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Contents

Federal Register

Vol. 75, No. 114

Tuesday, June 15, 2010

Administrative Committee of the Federal Register
See Federal Register, Administrative Committee

Agricultural Marketing Service
RULES
Order Amending Marketing Order:
Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, 33673–33678
PROPOSED RULES
Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Withdrawal, 33736

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Natural Resources Conservation Service
NOTICES
Final Report of the Dietary Guidelines Advisory Committee, Solicitation of Written Comments, and Invitation for Oral Testimony, 33759–33760

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Federal Firearms License (Collector of Curios and Relics), 33829–33830
Application to Make and Register a Firearm, 33826–33827
Firearms Manufactured or Imported, 33828
Letter Application to Obtain Authorization for the Assembly of a Nonsporting Rifle, etc., 33829
Records of Acquisition and Disposition, Collectors of Firearms, 33826
Special Agent Medical Preplacement, 33827–33828
State and Local Training Registration Request, 33828–33829

Army Department
NOTICES
Intent to Grant an Exclusive License of a U.S. Government-Owned Patent, 33793–33794
Privacy Act; Systems of Records, 33794–33796

Civil Rights Commission
NOTICES
Meetings:
New Hampshire Advisory Committee, 33763

Coast Guard
RULES
Safety Zones:
Annual Firework Displays within the Captain of the Port, Puget Sound Area of Responsibility, 33698–33701
Delta Independence Day Foundation Celebration, Mandeville Island, CA, 33694–33696
July Firework Display in Captain of the Port, Puget Sound AOR, 33696–33698
Lights on the River Fireworks Display, Delaware River, New Hope, PA, 33690–33692
Tacoma Freedom Fair Air Show, Commencement Bay, Tacoma, WA, 33692–33694
Security Zones:
Escorted U.S. Navy Submarines in Sector Honolulu Captain of the Port Zone, 33701–33704
PROPOSED RULES
Safety Zones:
Tracey/Thompson Wedding, Lake Erie, Catawba Island, OH, 33741–33744

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Renewal of the Global Markets Advisory Committee, 33788

Consumer Product Safety Commission
RULES
Requirements for Accreditation of Third Party Conformity:
Third Party Testing for Certain Children's Products; Infant Bath Seats; Correction, 33683

Defense Acquisition Regulations System
PROPOSED RULES
Defense Federal Acquisition Regulation Supplement:
Organizational Conflicts of Interest in Major Defense Acquisition Programs, 33752

Defense Department
See Army Department
See Defense Acquisition Regulations System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Government Property, 33796–33797
Privacy Act; Systems of Records, 33788–33793

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33797–33799

Employee Benefits Security Administration
NOTICES
Adoption of Amendment to Class Exemption:
Release of Claims and Extensions of Credit in Connection with Litigation (PTE 2003–39), 33830–33837

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Acquisition Regulation:
Socioeconomic Programs, 33752–33757

Environmental Protection Agency
RULES
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Partial Deletion of the Many Diversified Interests, Inc. Superfund Site, 33724–33729
Ocean Dumping:
Designation of Ocean Dredged Material Disposal Site at Coos Bay, Oregon, Site F, etc.; Correction, 33708–33712
Pesticide Management and Disposal; Standards for Pesticide Containers and Containment; Change to Labeling Compliance Date, 33705–33708
Withdrawal of the Emission-Comparable Fuel Exclusion under RCRA, 33712–33724
PROPOSED RULES
Mandatory Reporting of Greenhouse Gases, 33950–33982
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Partial Deletion of the Many Diversified Interests, Inc. Superfund Site, 33747–33748
Ocean Dumping:
Designation of Ocean Dredged Material Disposal Site at Coos Bay, Oregon, Site F, etc.; Correction, 33747
Pesticide Management and Disposal; Standards for Pesticide Containers and Containment; Proposed Change to Labeling Compliance Date, 33744–33747

Federal Aviation Administration
RULES
Amendments of Class D and E Airspace:
Victorville, CA, 33681–33682
PROPOSED RULES
Airworthiness Directives:
Rolls-Royce plc (RR) RB211–524 Series and RB211 Trent 500, 700, and 800 Series Turbofan Engines, 33738–33740

Federal Communications Commission
RULES
Facilitating Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services (2150–2162 and 2500–2690 MHz Bands), 33729–33731
PROPOSED RULES
Amateur Radio Use of the Allocation at 5 MHz, 33748–33752
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33804

Federal Deposit Insurance Corporation
NOTICES
Financial Institutions for Which Federal Deposit Insurance Corporation has been Appointed Receiver, Liquidator, or Manager, 33804–33805

Federal Emergency Management Agency
NOTICES
Debris Contracting Guidance; Availability; Request for Comments, 33820
Recovery Fact Sheet:
Public Assistance Funding to Public Housing Facilities, 33821
Recovery Policy:
Direct Disaster-Related Damage to Eligible Facilities, 33821

Federal Energy Regulatory Commission
NOTICES
Baseline Filing:
EasTrans, LLC, 33799
Enbridge Pipelines (North Texas) L.P., 33799–33800
Moss Bluff Hub, LLC, 33799
Initial Market-Based Rate Filings:
Laredo Ridge Wind, LLC, 33800–33801
Stephentown Regulation Services LLC, 33801
Taloga Wind, LLC, 33800
Meetings; Sunshine Act, 33801–33802
Proposed Restricted Service List:
Broken Bow; OK; Broken Bow Re-Regulation Dam Hydropower Project, 33802–33803
Request Under Blanket Authorization:
Sabine Pipe Line LLC, 33803–33804

Federal Register, Administrative Committee
PROPOSED RULES
Regulations Affecting Publication of the United States Government Manual, 33734–33735

Federal Reserve System
RULES
Electronic Fund Transfers; Correction, 33681
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33805–33810
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 33810
Proposals to Engage in Permissible Nonbanking Activities or Acquire Companies Engaged in Permissible Nonbanking Activities, 33810

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 33811

Federal Transit Administration
PROPOSED RULES
Major Capital Investment Projects, 33757–33758

Fiscal Service
NOTICES
Surety Companies Acceptable on Federal Bonds—Terminations:
Commerical Alliance Insurance Co., 33897

Fish and Wildlife Service
NOTICES
Los Esteros Critical Energy Facility Low-Effect Habitat Conservation Plan:
Bay Checkerspot Butterfly and Serpentine Endemic Plant Species, Santa Clara County, CA, 33822–33824

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Mammography Quality Standards Act Requirements, 33811–33814
Meetings:
Tobacco Product Constituents Subcommittee of the Tobacco Products Scientific Advisory Committee, 33814–33815

Foreign-Trade Zones Board
NOTICES
Foreign-Trade Zone 77 – Memphis, TN:
Application for Subzone; Delta Faucet Co. (Faucets) Jackson, TN, 33765–33766
Reorganization and Expansion of Foreign-Trade Zone 174 under Alternative Site Framework:
Tucson, AZ, 33787–33788

Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Virtual Incident Procurement System Existing Vendor Survey, 33760
New Fee Site, 33760–33761
Proposed New Recreation Fee Sites, 33763

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Government Property, 33796–33797

Health and Human Services Department
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health
NOTICES
Final Report of the Dietary Guidelines Advisory Committee, Solicitation of Written Comments, and Invitation for Oral Testimony, 33759–33760
Meetings:
HIT Policy Committee's Privacy & Security Tiger Team, 33811

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Section 8 Random Digit Dialing Fair Market Rent Surveys, 33821–33822

Indian Health Service
NOTICES
Nationwide Limited Waiver of Section 1605 (Buy American Requirement) of American Recovery and Reinvestment Act:
De Minimis Incidental Components of Sanitation Facilities Construction Projects Financed With Funds Provided Under ARRA, 33818–33820

Industry and Security Bureau
RULES
Export Administration Regulations; Technical Amendments, 33682–33683

Interior Department
See Fish and Wildlife Service

Internal Revenue Service
RULES
Indoor Tanning Services; Cosmetic Services; Excise Taxes, 33683–33688
PROPOSED RULES
Indoor Tanning Services; Cosmetic Services; Excise Taxes, 33740–33741
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33885–33892
Meetings:
Area 1 Taxpayer Advocacy Panel, 33896
Area 2 Taxpayer Advocacy Panel, 33895
Area 3 Taxpayer Advocacy Panel, 33895–33896
Area 4 Taxpayer Advocacy Panel, 33896
Area 5 Taxpayer Advocacy Panel, 33897
Area 6 Taxpayer Advocacy Panel, 33896
Area 7 Taxpayer Advocacy Panel, 33894–33895
Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee, 33894
Taxpayer Advocacy Panel Improvement Project Committee, 33893–33894
Taxpayer Advocacy Panel Joint Committee, 33894
Taxpayer Advocacy Panel Small Business/Self Employed Project Committee, 33893
Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee, 33894
Taxpayer Advocacy Panel Taxpayer Assistance Center Committee, 33895
Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee, 33895

International Trade Administration
NOTICES
Beauty and Cosmetics Trade Mission to India, 33763–33765
Preliminary Results of Antidumping Duty Administrative Review:
Light-Walled Rectangular Pipe and Tube from Turkey, 33779–33782
Polyethylene Retail Carrier Bags From Malaysia, 33772–33775
Purified Carboxymethylcellulose from Mexico, 33775–33778
Preliminary Results of the 2008–2009 Antidumping Duty Administrative Review:
Certain Polyester Staple Fiber from the Republic of Korea, 33783–33787

International Trade Commission
NOTICES
Investigations:
Barium Chloride from China, 33824
Pharmaceutical Products and Chemical Intermediates, Fourth Review; Advice Concerning Addition of Certain Products, etc., 33824–33825

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Lodging of First Material Modification to a Consent Degree Pursuant to the Clean Air Act, 33825–33826

Labor Department
See Employee Benefits Security Administration

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33884–33885

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Government Property, 33796–33797
Meetings:
NASA Advisory Council; Ad-Hoc Task Force on Planetary Defense, 33838
NASA Advisory Council; Science Committee; Astrophysics Subcommittee, 33837–33838
National Environmental Policy Act:
Scientific Balloon Program, 33838–33839

National Institute of Standards and Technology
NOTICES
Manufacturing Extension Partnership Availability of Funds:
Projects to Develop and Demonstrate Integrated Tools, Training, and Methodologies for Growth Transformation, etc., 33769–33772
Manufacturing Extension Partnership Availability of Funds:
Projects to Develop Client Engagement or Business Models and Deployment Strategies That Integrate Two or More Strategic Growth Areas, 33766–33769

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 33816
National Cancer Institute, 33817
National Institute of Diabetes and Digestive and Kidney Diseases, 33817–33818
National Institute of Mental Health, 33815
National Institute on Deafness and Other Communication Disorders, 33817–33818

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
2010 Atlantic Bluefin Tuna Quota Specifications; Correction, 33731–33732
Fisheries Off West Coast States:
Coastal Pelagic Species Fisheries; Closure, 33733

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 33839

Natural Resources Conservation Service
NOTICES
Proposed Change to Section IV of the Virginia State Technical Guide, 33761
Proposed Changes to the National Handbook of Conservation Practices, 33761–33763

Nuclear Regulatory Commission
RULES
List of Approved Spent Fuel Storage Casks:
MAGNASTOR System (Revision 1), 33678–33681
PROPOSED RULES
List of Approved Spent Fuel Storage Casks:
MAGNASTOR System (Revision 1), 33736–33737
Physical Protection of Byproduct Material, 33902–33947
NOTICES
Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 33839–33851
Combined License Application and Intent to Prepare an Environmental Impact Statement:
Florida Power & Light Co., Turkey Point (Units 6 and 7), 33851–33852
Draft Regulatory Guide; Issuance, Availability, 33853
Environmental Assessment; Finding of No Significant Impact:
Maine Yankee Atomic Power Co.; Independent Spent Fuel Storage Installation, 33853–33855
Meetings; Sunshine Act, 33855–33856

