. *Submission Dates and Times:*

Applications Available: May 21, 2010.

Deadline for Notice of Intent to Apply: June 1, 2010.

Deadline for Transmittal of Applications: July 6, 2010.

Bidders' Conferences: In-person bidders' conferences or pre-application workshops will be held in three locations across the country in late May and early June. Bidders' conferences are intended to provide technical assistance to all interested grant applicants. Detailed information regarding the pre-application workshop locations and times, along with the on-line registration form, can be found on the Teacher Incentive Fund's Web site at *http://www2.ed.gov/programs/teacherincentive/applicant.html.*

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should 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: September 3, 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. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov

3-Step Registration Guide (*see www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Teacher Incentive Fund—CFDA number 84.385 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: April Lee, Office of Elementary and Secondary Education (*Attention:* Teacher Incentive Fund), U.S. Department of Education, 400 Maryland Avenue, SW., room 3E120, Washington, DC 20202. *FAX:* 202–260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Numbers 84.385), 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 84.385), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the notice of final priorities, requirements, definitions, and selection criteria, for this program, published elsewhere in this issue of the **Federal Register.**

The selection criteria are as follows. The maximum points assigned to each criterion are indicated in parentheses next to the criterion. Applicants may earn up to a total of 100 points.

(a) *Need for the project (10 points).* In determining the need for the proposed project, the Secretary will consider the extent to which the applicant establishes that—

(1) The high-need schools (as defined in this notice) whose educators would be part of the PBCS have difficulty—

(i) Recruiting highly qualified or effective teachers, particularly in hard-to-staff subjects or specialty areas, such as mathematics, science, English language acquisition, and special education; and

(ii) Retaining highly qualified or effective teachers and principals.

(2) Student achievement (as defined in this notice) in each of the schools whose educators would be part of the PBCS is lower than in what the applicant determines are comparable schools in the LEA, or another LEA in its State, in terms of key factors such as size, grade levels, and poverty levels; and

(3) A definition of what it considers a "comparable" school for the purposes of paragraph (2) of this selection criterion is established.

(b) *Project design (60 points).* The Secretary will consider the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary will consider the extent to which the proposed PBCS—

(1) Is part of a proposed LEA or statewide strategy, as appropriate, for improving the process by which each participating LEA rewards teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) in high-need schools (as defined in this notice) based upon their effectiveness as determined in significant part by student growth (as defined in this notice). With regard to the effectiveness of teachers, principals, and other personnel, the Secretary will consider whether—

(i) The methodology the LEA or SEA proposes to use in its PBCS to determine the effectiveness of a school's teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) includes valid and reliable measures of student growth (as defined in this notice);

(ii) The participating LEA would use the proposed PBCS to provide performance awards to teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) that are of sufficient size to affect the behaviors of teacher, principal, and other personnel and their decisions as to whether to go to, or remain working in, the high-need school; and

(iii) The applicant provides a clear explanation of how teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools) are determined to be "effective" for the purposes of the proposed PBCS.

(2) Has the involvement and support of teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools), including input from teachers, and principals, and other personnel in the schools and LEAs to be served by the grant, and the involvement and support of unions in participating LEAs where they are the designated exclusive representatives for the purpose of collective bargaining that is needed to carry out the grant;

(3) Includes rigorous, transparent, and fair evaluation systems for teachers and principals that differentiate levels of effectiveness using multiple rating categories that take into account data on student growth (as defined in this notice) as a significant factor, as well as classroom observations conducted at least twice during the school year;

(4) Includes a data-management system, consistent with the LEA's proposed PBCS, that can link student achievement (as defined in this notice) data to teacher and principal payroll and human resources systems; and

(5) Incorporates high-quality professional development activities that increase the capacity of teachers and principals to raise student achievement (as defined in this notice) and are directly linked to the specific measures of teacher and principal effectiveness included in the PBCS.

(c) *Adequacy of Support for the Proposed Project (25 points).* In

determining the adequacy of the support for the proposed project, the Secretary considers the extent to which—

(1) The management plan is likely to achieve the objectives of the proposed project on time and within budget, and includes clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks;

(2) The project director and other key personnel are qualified to carry out their responsibilities, and their time commitments are appropriate and adequate to implement the project effectively;

(3) The applicant will support the proposed project with funds provided under other Federal or State programs and local financial or in-kind resources; and

(4) The requested grant amount and project costs are sufficient to attain project goals and reasonable in relation to the objectives and design of the project.