Pension Benefit Guaranty Corporation
RULES
Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits, 33688–33690

Personnel Management Office
NOTICES
Meetings:
Hiring Reform Initiative, 33856

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33856–33857
Applications:
DWS Advisor Funds, et al., 33857–33861
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 33875–33876
Fixed Income Clearing Corp., 33871–33872
International Securities Exchange, LLC, 33867–33868, 33874–33875
NASDAQ OMX PHLX, Inc., 33869–33871
NASDAQ Stock Market LLC, 33878–33880
New York Stock Exchange LLC, 33872–33874, 33877–33878
NYSE Amex LLC, 33880–33882
NYSE Amex LLC and NYSE Arca, Inc., 33882–33883
NYSE Arca, Inc., 33861–33866, 33868–33869

State Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Keystone XL Pipeline Project; Extension of Public Comment Period, etc., 33883–33884

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See Maritime Administration

Treasury Department
See Fiscal Service
See Internal Revenue Service
NOTICES
Survey of Foreign Ownership of U.S. Securities, 33885

Veterans Affairs Department
RULES
Loan Guaranty:
Elimination of Redundant Regulations, 33704–33705
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 33897–33898

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Loan Service Report, 33899
Monthly Certification of Flight Training, 33898–33899
VA Loan Electronic Reporting Interface System, 33898
Meetings:
Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, 33899

Separate Parts In This Issue

Part II
Nuclear Regulatory Commission, 33902–33947

Part III
Environmental Protection Agency, 33950–33982

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR

Proposed Rules:

9.....33734
11.....33734
12.....33734

7 CFR

930.....33673

Proposed Rules:

930.....33736

10 CFR

72.....33678

Proposed Rules:

30.....33902
32.....33902
33.....33902
34.....33902
35.....33902
36.....33902
37.....33902
39.....33902
51.....33902
71.....33902
72.....33736
73.....33902

12 CFR

205.....33681

14 CFR

71.....33681

Proposed Rules:

39.....33738

15 CFR

766.....33682

16 CFR

1215.....33683

26 CFR

40.....33683
49.....33683
602.....33683

Proposed Rules:

40.....33740
49.....33740

29 CFR

4022.....33688
4044.....33688

33 CFR

100.....33690
165 (5 documents) 33692, 33694, 33696, 33698, 33701

Proposed Rules:

165.....33741

38 CFR

36.....33704

40 CFR

156.....33705
228.....33708
261.....33712
300.....33724

Proposed Rules:

86.....33950
98.....33950
156.....33744
228.....33747
300.....33747

47 CFR

27.....33729

Proposed Rules:

2.....33748
97.....33748

48 CFR

Proposed Rules:

202.....33752
203.....33752
212.....33752
252.....33752
919.....33752
922.....33752
923.....33752
924.....33752
925.....33752
926.....33752
952.....33752

49 CFR

Proposed Rules:

611.....33757

50 CFR

635.....33731
660.....33733

Rules and Regulations

Federal Register
Vol. 75, No. 114
Tuesday, June 15, 2010

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AO–370–A8; AMS–FV–06–0213; FV07–930–2]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Order Amending Marketing Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 930 (order), which regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The amendments were proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. These amendments will: Authorize changing the primary reserve capacity associated with the volume control provisions of the order; authorize establishment of a minimum inventory level at which all remaining product held in reserves would be released to handlers for use as free tonnage; establish an age limitation on product placed into reserves; revise the nomination and election process for handler members on the Board; revise Board membership affiliation requirements; and update order language to more accurately reflect grower and handler participation in the nomination and election process in districts with only one Board representative.

The amendments are designed to provide flexibility in administering the volume control provisions of the order and to update Board nomination, election, and membership requirements. The amendments are intended to improve the operation and administration of the order.

DATES: This rule is effective July 15, 2010.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; telephone: (559) 487–5110, Fax: (559) 487–5906, or e-mail: *Martin.Engeler@ams.usda.gov;* or Kathy Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–9921, fax: (202) 720–8938, or e-mail: *Kathy.Finn@ams.usda.gov.*

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on February 5, 2007, and published in the February 7, 2007, issue of the **Federal Register** (72 FR 5646), a Recommended Decision issued on May 7, 2009 and published in the May 12, 2009, issue of the **Federal Register** (74 FR 22112), and a Secretary's Decision and Referendum Order issued on January 6, 2010, and published in the January 13, 2010, issue of the **Federal Register** (75 FR 1724).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held on February 21 and 22, 2007, in Grand Rapids, Michigan, and March 1 and 2, 2007, in Provo, Utah. Notice of this hearing was issued on February 5, 2007, and published in the February 7, 2007, issue of the **Federal Register** (72 FR 5646). The hearing was held to consider proposed amendments to the order.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act", and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Notice of Hearing contained several amendment proposals submitted by the Board. Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on May 7, 2009, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto. This Recommended Decision was published in the May 12, 2009, issue of the **Federal Register** (74 FR 22112). Six exceptions were filed during the exception period.

A Secretary's Decision and Referendum Order was issued on January 6, 2010, and published in the January 13, 2010, issue of the **Federal Register** (75 FR 1724). This document directed that a referendum among tart cherry growers and processors be conducted during the period February 1, 2010, through February 13, 2010 to determine whether they favor the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the growers voting in the referendum or two-thirds of the production represented by such growers. In addition, processors who had frozen or canned at least fifty percent of the volume of tart cherries had to vote in favor of the amendments for them to become effective. All of the proposed amendments were approved by growers and processors. The amendments included in this final order will:

1. Amend § 930.50 of the order to authorize changing the primary reserve capacity associated with the volume control provisions of the order.

2. Amend § 930.54 of the order to authorize establishment of a minimum inventory level at which all remaining product held in reserves would be released to handlers for use as free tonnage.

3. Amend § 930.55 to establish an age limitation on product placed into reserves.

4. Amend § 930.23 to revise the nomination and election process for handler members on the Board, including revisions to conform this section to amendment of § 930.20 regarding membership affiliation requirements.

5. Amend § 930.20 to revise Board membership affiliation requirements.

6. Amend § 930.23 to update order language to more accurately reflect grower and handler participation in the nomination and election process in Districts with only one Board representative.

In addition to these amendments to the order, AMS proposed to make any such additional changes as may be necessary to the order to conform to any amendments that may be adopted. To the extent necessary, conforming changes have been made to the amendments.

An amended marketing agreement was subsequently mailed to all tart cherry handlers in the production area for their approval. The marketing agreement was not approved by handlers representing more than 50 percent of the volume of tart cherries handled by all handlers during the representative period of July 1, 2008, through June 30, 2009.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $7,000,000.

There are approximately 40 handlers and processors of tart cherries subject to regulation under the order and approximately 600 producers of tart cherries in the regulated area. A majority of the producers, processors, and handlers are considered small entities according to the SBA's definition.

The geographic region regulated under the order covers the states of Michigan, New York, Oregon, Pennsylvania, Utah, Washington, and Wisconsin. Acreage devoted to tart cherry production in the regulated area has declined in recent years. According to data presented at the hearing, bearing acreage in 1987–88 totaled 50,050 acres; by 2006–2007 it had declined to 37,200 acres. Michigan accounts for 74 percent of total U.S. bearing acreage with 27,700 bearing acres. Utah is second, with a reported 2,800 acres, or approximately eight percent of the total. The remaining states' acreage ranges from 700 to 2,000 acres.

Production of tart cherries can fluctuate widely from year to year. The magnitude of these fluctuations is one of the most pronounced for any agricultural commodity in the United States, and is due in large part to weather related conditions during the bloom and growing seasons. This fluctuation in supplies presents a marketing challenge for the tart cherry industry because demand for the product is relatively static. In addition, the demand for tart cherries is inelastic, which means a change in the supply has a proportionately larger change in the price level.

Authorities under the order include volume regulation, promotion and research, and grade and quality standards. Volume regulation is used under the order to augment supplies during short supply years with product placed in reserves during large supply years. This practice is intended to reduce the annual fluctuations in supplies and corresponding fluctuations in prices.

The Board is comprised of representatives from all producing areas based on the volume of cherries produced in those areas. The Board consists of a mix of handler and grower members, and a member that represents the public. Board meetings where regulatory recommendations and other decisions are made are open to the public. All members are able to participate in Board deliberations, and each Board member has an equal vote. Others in attendance at meetings are also allowed to express their views.

The Board appointed a subcommittee to consider amendments to the marketing order. The subcommittee met several times for this purpose, and ultimately recommended several amendments to the order. The Board subsequently requested that USDA conduct a hearing to consider the proposed amendments. The views of all participants were considered throughout this process.

In addition, the hearing to receive evidence on the proposed amendments was open to the public and all interested parties were invited and encouraged to participate and express their views.

The proposed amendments are intended to provide additional flexibility in administering the volume control provisions of the order, and to update Board nomination, election, and membership requirements. The amendments are intended to improve the operation and administration of the order. Record evidence indicates the proposals are intended to benefit all producers and handlers under the order, regardless of size.

Amendment 1—Adding Authority To Change the Primary Reserve Capacity

This amendment revises § 930.50 of the order to authorize changing the primary reserve capacity associated with the volume control provisions of the order through informal rulemaking. Prior to this amendment, changing the reserve capacity required amendment of the order through the formal rulemaking process.

The order establishes a fixed quantity of 50 million pounds of tart cherries and tart cherry products that can be held in the primary reserve. Any reserve product in excess of the 50-million-pound limitation must be placed in the secondary reserve.

Free tonnage product can be sold to any market outlet, but most shipments are sold domestically, which is considered the primary market. Reserve product can be used only in specific outlets which are considered secondary markets. These secondary markets include development of export markets, new product development, new markets, and government purchases.

When the order was promulgated, a 50-million-pound limitation was placed on the capacity of the primary reserve. Proponents of the order proposed a limitation on the quantity of product that could be placed into the primary reserve. That limitation was incorporated into the order, and could only be changed through the formal rulemaking process.

Economic data presented when the order was promulgated indicated that a reserve program could benefit the industry by managing fluctuating supplies. Witnesses at the February and March 2007 hearing indicated the order has been successful in this regard. However, the record indicated that the order could be more flexible in allowing modifications to the 50-million-pound limitation should conditions warrant such a change in the future.

If the reserve capacity is changed, costs associated with storing product in reserves could also change. In addition, to the extent such a change could affect supplies in the marketplace, returns to

both growers and handlers could also be affected.

Any Board recommendation to change the reserve capacity will be required to be implemented through the informal rulemaking process. As part of the informal rulemaking process, USDA expects any Board recommendation to include an analysis of the pertinent factors and issues, including the impact of a proposed regulation on producers and handlers. During that process, the Board will recommend a change to USDA, and only if the recommendation is accompanied by adequate justification will USDA proceed with the change.

Amendment 2—Adding Authority To Establish a Minimum Inventory Level at Which Reserves Will Be Released

This amendment revises § 930.54 of the order to provide the Board with the authority to recommend establishment of a minimum inventory level at which reserves will be released and made available to handlers as free tonnage. Establishment of such a minimum inventory level will allow the Board to clear out the primary reserve and subsequently the secondary reserve when a specified minimum inventory level of tart cherries is reached. The specified minimum level would be established through the informal rulemaking process.

Under the order, handlers cannot access the secondary reserve until the primary reserve is empty. Thus, one handler who has not completely disposed of or otherwise fulfilled its reserve obligation can prevent access to the secondary reserve by other handlers.

This amendment will allow the Board to recommend informal rulemaking to establish a minimum inventory level at which it can clear out the primary reserve in order to provide the industry access to secondary reserve inventories.

If such a minimum inventory level is established, costs to both handlers and the Board could be reduced. Handlers incur costs in maintaining reserves. According to the record, these costs include the cost of storage, which can be in the range of $.01 per pound per month. Handlers also incur costs associated with tracking their own inventory levels. Witnesses stated that when inventory levels reach a minimal amount the costs of tracking inventory outweigh the benefit from carrying inventory in the primary reserve.

A significant portion of the Board staff's time is directed at tracking reserve inventory maintained at handlers' facilities. Hearing witnesses testified that while it is difficult to quantify the exact value of the Board staff's time to conduct these activities, the time could be better spent on other industry issues, and it is unnecessary to track minimal levels of inventory.

The establishment of a minimum inventory level at which reserves will be released could have a positive impact on the market. As inventories are released from the reserves, products could be sold, generating revenue for the industry.

If the authority provided by this amendment is utilized, it is expected to reduce costs to handlers and the Board, thus having a positive economic impact.

Amendment 3—Establishing an Age Limitation on Products Placed Into Reserves

This amendment revises § 930.55 to require that products placed in reserves must have been produced in the current or immediately preceding two crop years. This amendment will allow the Board to place an age limit on products carried in the reserve. The purpose of the amendment is to help ensure that products of saleable quality are maintained in reserve inventories.

Witness supported the amendment by stating that it will add credibility to product quality for all products carried in the reserve. Prior to this amendment, handlers could carry products they have no intention of selling just to meet their reserve obligation. This amendment will require handlers to rotate product in their reserve inventory, thus preventing them from maintaining the same product in the reserve year after year. Product held in inventory tends to deteriorate over time. This amendment will help ensure that when reserve product is ultimately released, it is in saleable condition and can satisfy the market's needs. Assuring product is available to satisfy the market helps to foster long term market stability.

In terms of costs, handlers may experience some minimal costs associated with periodically rotating product through their reserve inventory. It is difficult to estimate such costs because they will vary depending upon each handler's operation. To the extent costs may increase, they will be proportionate to each handler's share of the entire industry's reserve inventory. Each handler's reserve inventory obligation is based on the handler's share of the total crop handled. Thus, small handlers will not be disproportionately burdened.

It is anticipated that the benefits of providing a good quality product in reserves to ultimately supply markets when needed will outweigh any costs associated with implementation of this amendment.

Amendment 4—Revision of Nomination and Election Process for Handler Members on the Board

This amendment relates to nomination and election of Board members under § 930.23 of the order. It will require a handler to receive support from handlers that handled at least five percent of the average production of tart cherries in the applicable district in order to be a candidate and to be elected by the industry and recommended to the Secretary for Board membership. Prior to this amendment, there was no accounting for handler volume in the nomination and balloting process. Each handler was entitled to one equal vote. This amendment will continue to allow each handler to have one vote, but will also require handler candidates to be supported by handlers representing at least five percent of the average production in the applicable district to be eligible to run for a Board position and to be elected by the industry for recommendation to the Secretary. This will help to ensure that handler members on the Board represent the interests of handlers in their district that account for at least a minimal percentage of the volume in the district. The amendment proposed by the Board was modified by AMS. The amendment as modified by AMS will not apply the five percent support requirements to candidates whose potential election could prevent a sales constituency conflict from occurring, as discussed under amendment number five. The modification will help to ensure that all qualified handlers can participate in the election process.

This amendment is not anticipated to have a significant economic impact on small businesses. It only affects the nomination and election criteria for membership on the Board by adding volume as an element of support to help ensure that Board membership reflects the interests of its constituency. All qualified handlers, regardless of size, will continue to be able to participate in the nomination and election process. The process will continue to allow for both small and large handlers to be represented on the Board.

Amendment 5—Revision of Board Membership Affiliation Requirements

This amendment revises § 930.20 to allow more than one Board member to be affiliated with the same sales constituency from the same district, if such a conflict cannot be avoided.

Prior to this amendment, § 930.20 did not allow more than one Board member to be affiliated with the same sales constituency from the same district

under any circumstances. The purpose of that provision is to prevent any one sales constituency from having a controlling influence on Board issues and actions. However, a situation occurred in District 7, Utah, where this particular provision of the order did not allow the district from having two representatives on the Board, as it was entitled to under section 930.20(b) of the order. In that situation, the only candidates willing to serve on the Board from Utah were affiliated with the same sales constituency. Thus Utah was only able, under the marketing order rules, to seat one of the two Board representatives it was entitled to.

This amendment is designed to prevent a similar problem from occurring in the future by allowing more than one Board member affiliated with the same sales constituency to represent a district, if such a sales constituency conflict cannot be avoided. The hearing record is clear that the sales constituency provision should not prevent a district from having its allocated number of seats on the Board if there are eligible candidates willing to serve on the Board.

This amendment is not expected to have an economic impact on growers or handlers. It relates to representation on the Board, and is intended to help ensure each area covered under the order has the opportunity to achieve its allocated representation on the Board.

Amendment 6—Update Order Language To Accurately Reflect Grower and Handler Participation in the Nomination and Election Process in Districts With Only One Board Representative

This amendment to § 930.23 revises and updates order language to more accurately reflect grower and handler participation in the nomination and election process in districts with only one Board representative.

Sections 930.23(b)(5) and (c)(4) previously referenced Districts 5, 6, 8 and 9 in regard to the nomination and election process. Those were the districts entitled to one Board seat when the order was initially promulgated. However, districts that are entitled to one Board seat have changed over time due to shifts in production. Amending § 930.23(b)(5) and (c)(4) by removing the specific references to Districts 5, 6, 8 and 9 and replacing it with generic language to cover any district that is entitled to only one Board representative based on the representative calculation established in § 930.20 will update order language to better reflect the constantly changing tart cherry industry.

This amendment updates order language to remove incorrect references to district representation in the event production shifts occur. It has no economic impact on handlers, growers, or any other entities.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed amendments to the order on small entities. The record evidence is that some of the proposed amendments may result in some minimal cost increases while others will result in cost decreases. To the extent there are any cost increases, the benefits of the proposed changes are expected to outweigh the costs. In addition, changes in costs as a result of these amendments would be proportional to the size of businesses involved and would not unduly or disproportionately impact small entities. The informational impact of these amendments is addressed in the Paperwork Reduction Act discussion that follows.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. These amendments are intended to improve the operation and administration of the order to the benefit of the tart cherry industry.

Paperwork Reduction Act

Information collection requirements for part 930 are currently approved by the Office of Management and Budget (OMB), under OMB Number 0581–0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Implementation of these amendments will not trigger any changes to those requirements. It is possible that a change to the reporting requirements may occur in the future if the Board believes it would be necessary to assist in program compliance efforts. Should any such changes become necessary in the future, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Justice Reform

These amendments to Marketing Order 930 have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–612), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed amendment of Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of tart cherries grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping tart cherries covered by the order as hereby amended) who, during the period July 1, 2008, through June 30, 2009, handled 50 percent or more of the volume of such cherries covered by said order, as hereby amended, have not signed a marketing agreement; and

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the produces who participated in a referendum on the question of approval and who, during the period of July 1, 2008 through June 30, 2009, (which has been determined to be a representative period), have been engaged within the production area in the production of such cherries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of tart cherries in the production area.

Order Relative to Handling of Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin shall be in conformity to, and in compliance with the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed order amending the order amending the order contained in the Secretary's Decision issued on January 6, 2010, and published in the **Federal Register** on January 13, 2010 (75 FR 1724), shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, Chapter XI of Title 7 of the Code of Federal Regulations is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise paragraph (g) of § 930.20 to read as follows:

§ 930.20 Establishment and membership.

* * * * *

(g) In order to achieve a fair and balanced representation on the Board, and to prevent any one sales constituency from gaining control of the Board, not more than one Board member may be from, or affiliated with, a single sales constituency in those districts having more than one seat on the Board; *Provided,* That this prohibition shall not apply in a district where such a conflict cannot be avoided. There is no prohibition on the number of Board members from differing districts that may be elected from a single sales constituency which may have operations in more than one district. However, as provided in § 930.23, a handler or grower may only nominate Board members and vote in one district.

* * * * *

■ 3. Revise paragraphs (b)(2) and (b)(5), redesignate paragraph (c)(3) as paragraph (c)(3)(i), add a new paragraph (c)(3)(ii), and revise paragraph (c)(4) of § 930.23 to read as follows:

§ 930.23 Nomination and election.

* * * * *

(b) * * *

(2) In order for the name of a handler nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which contains the signature of one or more handler(s), other than the nominee, from the nominee's district who is or are eligible to vote in the election and that handle(s) a combined total of no less than five percent (5%) of the average production, as that term is used § 930.20, handled in the district. *Provided,* that this requirement shall not apply if its application would result in a sales constituency conflict as provided in § 930.20(g). The requirement that the petition form be signed by a handler other than the nominee shall not apply in any district where fewer than two handlers are eligible to vote.

* * * * *

(5) In districts entitled to only one Board member, both growers and handlers may be nominated for the district's Board seat. Grower and handler nominations must follow the petition procedures outlined in paragraphs (b)(1) and (b)(2) of this section.

* * * * *

(c) * * *

(3) * * *

(ii) To be seated as a handler representative in any district, the successful candidate must receive the support of handler(s) that handled a combined total of no less than five percent (5%), of the average production, as that term is used in § 930.20, handled in the district; *Provided,* that this paragraph shall not apply if its application would result in a sales constituency conflict as provided in § 930.20(g).

(4) In districts entitled to only one Board member, growers and handlers may vote for either the grower or handler nominee(s) for the single seat allocated to those districts.

* * * * *

■ 4. Revise paragraph (i) of § 930.50 to read as follows:

§ 930.50 Marketing policy.

* * * * *

(i) *Restricted Percentages.* Restricted percentage requirements established under paragraphs (b), (c), or (d) of this section may be fulfilled by handlers by either establishing an inventory reserve

in accordance with § 930.55 or § 930.57 or by diversion of product in accordance with § 930.59. In years where required, the Board shall establish a maximum percentage of the restricted quantity which may be established as a primary inventory reserve such that the total primary inventory reserve does not exceed 50-million pounds; *Provided,* That such 50-million-pound quantity may be changed upon recommendation of the Board and approval of the Secretary. Any such change shall be recommended by the Board on or before September 30 of any crop year to become effective for the following crop year, and the quantity may be changed no more than one time per crop year. Handlers will be permitted to divert (at plant or with grower diversion certificates) as much of the restricted percentage requirement as they deem appropriate, but may not establish a primary inventory reserve in excess of the percentage established by the Board for restricted cherries. In the event handlers wish to establish inventory reserve in excess of this amount, they may do so, in which case it will be classified as a secondary inventory reserve and will be regulated accordingly.

* * * * *

■ 5. Add a new paragraph (d) to § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

* * * * *

(d) Should the volume of cherries held in the primary inventory reserves and, subsequently, the secondary inventory reserves reach a minimum amount, which level will be established by the Secretary upon recommendation from the Board, the products held in the respective reserves shall be released from the reserves and made available to the handlers as free tonnage.

■ 6. Revise paragraph (b) of § 930.55 to read as follows:

§ 930.55 Primary inventory reserves.

* * * * *

(b) The form of the cherries, frozen, canned in any form, dried, or concentrated juice, placed in the primary inventory reserve is at the option of the handler. The product(s) placed by the handler in the primary inventory reserve must have been produced in either the current or the preceding two crop years. Except as may be limited by § 930.50(i) or as may be permitted pursuant to §§ 930.59 and 930.62, such inventory reserve portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective restricted percentage fixed by the Secretary; *Provided,* That in converting cherries in each lot to the form chosen by the handler, the inventory reserve obligations shall be adjusted in accordance with uniform rules adopted by the Board in terms of raw fruit equivalent.