(d) *Quality of Local Evaluation (5 points).* In determining the quality of the local project evaluation, the Secretary considers the extent to which the applicant's evaluation plan—

(1) Includes the use of strong and measurable performance objectives (that are clearly related to the goals of the project) for raising student achievement (as defined in this notice), increasing the effectiveness of teachers, principals, and other personnel (in those sites in which the grantee wishes to expand the PBCS to additional staff in its schools), and retaining and recruiting effective teachers, principals, and other personnel;

(2) Will produce evaluation data that are quantitative and qualitative; and

(3) Includes adequate evaluation procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

2. *Review and Selection Process:* The Department will screen applications submitted in accordance with the requirements in this notice, and will determine which applications are eligible to be read based on whether they have met eligibility and other statutory requirements.

The Department will use independent reviewers from various backgrounds and professions, including those with expertise in: Evaluation, teacher quality, data management and analysis, differentiated pay, educational policy, teaching and/or school leadership. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review process.

Reviewers will read, prepare a written evaluation, and score the applications assigned to their panel, using the selection criteria provided in this notice.

Reviewers will review and score all applications on the following four criteria:

(a) Need for the project;

(b) Project design;

(c) Adequacy of support for the proposed project; and

(d) Quality of local evaluation.

If eligible applicants have chosen to address the competitive preference priorities, reviewers will review and score those competitive preference priorities as well. If points are awarded, those points will be added to the eligible applicant's score.

The Secretary will prepare a rank order of applications based solely on the evaluation of their quality according to the selection criteria. In accordance with 34 CFR 75.217(c)(3), the Secretary will make final awards after considering the rank ordering and other information, including an applicant's performance and use of funds and compliance history under a previous award under any Department program. In making awards under any future competitions, the Secretary will consider an applicant's past performance.

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 the 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 75.720(a) and (b). The Secretary may also require more frequent performance reports under 34 CFR. For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Funding for the 2010 TIF program has been made available through a combination of funds available under the Department's 2010 Appropriations Act and the American Recovery and Reinvestment Act of 2009 (ARRA). Grantees may receive funds from a combination or one of these sources. It is anticipated that grantees that wish to include other school personnel in addition to teachers and principals in their TIF-funded PBCSs will be funded through the FY 2010 appropriation funds. TIF Evaluation competition grantees, at a minimum, will receive funds through the ARRA provisions and therefore must also meet the reporting requirements that apply to all ARRA-funded programs. Specifically, under the ARRA, each grantee must submit reports, within 10 days after the end of each calendar quarter, that contain the information required under section 1512(c) of the ARRA in accordance with any guidance issued by the Office of Management and Budget or the Department (ARRA division A, section 1512(c)).

In addition, for each year of the program, each grantee must submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

1. The uses of funds within the defined area of the proposed project;

2. How the applicant distributed the funds it received;

3. The number of jobs estimated to be saved or created with the funds; and

4. The project's progress in reducing inequities in the distribution of highly qualified teachers, implementing a longitudinal data system, and developing and implementing valid and reliable assessments for English learners and students with disabilities.

4. *Performance Measures:* Pursuant to the Government Performance and Results Act of 1993, the Department has established the following performance measures that it will use to evaluate the overall effectiveness of the grantee's project, as well as the TIF program as a whole:

(1) Changes in LEA personnel deployment practices, as measured by changes over time in the percentage of teachers and principals in high-need schools who have a record of effectiveness; and

(2) Changes in teacher and principal compensation systems in participating LEAs, as measured by the percentage of an LEA's personnel budget that is used for performance-related payments to

effective (as measured by student achievement gains) teachers and principals.

All grantees will be also expected to submit an annual performance report documenting their success in addressing these performance measures. The Department will use the applicant's performance data for program management and administration, in such areas as determining new and continuation funding and planning technical assistance.

VII. Agency Contact

For Further Information Contact: April Lee, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E120, Washington, DC 20202. *Telephone:* (202) 205–5224, or by *e-mail: TIF@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact number or e-mail address listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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.*

Dated: May 18, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–12216 Filed 5–20–10; 8:45 am]

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