* * * * *

Dated: June 9, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–14286 Filed 6–14–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2010–0140]

RIN 3150–AI86

List of Approved Spent Fuel Storage Casks: MAGNASTOR System, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International Inc. (NAC) MAGNASTOR System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to Certificate of Compliance (CoC) Number 1031. Amendment No. 1 to the MAGNASTOR System CoC will change Technical Specifications (TS) related to neutron absorber qualification and acceptance testing. Specifically, the amendment will revise TS 4.1.1.b and incorporate by reference into the MAGNASTOR CoC, Sections 10.1.6.4.5, 10.1.6.4.6, 10.1.6.4.7, and 10.1.6.4.8 of the Final Safety Analysis Report (FSAR) regarding the acceptance testing of borated aluminum alloy and borated metal matrix composite neutron absorber material. The amendment will also include other changes in Appendices A and B of the TS to incorporate minor editorial corrections.

DATES: The final rule is effective August 30, 2010, unless significant adverse comments are received by July 15, 2010. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0140. Address questions about NRC dockets to Carol Gallagher at 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–899–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* An electronic copy of the proposed CoC, TS, and preliminary safety evaluation report (SER) can be found under ADAMS Package Number ML100130178. The ADAMS Accession Number for the NAC application, dated March 26, 2009, is ML090890292.

CoC No. 1031, the TS, the preliminary SER, and the environmental assessment are available for inspection at the NRC PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72, which added a new Subpart K within 10 CFR Part 72, entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks," which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the MAGNASTOR cask design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1031.

Discussion

On March 26, 2009, and as supplemented on September 4 and December 1, 2009, the certificate holder (NAC) submitted an application to the NRC that requested an amendment to CoC No. 1031. NAC requested modifications to the cask design to change the TS related to neutron absorber qualification and acceptance testing. Specifically, the amendment will revise TS 4.1.1.b and incorporate by reference into the MAGNASTOR CoC, Sections 10.1.6.4.5, 10.1.6.4.6, 10.1.6.4.7, and 10.1.6.4.8 of the FSAR regarding the acceptance testing of borated aluminum alloy and borated metal matrix composite neutron absorber material. The amendment will also include other changes in Appendices A and B of the TS to incorporate minor editorial corrections. As documented in the SER, the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the MAGNASTOR System listing in 10 CFR 72.214 by adding Amendment No. 1 to CoC No. 1031. The amendment consists of the changes described above, as set forth in the revised CoC and TS. The particular TS which are changed are identified in the SER.

The amended MAGNASTOR System cask design, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into MAGNASTOR System casks that meet the criteria of Amendment No. 1 to CoC No. 1031 under 10 CFR 72.212.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1031 is revised by adding the effective date of Amendment Number 1.

Procedural Background

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1031 and does not include other aspects of the MAGNASTOR System. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety and the environment continues to be ensured. The amendment to the rule will become effective on August 30, 2010. However, if the NRC receives significant adverse comments on this direct final rule by July 15, 2010, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For detailed instructions on filing comments, please see the companion proposed rule published elsewhere in this issue of the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the MAGNASTOR System cask design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of

Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES**, above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the MAGNASTOR System cask design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will change the TS related to neutron absorber qualification and acceptance testing. Specifically, the amendment will revise TS 4.1.1.b and incorporate by reference into the MAGNASTOR CoC, Sections 10.1.6.4.5, 10.1.6.4.6, 10.1.6.4.7, and 10.1.6.4.8 of the FSAR regarding the acceptance testing of borated aluminum alloy and borated metal matrix composite neutron absorber material. The amendment will also include other changes in Appendices A and B of the TS to incorporate minor editorial corrections.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On November 21, 2008 (73 FR 70587), the NRC issued an amendment to Part 72 that approved the MAGNASTOR System cask design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On March 26, 2009, and as supplemented on September 4 and December 1, 2009, the certificate holder (NAC) submitted an application to the NRC to amend CoC No. 1031 to change the TS related to neutron absorber qualification and acceptance testing. Specifically, the amendment will revise TS 4.1.1.b and incorporate by reference into the MAGNASTOR CoC, Sections 10.1.6.4.5, 10.1.6.4.6, 10.1.6.4.7, and 10.1.6.4.8 of the FSAR regarding the acceptance testing of borated aluminum alloy and borated metal matrix composite neutron absorber material. The amendment will also include other changes in Appendices A and B of the TS to incorporate minor editorial corrections.

The alternative to this action is to withhold approval of Amendment No. 1 and to require any Part 72 general licensee, seeking to load spent nuclear fuel into MAGNASTOR System casks under the changes described in Amendment No. 1, to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested Part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC. These entities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR chapter I. Therefore, a backfit analysis is not required.

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous Waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements,

Security measures, Spent nuclear fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009.

Amendment Number 1 Effective Date: August 30, 2010.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR.

Dated at Rockville, Maryland, this 25th day of May 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2010–14334 Filed 6–14–10; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1343]

Electronic Fund Transfers

June 4, 2010.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** of June 4, 2010, a document amending Regulation E and the official staff commentary to clarify certain aspects of the Regulation E final rule. This document corrects a typographical error in the amendatory instruction.

DATES: *Effective Date:* July 6, 2010.

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

SUPPLEMENTARY INFORMATION: The Board published a document in the **Federal Register** of June 4, 2010 (75 FR 31665). The document (FR Doc. 2010–13280) amended Regulation E and the official staff commentary to clarify certain aspects of the November 2009 Regulation E final rule addressing overdraft services, and contained a typographical error in amendatory instruction number 2.

In the final rule, FR Doc. 2010–13280, published on June 4, 2010 (75 FR 31665) make the following correction:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. On page 31671, in the third column, correct amendatory instruction 2 to read as follows:

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

By order of the Board of Governors of the Federal Reserve System, June 10, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–14353 Filed 6–14–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1140; Airspace Docket No. 09–AWP–13]

Amendment of Class D and E Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class D and E airspace at Victorville, CA, to accommodate aircraft using Instrument Flight Rules (IFR) operations at Southern California Logistics Airport, allowing aircraft operations outside Class D airspace at Adelanto Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at both airports. This action also will note a change in the airport name and geographic coordinates of Southern California Logistic Airport.

DATES: Effective date, 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On March 11, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Victorville, CA (74 FR 11476). Interested parties were

invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000 and 6005, respectively, of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class D airspace extending upward from the surface to and including 4,500 feet MSL within a 6-mile radius of Southern California Logistics Airport, Victorville, CA, excluding that airspace within a 1.5-mile radius of Adelanto Airport. This action is necessary for the safety and management of IFR operations. This rule also adjusts the geographic coordinates of Southern California Logistics Airport in Class D and E airspace, and changes the airport name from Southern California International Airport to Southern California Logistics Airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Southern California Logistics Airport, Victorville, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D Victorville, CA [Modified]

Victorville, Southern California Logistics Airport, CA
(Lat. 34°35′51″ N., long. 117°22′59″ W.)
Adelanto, Adelanto Airport, CA
(Lat. 34°32′15″ N., long. 117°27′38″ W.)

That airspace extending upward from the surface to 5,400 feet MSL within a 6-mile radius of the Southern California Logistics Airport, Victorville, CA, excluding that airspace with a 1.5-mile radius of Adelanto Airport, Adelanto, CA. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Victorville, CA [Amended]

Southern California Logistics Airport, CA
(Lat. 34°35′51″ N., long. 117°22′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Southern California Logistics Airport.

Issued in Seattle, Washington, on May 28, 2010.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–14219 Filed 6–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 766

[Docket No. 100603238–0235–01]

RIN 0694–AE93

Export Administration Regulations; Technical Amendments

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) makes a technical amendment to the Export Administration Regulations (EAR). Specifically, BIS deletes references concerning Federal court jurisdiction for judicial review of final decisions and orders issued in BIS export control administrative enforcement proceedings and in administrative appeals of BIS temporary denial orders. Federal court jurisdiction to review these orders is governed by statute, not by regulation.

DATES: *Effective Date:* This rule is effective June 15, 2010

ADDRESSES: You may submit comments, identified by RIN 0694–AE93, by any of the following methods:

- *E-mail: publiccomments@bis.doc.gov.* Include "RIN 0694–AE93" in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- *Mail or Hand Delivery/Courier:* Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE93.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285. Comments on this collection of information should be submitted separately from comments on

the final rule (*i.e.,* RIN 0694–AE93)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Sheila Quarterman, Bureau of Industry and Security, Office of Exporter Services, Regulatory Policy Division, by phone at 202–482–2440 or by fax 202–482–3355.

SUPPLEMENTARY INFORMATION:

Background

In this rule, BIS makes a technical amendment to the Export Administration Regulations (EAR) to remove three references concerning Federal court jurisdiction to review certain BIS enforcement orders. Paragraph (e) of section 766.22 discusses judicial review of a final decision and order by the Under Secretary for Industry and Security in a BIS export control administrative proceeding. Section 766.24 contains two references to judicial review. Paragraph (g) of section 766.24 discusses judicial review of a final decision and order by the Under Secretary concerning the administrative appeal of a temporary denial order issued by the Assistant Secretary for Export Enforcement, and paragraph (e)(5) of the same section includes a reference to paragraph (g). Federal court jurisdiction to review these BIS final orders is governed by statute, not by regulation. BIS is deleting these provisions, which were not promulgated with the intent to create or govern Federal court jurisdiction.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009)), has continued the EAR in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve a collection of information, and, therefore, does not implicate requirements of the PRA.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(A) and (B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule is one of procedure, which is exempted from the notice and comment requirements of the APA. This rule only deletes provisions from Part 766 that discuss federal court jurisdiction, which is an issue governed by statute, not by regulation. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

List of Subjects in 15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

■ Accordingly, 15 CFR part 766 of the Export Administration Regulations (15 CFR Parts 730–774) is amended as follows:

PART 766—[AMENDED]

■ 1. The authority citation for 15 CFR Part 766 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

§ 766.22 [Amended]

■ 2. In § 766.22, remove paragraph (e).

§ 766.24 [Amended]

■ 3. In § 766.24, remove the last sentence from paragraph (e)(5) and remove paragraph (g).

Dated: June 11, 2010.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2010–14525 Filed 6–14–10; 8:45 am]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1215

[CPSC Docket No. CPSC–2009–0064]

Third Party Testing for Certain Children's Products; Infant Bath Seats: Requirements for Accreditation of Third Party Conformity

Correction

In rule document 2010–13080 beginning on page 31688 in the issue of Friday, June 4, 2010 make the following corrections:

1. On page 31689, in the third column, in the first full paragraph, in the fourth and fifth lines, "December 1, 2010" should read "December 6, 2010".

2. On the same page, in the same column, in the same paragraph, in the 10th and 11th lines, "December 2, 2010" should read "December 7, 2010".

3. On page 31691, in the first column, in the second line from the top, "December 1, 2010" should read "December 7, 2010".

[FR Doc. C1–2010–13080 Filed 6–14–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 49, and 602

[TD 9486]

RIN 1545–BJ41

Indoor Tanning Services; Cosmetic Services; Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance on the indoor tanning services excise tax imposed by the Patient Protection and Affordable Care Act. These final and temporary regulations

affect persons that use, provide, or pay for indoor tanning services. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.**

DATES: *Effective Date:* These regulations are effective on June 15, 2010.

Applicability Date: For dates of applicability, *see* §§ 40.0–1T(e) and 49.5000B–1T(h).

FOR FURTHER INFORMATION CONTACT: Taylor Cortright, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget under control number 1545–2177. The information is required to be maintained in order for the provider of indoor tanning services to accurately calculate the tax on indoor tanning services when those services are offered with other goods and services, as described in § 49.5000B–1T(d)(2). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register.**

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49) under section 5000B of the Internal Revenue Code (Code). Section 5000B was added to the Code by section 10907 of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), to impose an excise tax on indoor tanning services.

Explanation of Provisions

Section 5000B(a) imposes on any indoor tanning service a tax equal to 10 percent of the amount paid for such service. Indoor tanning service, as defined in section 5000B(b), does not include any phototherapy service provided by a licensed medical professional. The regulations define phototherapy service and clarify that such service must be performed by, and on the premises of, a licensed medical professional.

The tax applies to amounts paid after June 30, 2010, for indoor tanning services. Liability for the tax arises at the time of payment for the indoor tanning services. In some cases (such as purchase of an undesignated payment card, discussed later in this preamble), it may not be possible to determine whether there is a payment for indoor tanning services. Thus, the regulations provide in those cases that a payment is treated as made, and the tax is imposed, at the time it can reasonably be determined that the payment is made specifically for indoor tanning services. In the case of membership fees paid to certain physical fitness facilities that provide indoor tanning services, the regulations provide a different rule, discussed later in this preamble.

The regulations provide that the "amount paid" for purposes of determining the tax base includes all amounts paid to the provider for indoor tanning services, including any amount paid by insurance. Providers of indoor tanning services, however, often sell other goods and services (such as protective eyewear, footwear, towels, and tanning lotions; manicures, pedicures and other cosmetic or spa treatments; and access to sport or exercise facilities) in addition to indoor tanning services. Thus, the regulations provide rules for determining the tax when the provider charges for other goods and services in addition to indoor tanning services.

Section 6001 requires taxpayers to keep books and records sufficient to show whether or not they are liable for tax. To that end, the regulations allow the provider to exclude charges for other goods and services if the charges are separable, do not exceed the fair market value of the other goods and services, and are shown in the exact amounts in the records pertaining to the indoor tanning services charge.

If the charges are not separately stated, but the total amount paid covers indoor tanning services, then the tax is based on the portion of the amount paid that is reasonably attributable to the indoor tanning services. For example, if the provider sells bundled services in which the indoor tanning service is bundled with other goods and services, and the charge is not separately stated, the tax applies to the amount paid that is reasonably attributable to the indoor tanning services. This is consistent with the approach taken in Rev. Rul. 63–155 (1963–2 CB 566) (relating to the application of the section 4261 tax on transportation by air to a package tour sold by a hotel that includes airfare, hotel accommodations, and other services not subject to the section 4261 tax).

The regulations provide that a payment for indoor tanning services is treated as made, and liability for the tax is imposed, at the time it can reasonably be determined that the payment is made specifically for indoor tanning services. If a payment is made with a gift certificate, gift card or similar device with a monetary value that can be redeemed for goods or services that may, but do not necessarily, include indoor tanning services (an undesignated payment card), it can reasonably be determined that a payment is made specifically for indoor tanning services when the undesignated payment card is redeemed, in whole or in part, to pay specifically for indoor tanning services (and not when a payment is made to purchase the undesignated payment card). This is consistent with the approach taken in Rev. Rul. 56–157 (1956–1 CB 523) (relating to the application of the section 4261 tax on transportation by air to a gift certificate that could be redeemed for air transportation or cash). In these cases, the provider of the services calculates the tax on the amount of the undesignated payment card that is redeemed for indoor tanning services at the time it is redeemed, and the rules of section 5000B(c) apply to determine the person liable for the tax.

If, however, the provider sells bundled services in which access to indoor tanning services (in a specified or unlimited amount) over a period of time is bundled with other goods and services, it can reasonably be determined that the payment is made specifically for indoor tanning services at the time the bundled services are purchased, because there is value attributable to the access to indoor tanning services. This is different than the example of the gift certificate, because the gift certificate can be redeemed entirely for non-taxable services, but the purchase of bundled services will always include access to indoor tanning services in the "bundle". In addition, for purposes of these regulations, payments for indoor

tanning services are subject to tax, regardless of actual usage. Thus, the tax applies to the amount paid that is reasonably attributable to the access to indoor tanning services, and the rules of section 5000B(c) apply to determine the person liable for the tax.

On the other hand, in the case of a payment of a membership fee to a qualified physical fitness facility (QPFF) (as defined in the regulations) that includes access to indoor tanning services, the IRS and Treasury Department have determined that the access is incidental to the QPFF's predominant business or activity and any amount attributable to such access would be difficult to calculate and administer. Thus, an amount paid to a QPFF is not a payment for indoor tanning services and the tax is not imposed on the amount paid. The regulations narrowly define QPFF to require, among other things, that the predominant business or activity of the facility is to serve as a physical fitness facility, taking into consideration all of the facts and circumstances. Thus, for example, a business predominantly engaged in providing indoor tanning or other cosmetic services cannot become a QPFF by allowing users access to exercise classes or pieces of exercise equipment. The regulations further provide that a QPFF cannot charge separately for indoor tanning services, offer such services to the public, or offer different membership fee rates based on access to indoor tanning services. Thus, a physical fitness facility that distinguishes memberships based on access to indoor tanning services is not a QPFF.

Section 5000B(c)(1) provides that the person liable for the tax is the individual on whom the indoor tanning service is performed. In some cases, a person might pay for services to be performed on someone else, such as by purchasing a gift certificate for indoor tanning services. Because the tax is calculated on the amount paid for the indoor tanning services, and because the statute contemplates that the tax will be collected at the time payment is made, the person who pays for the services (payor) is deemed to be the person on whom the services are performed for purposes of collecting the tax. Thus, the payor is liable for the tax on the services. If a person pays for a gift certificate for indoor tanning services (or for bundled services that includes indoor tanning services), then the liability for the tax arises at the time of payment.

However, if a person purchases an undesignated payment card, then a payment has not been made for indoor tanning services until the undesignated payment card is redeemed specifically to pay for indoor tanning services. In that case, the liability for the tax arises at the time the undesignated payment card is redeemed. The person who redeems the card for indoor tanning services is deemed to be the person on whom the services are performed for purposes of collecting the tax, and that person is liable for the tax on the services.

Section 5000B(c)(2) provides that the person receiving the payment on which tax is imposed (the provider) generally must collect the tax from the payor and pay the tax over quarterly to the government. These regulations provide that the amount paid by the payor to the provider is presumed to include the tax if the tax is not separately stated.

In the Proposed Rules section in this issue of the **Federal Register**, the IRS and Treasury Department are requesting comments regarding these temporary regulations, including comments on whether the presumption relating to section 5000B(c)(2) (that the amount paid by the payor to the provider includes the tax if the tax is not separately stated) is consistent with the manner in which providers maintain books and records and specifically whether such a rule is useful for purposes of minimizing recordkeeping burdens of the providers.

If the payor does not pay the tax at the time payment for the indoor tanning services is made, section 5000B(c)(3) provides that, to the extent the tax is not collected, the provider must pay the tax. Thus, the regulations provide that if the provider of the indoor tanning services fails to collect the tax from the payor at the time the payor makes a payment for indoor tanning services, the provider is liable for the tax.

These regulations apply the existing excise tax procedural rules in 26 CFR part 40 to the tax on indoor tanning services. Thus, the tax, whether paid by the payor or the provider under section 5000B(c), is reported by the provider on Form 720 "Quarterly Federal Excise Tax Return." These temporary part 40 regulations do not require semimonthly deposits of tax; rather, full payment of the tax is due quarterly at the time Form 720 is timely filed. The existing regulations also provide that once a Form 720 is required to be filed for a calendar quarter, a Form 720 must be filed for each subsequent calendar quarter, whether or not liability is incurred (or tax must be collected and paid over) during that subsequent quarter, until a final return under § 40.6011(a)–2 is filed.

Some providers of indoor tanning services may operate more than one location at which the services are provided. Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person that must file a separate Form 720.

Collected taxes are held in special trust for the United States pursuant to section 7501, and any person who willfully fails to collect and pay over the tax may be subject to the penalty in section 6672. The IRS will generally administer the indoor tanning services tax (in Chapter 49 of the Code), the same way it administers the other collected excise taxes in Chapter 33 of the Code (the communications and transportation taxes). However, the reporting provisions in § 49.4291–1 of the regulations (relating to certain inabilities to collect or refusals to pay tax) do not apply to the tax on indoor tanning services because section 4291 provides that these rules apply only to the Chapter 33 taxes.

Availability of IRS Documents

The IRS revenue rulings cited in this preamble are published in the Internal Revenue Cumulative Bulletin and are available from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analysis section in the preamble to the cross-referenced notice of proposed rulemaking in the Proposed Rules section in this issue of the **Federal Register.** Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Taylor Cortright, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 40, 49, and 602 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

■ **Paragraph 1.** The authority citation for part 40 continues to read in part as follows:

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

■ **Par. 2.** Section 40.0–1 is amended as follows:

■ 1. Paragraph (d) is redesignated as paragraph (f) and new paragraphs (d) and (e) are added.

■ 2. The paragraph heading of redesignated paragraph (f) is revised.

The addition and revision read as follows:

§ 40.0–1 Introduction.

* * * * *

(d) [Reserved]. For further guidance, *see* § 40.0–1T(d).

(e) [Reserved]. For further guidance, *see* § 40.0–1T(e).

(f) *Effective/applicability dates.* * * *

■ **Par. 3.** Section 40.0–1T is added to read as follows:

§ 40.0–1T Introduction (temporary).

(a) through (c) [Reserved]. For further guidance, *see* § 40.0–1(a) through (c).

(d) *Indoor tanning services.* The regulations in this part 40 also set forth administrative provisions relating to the excise taxes imposed by chapter 49, relating to cosmetic services.

(e) *Effective/applicability date.* Paragraph (d) of this section applies to returns that relate to calendar quarters beginning after June 30, 2010.

(f) [Reserved]. For further guidance, *see* § 40.0–1(f).

(g) *Expiration date.* Paragraph (d) of this section expires on or before June 11, 2013.

■ **Par. 4.** Section 40.6302(c)–1 is amended by:

■ 1. In paragraph (a)(1), removing the language "by statute" and adding "by statute, by § 40.6302(c)–1T(g)," in its place.

■ 2. Revising the paragraph heading in paragraph (f).

■ 3. Adding paragraph (g).

The revision and additions read as follows:

§ 40.6302(c)–1 Use of Government depositories.

* * * * *

(f) *Effective/applicability date.* * * *

(g) [Reserved]. For further guidance, *see* § 40.6302(c)–1T(g).

■ **Par. 5.** Section 40.6302(c)–1T is added to read as follows:

§ 40.6302(c)–1T Use of government depositaries (temporary).

(a) through (f) [Reserved]. For further guidance, *see* § 40.6302(c)–1(a) through (f).

(g) *Exception for indoor tanning services.* No deposit is required for the taxes imposed by section 5000B (relating to indoor tanning services) for any calendar quarter beginning after June 30, 2010.

(h) *Expiration date.* This section expires on or before June 11, 2013.

PART 49—FACILITIES AND SERVICES EXCISE TAX

■ **Par. 6.** The authority citation for part 49 continues to read in part as follows:

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

■ **Par. 7.** Section 49.0–3T is added to read as follows:

§ 49.0–3T Introduction; cosmetic services (temporary).

On and after July 1, 2010, this part 49 also applies to taxes imposed by chapter 49 of the Internal Revenue Code, relating to cosmetic services. *See* part 40 of this chapter for regulations relating to returns and payments of taxes imposed by chapter 49.

■ **Par. 8.** Subpart G is added to read as follows:

Subpart G—Cosmetic Services

§ 49.5000B–1T Indoor tanning services (temporary).

(a) *Overview.* This section provides rules for the tax imposed by section 5000B on any indoor tanning service.

(b) *Imposition of tax*—(1) *General rule.* Tax is imposed by section 5000B at the time of payment for any indoor tanning service.

(2) *Undesignated payment cards.* In the case of an undesignated payment card (within the meaning of paragraph (c)(5) of this section), payment for indoor tanning services is made when it can reasonably be determined that a payment is made specifically for indoor tanning services. Thus, when the undesignated payment card is redeemed, in whole or in part, to pay for indoor tanning services (and not when a payment is made to purchase the undesignated payment card), it can reasonably be determined that a payment for indoor tanning services is made, and the tax is imposed.

(3) *Payments to qualified physical fitness facilities.* No portion of a payment to a qualified physical fitness facility (within the meaning of paragraph (c)(4) of this section) that includes access to indoor tanning services is treated as a payment for indoor tanning services.

(c) *Definitions*—(1) *Indoor tanning service* means a service employing any electronic product designed to incorporate one or more ultraviolet lamps and intended for the irradiation of an individual by ultraviolet radiation, with wavelengths in air between 200 and 400 nanometers, to induce skin tanning. The term does not include phototherapy service performed by, and on the premises of, a licensed medical professional (such as a dermatologist, psychologist, or registered nurse).

(2) *Other goods and services* include, but are not limited to, protective eyewear, footwear, towels, and tanning lotions; manicures, pedicures and other cosmetic or spa treatments; and access to sport or exercise facilities.

(3) *Phototherapy service* means a service that exposes an individual to specific wavelengths of light for the treatment of—

(i) Dermatological conditions (such as acne, psoriasis, and eczema);

(ii) Sleep disorders;

(iii) Seasonal affective disorder or other psychiatric disorder;

(iv) Neonatal jaundice;

(v) Wound healing; or

(vi) Other medical condition determined by a licensed medical professional to be treatable by exposing the individual to specific wavelengths of light.

(4) *Qualified physical fitness facility* means a facility—

(i) In which the predominant business or activity is providing facilities, equipment, and services to its members for purposes of exercise and physical fitness (determined by taking into consideration all of the facts and circumstances, such as the cost of the equipment, variety of services offered, actual usage of services by customers, revenue generated by different services, and how the entity holds itself out to the public through advertising or other means);

(ii) In which providing indoor tanning services is not a substantial part of the business or activity; and

(iii) That does not sell indoor tanning services for a fee to the public or otherwise offer different pricing options to its members based in whole or in part on access to indoor tanning services.

(5) *Undesignated payment card* means a gift certificate, gift card, or similar item that can be redeemed for goods or services that may, but do not necessarily, include indoor tanning services.

(d) *Application of tax*—(1) *Tax on total amount paid for indoor tanning services.* The tax is imposed on the total amount paid for indoor tanning services, including any amount paid by insurance.

(2) *Charges for other goods and services; tanning services separately stated.* If a payment covers charges for indoor tanning services as well as other goods and services, the charges for other goods and services may be excluded in computing the tax payable on the amount paid, if the charges—

(i) Are separable (regardless of the manner of invoicing the charges);

(ii) Do not exceed the fair market value of such other goods and services; and

(iii) Are shown in the exact amounts in the records pertaining to the indoor tanning services charge.

(3) *Charges for other goods and services; tanning services bundled.* This paragraph (d)(3) applies if paragraph (d)(2) of this section does not apply. If a provider offers indoor tanning services (whether of a specified or unlimited amount, including "free" or reduced-rate indoor tanning services) bundled with other goods and services, the payment for the bundled services includes an amount paid for indoor tanning services. The tax applies to that portion of the amount paid to the provider that is reasonably attributable to indoor tanning services. The amount reasonably attributable to indoor tanning services may be determined by applying to the total amount paid a ratio determined by comparing—

(i) The provider's charge for indoor tanning services not in bundled services or, in the event the provider only charges for other goods and services as part of bundled services, the fair market value of similar services (based on the amount charged by comparable providers in the same geographic area); to

(ii) The charge determined in paragraph (d)(3)(i) of this section plus the provider's charge for the other goods and services in the bundled services or, in the event the provider only charges for other goods and services as part of bundled services, the fair market value of similar goods and services (based on the amount charged by comparable providers in the same geographic area).

(e) *Person liable for the tax*—(1) *General rule.* The person who pays for the indoor tanning service is deemed to be the person on whom the service is performed for purposes of collecting the tax. Thus, the person paying for the indoor tanning service is liable for the tax at the time of payment.

(2) *Undesignated payment cards.* In the case of a payment made with an undesignated payment card (within the meaning of paragraph (c)(5) of this section) described in paragraph (b)(2) of this section, the person who redeems the card, in whole or in part, to pay specifically for indoor tanning services is the person who pays for the indoor tanning services. Thus, the person who redeems an undesignated payment card, in whole or in part, to pay specifically for indoor tanning services is liable for the tax at the time such payment is made.

(3) *Tax not collected at time of payment.* If the person paying for the indoor tanning services does not pay the tax to the person receiving the payment for the services at the time of payment for the services, the person receiving the payment is liable for the tax.

(f) *Persons receiving payment must collect tax.* Every person receiving a payment for indoor tanning services on which a tax is imposed under this section shall collect the amount of the tax from the person making that payment. The total amount paid is presumed to include the tax if the tax is not separately stated.

(g) *Examples.* The following examples illustrate the application of section 5000B and this section.

Example 1. A is a provider of indoor tanning services and other goods and services. On July 1, 2010, B, an individual, pays A for one 10-minute indoor tanning service (as defined in paragraph (c)(1) of this section) and one pair of protective eyewear. A charges $15.00 for the 10-minute indoor tanning service and $2.00 for a pair of protective eyewear. The $2.00 charge for the protective eyewear does not exceed its fair market value. The invoice from A is $17.00 (exclusive of the tax imposed by section 5000B) and separately states the cost of the protective eyewear. Because the cost of the protective eyewear is separately stated, A calculates the section 5000B tax on $15.00 as provided by paragraph (d)(2) of this section. B is liable for the tax when B pays for the services. If A does not collect the tax from B at the time B pays for the services, A is liable for the tax.

Example 2. A, a provider of indoor tanning services and other goods and services, periodically offers bundled services to promote additional business. On July 1, 2010, C, an individual, buys bundled service from A that includes 10 swimming lessons, the use of towels while on A's premises, one pair of protective eyewear, and 2 "free" 10-minute indoor tanning services. A charges $252.00 (exclusive of the tax imposed by section 5000B) for the bundled services. If these services are purchased separately, A charges (exclusive of the tax imposed by section 5000B) $25.00 per swimming lesson, $15.00 for a 10-minute indoor tanning service, $2.00 for the protective eyewear and does not charge for the use of towels while on A's premises. As determined under paragraph (d)(3) of this section, the section 5000B tax applies to the amount reasonably attributable to the indoor tanning service, which is $26.81 (($30/$282) × $252).

Example 3. On July 1, 2010, D buys bundled services (described in *Example 2*) from A as a gift for C. Under paragraph (e)(1) of this section, D is deemed to be the person on whom the indoor tanning services are performed for purposes of collecting the tax. Therefore, under paragraph (b)(1) of this section, D is liable for the tax when D pays for the services. The tax will be computed under the rules of paragraph (d)(3) of this section. If D does not pay the tax at the time D pays for the services, A is liable for the tax.

Example 4. S operates a spa that provides a variety of cosmetic goods and services, including indoor tanning services. On July 1, 2010, D buys a gift certificate in the amount of $100.00 from S as a gift for C. The gift certificate may be redeemed by C for C's choice among several services offered by S, including indoor tanning services. On July 15, 2010, C partially redeems the gift certificate to pay for one 10-minute indoor tanning service. Under paragraph (b)(2) of this section, a payment for indoor tanning services is made, and the tax under section 5000B is imposed, on July 15, 2010, when C partially redeems the gift certificate to pay for one indoor tanning service. Under paragraph (e)(2) of this section, C is the person who pays for the indoor tanning services. Therefore, C is liable for the tax, computed under the rules of paragraph (d) of this section, and pays the tax by permitting S to debit the amount of the tax from the balance of the gift certificate or by paying the amount of the tax to S in cash. If C does not pay the tax at the time C partially redeems the gift certificate to pay for the indoor tanning services, S is liable for the tax.

Example 5. On July 1, 2010, E pays $1000 (exclusive of the tax imposed by section 5000B) to spa S for the right to use the following equipment and services during the month of July: up to four massages or facials, unlimited use of a sauna, steam room, showers, and towel service, and unlimited indoor tanning services. If the services are purchased separately, S charges (exclusive of the tax imposed by section 5000B) $150 for unlimited indoor tanning services during the month of July, and $900 for the other equipment and services during the month of July, not including indoor tanning services. Under paragraph (b) of this section, E has made a payment for indoor tanning services and the tax will be computed under the rules of paragraph (d)(3) of this section. As determined under paragraph (d)(3) of this section, the section 5000B tax applies to the amount reasonably attributable to the indoor

tanning services, which is $142.86 (($150/$1050) × $1000). If E does not pay the tax at the time E pays for the bundled services, S is liable for the tax.

Example 6. G operates a full-service gym facility that offers fitness classes, multiple exercise machines (such as treadmills, stationary bicycles, weight training machines, and free weights), and has as its predominant business providing these facilities, equipment, and services to members for purposes of exercise and physical fitness. G provides its members with access to indoor tanning services, comprised of two tanning beds that meet the definition of indoor tanning services under paragraph (c)(1) of this section. G generally charges its members a fee for monthly usage of its facilities, equipment, and services, but also offers short-term or free trial memberships and allows non-members to purchase individual or a series of exercise classes. G does not charge any fee for the indoor tanning services, does not offer indoor tanning services separately from its other services, and has no membership tier or category that differs from others based on access to the indoor tanning services. G holds itself out to the public through advertising and marketing as providing equipment and services to improve physical fitness. On July 1, 2010, F pays a membership fee to G in return for use of G's facility during the month of July. Under paragraph (b)(3) of this section, no portion of F's membership fee payment is treated as a payment made for indoor tanning services, because G is a qualified physical fitness facility under paragraph (c)(4) of this section. Therefore, no liability for tax arises under section 5000B.

(h) *Effective/applicability date.* This section applies to amounts paid after June 30, 2010, for indoor tanning services.

(i) *Expiration date.* This section expires on or before June 11, 2013.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 9.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 10.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where indentified and described	Current OMB control No.
* * * * *	
1.5000B–1	1545–2177
* * * * *	

Approved: June 9, 2010.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010–14398 Filed 6–11–10; 11:15 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulations on Allocation of Assets in Single-Employer Plans and Benefits Payable in Terminated Single-Employer Plans prescribe interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule (1) amends the asset allocation regulation to adopt interest assumptions for plans with valuation dates in the third quarter of 2010 and (2) amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in July 2010. Interest assumptions are also published on PBGC=s Web site (*http://www.pbgc.gov*).

DATES: Effective July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: the regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the assumptions under the asset allocation regulation for the third quarter (July through September) of 2010 and updates the assumptions under the benefit payments regulation for July 2010.

The interest assumptions prescribed under the asset allocation regulation (found in Appendix B to Part 4044) are used for the valuation of benefits for allocation purposes under ERISA section 4044. Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) Adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during the third quarter (July through September) of 2010, (2) adds to appendix B to part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during July 2010, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during July 2010.

The interest assumptions that PBGC will use for valuing benefits for allocation purposes (set forth in appendix B to part 4044) will be 4.93 percent for the first 20 years following the valuation date and 4.66 percent thereafter. In comparison with the interest assumptions in effect for the second quarter of 2010, these interest assumptions represent an increase of 0.30 percent for the first 20 years following the valuation date and an increase of 0.15 percent for all years thereafter.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay

status. In comparison with the interest assumptions in effect for June 2010, these interest assumptions represent a decrease of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during July 2010, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 201, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
201	7–1–10	8–1–10	2.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 201, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
201	7–1–10	8–1–10	2.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE–EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for July—September 2010, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the months—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
July–September 2010	0.0493	1–20	0.0466	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of June 2010.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–14299 Filed 6–14–10; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0443]

RIN 1625–AA00

Safety Zone, Lights on the River Fireworks Display, Delaware River, New Hope, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Delaware River in New Hope, PA. The safety zone will restrict vessel traffic on the Delaware River from operating within 400 yards of a fireworks barge located at 40°21′49″ N./074°56′54″ W. The safety zone will protect life and property while preventing vessel traffic from navigating on the Delaware River near the Bridge Street Bridge and for 800 feet downriver of the bridge in New Hope, PA.

DATES: This rule is effective from June 15, 2010 through July 30, 2010. This rule may be enforced with actual notice starting on the signature date.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0443 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0443 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Gary George, Chief Waterways Management, Sector Delaware Bay, Coast Guard; telephone 215–271–4851, e-mail *gary.e.george@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Delaying action on this rulemaking to allow for a comment period would be contrary to the public interest in allowing this event to go on as scheduled. Furthermore, the location of the event and short duration (one hour once each week, in the evening) mean that the chance of significant impact on or interest by the boating public is small.

Under 5 U.S.C. 553(d)(3), the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reason as above. Delaying the establishment of the safety zone could result in mariners approaching the fireworks barge, creating a hazardous scenario with potential for loss of life and property.

Basis and Purpose

The New Hope Chamber of Commerce has contracted Garden State Fireworks Inc. for a fireworks display to reoccur once a week on Friday evenings from May 21, 2010 to July 30, 2010. The establishment of this safety zone will prevent vessels from entering the fireworks fallout area, located on the Delaware River at 40°21′49″ N./074°567′54″ W. This safety zone will help protect both life and property on the Delaware River.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone which will be enforced May 21, 2010 from 8 p.m. to 9 p.m. and then every Friday from May 28, 2010 through July 30, 2010 from 9 p.m. until 10 p.m.

Except for persons or vessels authorized by the Captain of the Port, no person or vessel may enter or remain in the regulated area during the enforcement period. The safety zone is necessary to protect life and property operating on the navigable waterways of the Delaware River in New Hope, PA.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts vessel traffic on the navigable waters of the Delaware River, the effect of this regulation will not be significant due to the limited duration that the safety zone will be in effect. While the safety zone will be reoccurring on a weekly basis, the enforcement window lasts for only an hour in an area that is bordered downriver by rapids, minimizing local traffic that might pass though the affected area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in a portion of the Delaware River, New Hope, PA Fridays from May 28, 2010 through July 30, 2010 from 9 p.m. until 10 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for a maximum duration of one hour. Vessel traffic may pass through the affected area on the Delaware River during time periods other than the time needed to enforce the safety zone in during the "Lights on the River" fireworks shows.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves a limited-duration recurring safety zone intended to protect life and property on the navigable waterways of the Delaware River. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100–SAFETY OF LIFE ON NAVIGABLE WATERWAYS

■ 1. The authority citation for part 100 continues to read as follows:

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

■ 2. Add temporary § 165.T05–0443, to read as follows:

§ 100.T05–0443 Safety Zone; Fireworks Display, Delaware River, New Hope, PA.

(a) *Location.* The safety zone will restrict vessel traffic on the Delaware River from operating within 400 yards of a fireworks barge located at 40°21′49″ N./074°56′54″ W. This point is described as a point existing 400 ft downriver of the Bridge St. Bridge located in New Hope, PA, and 400 ft east of the shoreline of New Hope, PA.

(b) *Regulations.* (1) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Captain of the Port or a designated representative. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Captain of the Port or a designated representative and leave the safety zone immediately if so ordered.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definition.* "Designated representative" means the Commander of Sector Delaware Bay or any Coast Guard Commissioned, Warrant or Petty Officer who has been authorized by the Captain of the Port to act on her behalf.

(d) *Enforcement period.* This rule will be enforced every Friday from May 28, 2010 through July 30, 2010 from 9 p.m. until 10 p.m.

Dated: May 21, 2010.

R.T. Gatlin,

Captain, U.S. Coast Guard, Acting Captain of the Port Delaware Bay.

[FR Doc. 2010–14297 Filed 6–14–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0495]

RIN 1625–AA00

Safety Zone; Tacoma Freedom Fair Air Show, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Commencement Bay in Tacoma, Washington during the Tacoma Freedom Fair Air Show. The safety zone is necessary to help ensure the safety of the maritime public during the air show on July 4, 2010 and will do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: This rule is effective from 8 a.m. until 4:30 p.m. on July 4, 2010 unless cancelled sooner by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0495 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0495 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LTJG Ian Hanna, Sector Seattle, Waterways Management Division, Coast Guard; telephone 206–217–6051, e-mail *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure safety of participants and spectators in the Tacoma Freedom Fair Air show.

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

Basis and Purpose

The Coast Guard is establishing this temporary safety zone to help ensure the safety of the maritime public during the Tacoma Freedom Fair Air Show taking place along Ruston Way in Commencement Bay near Tacoma, Washington. The safety zone is necessary because of the numerous potential hazards associated with air show events.

Discussion of Rule

The temporary safety zone created by this rule encompasses all waters within the points 47° – 17.63′ N., 122° – 28.724′ W.; 47° – 17.059′ N., 122° – 27.538′ W.; 47° – 16.66′ N., 122° – 27.963′ W.; and 47° – 17.231′ N., 122° – 29.149′ W. The zone resembles a rectangle measuring approximately 2000 yards along the shoreline of Ruston Way and extending approximately 1100 yards into Commencement Bay. Floating markers will be placed by the sponsor of the event to delineate the boundaries of the safety zone. All persons and vessels are prohibited from entering or remaining in the safety zone unless authorized by the Captain of the Port, Puget Sound or Designated Representative. The Captain of the Port Puget Sound may be assisted by other local, state, and Federal agencies in the enforcement of this safety zone.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule is not a significant regulatory action because it is minimal in size and short in duration.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the affected waterway during the time of enforcement. This safety zone will not

have a significant economic impact on a substantial number of small entities for the following reasons: It is minimal in size, short in duration and vessel traffic can pass safely around the zone.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves a safety zone on the waters of Commencement Bay in Tacoma, Washington during the Tacoma Freedom Fair Air Show.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary section 33 CFR 165.T13–148 to read as follows:

§ 165.T13–148: Safety Zone; Tacoma Freedom Fair Air Show, Commencement Bay, Tacoma, Washington.

(a) *Location.* The following area is a designated safety zone: All waters within the points 47°-17.63′ N., 122°-28.724′ W.; 47°-17.059′ N., 122°-27.538′ W.; 47°-16.66′ N., 122°-27.963′ W.; and 47°-17.231′ N., 122°-29.149′ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no vessel operator may enter, transit, moor, or anchor within

this safety zone, except for vessels authorized by the Captain of the Port or Designated Representative.

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

(d) *Effective Period.* This rule is effective from 8 a.m. until 4:30 p.m. on July 4, 2010 unless canceled sooner by the Captain of the Port.

Dated: June 1, 2010.

S.W. Bornemann,

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

[FR Doc. 2010–14293 Filed 6–14–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0364]

RIN 1625–AA00

Safety Zone; Delta Independence Day Foundation Celebration, Mandeville Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters off the North Eastern shoreline of Mandeville Island, CA for the Delta Independence Day Foundation Celebration Fireworks Display. This safety zone is being established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from 10 a.m. July 02, 2010 through 10 p.m. on July 04, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0364 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2010–0364 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Ensign Liezl Nicholas, U.S. Coast Guard Sector San Francisco, at 415–399–7442 or e-mail at *D11–PF–MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists, as it would be impracticable to publish a notice of proposed rulemaking (NPRM) with respect to this rule, because the event would occur before the rulemaking process would be completed. Because of the immediate dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area.

Background and Purpose

The Delta Independence Day Foundation will sponsor a fireworks display on July 04, 2010, 300 feet from the North Eastern shoreline of Mandeville Island, CA. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area around the fireworks barge during the loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

This safety zone will apply to navigable waters from the surface to the sea floor in the San Joaquin River, during loading of pyrotechnics onto the fireworks barge at Dutra Corp Yard, Rio Vista, CA, during transit to the launch location and until the completion of the fireworks display. The temporary safety zone applies to the navigable waters around and under the fireworks barge during loading and transit within a radius of 100 feet, from 10 a.m. on July 02, 2010 until 9:30 p.m. on July 4, 2010. At 9:30 p.m. until 10 p.m. on July 04, 2010, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around and under the barge within a radius of 1,000 feet. The fireworks launch site will be located approximately 300 feet off the shore in position 38°03′19.37″ N., 121°31′54.34″ W. (NAD 83).

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site while the fireworks are loaded onto the barge, while the barge in transiting to the display location, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because of the small area and short duration of the safety zone. Furthermore, the local waterway users will be notified via public Broadcast

Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

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

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

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas off Stockton, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

An environmental analysis checklist and a categorical exclusion determination are available in the

docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–314 to read as follows:

§ 165.T11–314 Safety Zone; Delta Independence Day Foundation Celebration, Mandeville Island, CA.

(a) *Location.* This temporary safety zone is established for the waters off the North Eastern shoreline of Mandeville, CA. The fireworks launch site will be located approximately 300 feet off the shore in position 38°03′19.37″ N., 121°31′54.34″ W. (NAD 83).

During the transit to the launch location and until the completion of the fireworks display, from 10 a.m. on July 02, 2010 until 9:30 p.m. on July 4, 2010, the temporary safety zone applies to the navigable waters around and under the fireworks barge during loading and transit within a radius of 100 feet. From 9:30 p.m. until 10 p.m. on July 04, 2010, the temporary safety zone applies to the navigable waters around and under the barge within a radius of 1,000 feet.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) Effective period. This section is effective from 10 a.m. on July 02,2010 through 10 p.m. on July 04, 2010.

Dated: May 28, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–14292 Filed 6–14–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0476]

RIN 1625–AA00

Safety Zone: July Firework Display in Captain of the Port, Puget Sound AOR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone restricting vessel movement to protect the maritime public from dangers associated with firework display. This action is necessary to restrict vessels from congregating in close proximity to the fireworks discharge site during this display. Entry into, transit through or mooring within this safety zone is prohibited unless authorized by the Captain of the Port or Designated Representative.

DATES: This rule is effective from 5 p.m. on July 4, 2010 until 1 a.m. on July 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0476 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0476 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Ashley M. Wanzer, Sector Seattle Waterways Management, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary in order to restrict vessel movement and ensure maritime public safety during this firework display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Immediate action is necessary in order to restrict vessel movement and ensure maritime public safety during this firework display.

Basis and Purpose

This rule establishes a temporary safety zone in order to restrict vessel movement in and around the fireworks discharge site. The Coast Guard intends to promote maritime safety through this action by ensuring a safe distance is kept from the fireworks discharge site.

Discussion of Rule

This rule will prevent vessels from entering and congregating near the fireworks discharge site. Vessels will be directed to transit around the zone if the on-scene patrol commander deems that it is safe to do so.

Regulatory Analyses

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

Regulatory Planning and Review

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

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the affected waterways during times of enforcement. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone is minimal in size, short in duration and if practical then vessels will be able to transit around the zone.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves a firework display from a barge in Port Gardner Bay, WA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination will be made

available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary section 33 CFR 165.T13–147 to read as follows:

§ 165.T13–147: Safety Zone: July Firework Display in Captain of the Port, Puget Sound AOR.

(a) *Safety Zone.* The following area is a designated safety zone: all waters of Port Gardner Bay, WA extending out to a 300 yard radius from the launch site at 47°58′51″ N 122°13′16″ W.

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

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

(d) *Effective Period.* This rule is effective from 5 p.m. on July 4, 2010 until 1 a.m. on July 5, 2010 unless canceled sooner by the Captain of the Port.

Dated: May 27, 2010.

S.W. Bornemann,

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

[FR Doc. 2010–14294 Filed 6–14–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0063]

RIN 1625–AA00

Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent safety zones to ensure public safety during annual firework displays at various locations in the Captain of the Port (COTP), Puget Sound Area of Responsibility (AOR). When these safety zones are activated, and thus subject to enforcement, this rule restricts the movement of vessels within the established firework display areas. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with firework displays. Entry into, transit through, mooring, or anchoring within these zones during times of enforcement is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: This rule is effective June 15, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0063 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0063 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ensign Ashley M. Wanzer, USCG Sector Seattle Waterways Management Division, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 25, 2010, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Annual Firework Displays within the Captain of the Port, Puget Sound Area of Responsibility in the **Federal Register** (75 FR 8566). We did not receive any comments on the proposed rule. We also did not receive any requests for a public meeting; therefore, a public meeting was not held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate action is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to these safety zones' intended objective of protecting persons and vessels involved in the fireworks events.

Basis and Purpose

The U.S. Coast Guard is establishing permanent safety zones to ensure public safety during annual firework shows occurring within the Captain of the Port, Puget Sound, WA, AOR. This action is necessary in order to restrict vessel movement and reduce vessel congregation in the proximity of firework discharge sites ensuring maritime public safety.

Coast Guard typically receives numerous applications in these geographic areas for firework displays. Currently, temporary safety zones are established on an emergency basis for each individual display thereby limiting opportunity for public comment. Establishing permanent safety zones through notice and comment rulemaking provided the public the opportunity to comment on the safety zone locations, size and length of time each zone will be enforced. Additionally, this final rule includes a variety of locations and date ranges to allow for speedy and safe activation of permanent safety zones. Firework displays occur in these locations and on these dates with regularity. The establishment of multiple permanent safety zones provides enhanced public safety measures by reducing the number of emergency safety zones needed for firework displays. Notification of the specific dates and time for activation of safety zones will be available to the maritime public.

Each year organizations sponsor firework displays in the same general location and time period. Each event uses a barge, a tug and a barge, or an on-

shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. An on-scene patrol commander may allow persons within the safety zone if conditions permit.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not a significant regulatory action because the period of enforcement and size of these safety zones are minimal.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the affected waterways while this rule is enforced. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons: The safety zones included in this rule will be in effect for a short duration when vessel traffic volume is low and are limited in size. If safe to do so, traffic will be allowed to pass through these safety zones with the permission of the Captain of the Port or Designated Representative.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of safety zones around firework display sites within the COTP Puget Sound AOR. Each event will individually comply with NEPA requirements on an annual basis as ensured through the submittal of an annual marine event permit. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1332 to read as follows:

§ Safety Zones; Annual Firework Displays within the Captain of the Port, Puget Sound Area of Responsibility.

(a) *Safety Zones.* The following areas are designated safety zones: (1) All waters of Puget Sound, Washington, extending to a 450 yard radius from the following launch sites:

CAPTAIN OF THE PORT PUGET SOUND AOR ANNUAL FIREWORK DISPLAYS

Event name (typically)	Event location	Latitude	Longitude
Steilacoom Annual Fireworks	Steilacoom	47° 10.4′ N	122° 36.2′ W
Tacoma Freedom Fair	Commencement Bay	47° 16.817′ N	122° 27.933′ W
City of Anacortes Fireworks	Fidalgo Bay	47° 17.1′ N	122° 28.4′ W
Alderbrook Resort & Spa Fireworks	Hood Canal	47° 21.033′ N	123° 04.1′ W
Fireworks Display	Henderson Bay	47° 21.8′ N	122° 38.367′ W
Des Moines Fireworks	Des Moines	47° 24.117′ N	122° 20.033′ W
Three Tree Point Community Fireworks	Three Tree Point	47° 27.033′ N	122° 23.15′ W
City of Renton Fireworks	Renton, Lake Washington	47° 29.986′ N	122° 11.85′ W
Port Orchard Fireworks	Port Orchard	47° 32.883′ N	122° 37.917′ W
Chimes and Lights	Port Orchard	47° 32.75′ N	122° 38.033′ W
Seattle Seafair	Lake Washington	47° 34.333′ N	122° 16.017′ W
Mercer Island Celebration	Mercer Island	47° 35.517′ N	122° 13.233′ W
Medina Days	Medina Park	47° 36.867′ N	122° 14.5′ W
Bainbridge Island Fireworks	Eagle Harbor	47° 37.267′ N	122° 31.583′ W
Whaling Days	Dyes Inlet	47° 38.65′ N	122° 41.35′ W
Yarrow Point Community	Yarrow Point	47° 38.727′ N	122° 13.466′ W
City of Kenmore Fireworks	Lake Forest Park	47° 39.0′ N	122° 13.55′ W
Kirkland Concours D'Elegence	Kirkland	47° 39.521′ N	122° 12.439′ W
Kirkland Fireworks	Kirkland	47° 40.583′ N	122° 12.84′ W
Liberty Bay Fireworks	Liberty Bay	47° 43.917′ N	122° 39.133′ W
Sheridan Beach Community	Lake Forest Park	47° 44.783′ N	122° 16.917′ W
Langlie's Old Fashioned Independence Celebration.	Indianola	47° 44.817′ N	122° 31.533′ W
Lake Forest Park Fireworks	Lake Forest Park	47° 45.117′ N	122° 16.367′ W
Vashon Island Fireworks	Quartermaster Harbor	47° 45.25′ N	122° 15.75′ W
Kingston Fireworks	Appletree Cove	47° 47.65′ N	122° 29.917′ W
Mukilteo Lighthouse Festival	Possession Sound	47° 56.9′ N	122° 18.6′ W
Brewster Fire Department Fireworks	Brewster	48° 06.367′ N	119° 47.15′ W
Port Angeles	Port Angeles Harbor	48° 07.033′ N	123° 24.967′ W
Port Townsend Sunrise Rotary	Port Townsend	48° 08.067′ N	122° 46.467′ W
Friday Harbor Independence	Friday Harbor	48° 32.6′ N	122° 00.467′ W
Roche Harbor Fireworks	Roche Harbor	48° 36.7′ N	123° 09.5′ W
Deer Harbor Annual Fireworks Display	Deer Harbor	48° 37.0′ N	123° 00.25′ W.
Orcas Island	Orcas Island	48° 41.317′ N	122° 54.467′ W
Blast Over Bellingham	Bellingham Bay	48° 44.933′ N	122° 29.667′ W
True Colors Event	Blaine	48° 59.488′ N	122° 46.339′ W
John Eddy Wedding	Magnolia Bluff	49° 38.988′ N	122° 25.356′ W
City of Mount Vernon Fireworks	Edgewater Park	48° 25.178′ N	122° 20.424′ W
Chase Family Fourth at Lake Union	Lake Union	47° 38.418′ N	122° 20.111′ W

(2) [RESERVED]

(b) *Special Requirements.* Firework barges or launch sites on land used in locations stated in this rule shall display a sign. The sign will be affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and in close proximity to the shoreline facing the water labeled "FIREWORKS–DANGER–STAY AWAY." This will provide on-scene notice that the safety zone is, or will, be enforced on that day. This notice will consist of a diamond shaped sign, 4 foot by 4 foot, with a 3 inch

orange retro-reflective border. The word "DANGER' shall be 10 inch black block letters centered on the sign with the words "FIREWORKS" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER" respectively on a white background. An on-scene patrol vessel will enforce these safety zones 30 minutes prior to the start and 30 minutes after the conclusion of the fireworks display.

(c) *Notice of Enforcement.* These safety zones will be activated and thus subject to enforcement, under the following conditions: the Coast Guard must receive and approve a marine event permit for each firework display and then the Captain of the Port will cause notice of the enforcement of these safety zones to be made by all appropriate means to provide notice to the affected segments of the public as practicable, in accordance with 33 CFR 165.7(a). The Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public of activation and suspension of enforcement of these safety zones. Additionally, an on-scene Patrol Commander will ensure enforcement of this safety zone by limiting the transit of non-participating vessels in the designated areas described above.

(d) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no vessel operator may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or Designated Representative.

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

(f) *Enforcement Period.* This rule will be enforced from 5 p.m. until 1 a.m. each day a barge with a "FIREWORKS–DANGER–STAY AWAY" sign is located within any of the above designated safety zone locations and meets the criteria established in section (b), within the following timeframes:

(1) The last two weeks of December until the conclusion of the first weekend of January.

(2) The last weekend of June until the conclusion of the third week of July.

(3) The second weekend of August until the conclusion of the fourth week of August.

(4) The first weekend of September until the conclusion of the third week of September.

(5) The first weekend of December.

(g) *Contact Information.* Questions about safety zones and related events should be addressed to COMMANDER (spw), U.S. COAST GUARD SECTOR, Attention: Waterways Management Division, 1519 Alaskan Way South, Seattle, WA 98134–1192.

Dated: May 27, 2010.

S.W. Bornemann,

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

[FR Doc. 2010–14296 Filed 6–14–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0409]

RIN 1625–AA87

Security Zone; Escorted U.S. Navy Submarines in Sector Honolulu Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with requests for comments.

SUMMARY: The Coast Guard is establishing a moving security zone around all U.S. Navy submarines that are operating in the Sector Honolulu Captain of the Port Zone, which includes Mamala Bay and coastal waters of the State of Hawaii, and are being escorted by the U.S. Coast Guard. This security zone is necessary to help ensure the security of the submarines, their Coast Guard security escorts, and the general maritime public. This security zone prohibits all persons and vessels from coming within 1,000 yards of an escorted submarine unless authorized by the Coast Guard patrol commander.

DATES: This interim rule is effective from June 15, 2010. The security zone has been enforced with actual notice since June 12, 2010. Comments and related material must reach the Coast Guard on or before July 15, 2010. Requests for public meetings must be received by the Coast Guard on or before July 15, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0409 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call Mr. Terry Rice, Enforcement Division, U.S. Coast Guard District Fourteen, telephone 808–535–3264. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking USCG–2010–0409, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will

then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0409" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and we may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0409" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before July 15, 2010 to the Docket Management Facility using one of the four methods specified under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to section 4(a) of the Administrative Procedure Act (APA)(5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C.(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be contrary to the public interest since U.S. Navy submarine operations in the Sector Honolulu Captain of the Port Zone are ongoing, making the security zone created by this rule immediately necessary to help ensure the security of the submarines, their Coast Guard security escorts, and the maritime public in general.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because waiting 30 days would be contrary to the public interest for the same reasons discussed above.

Background and Purpose

U.S. Navy submarines frequently operate in the Sector Honolulu Captain of the Port Zone as defined in 33 CFR 3.70–10, which includes Mamala Bay and coastal waters of the State of Hawaii. Due to the numerous security concerns involved with submarine operations near shore, the Coast Guard frequently provides security escorts of submarines when operating in those areas. Security escorts of this type require the Coast Guard personnel on-scene to make quick judgments about the intent of vessels operating in close proximity to the submarines and decide, occasionally with little information about the vessel or persons on board, whether they pose a threat to the submarine.

The security zone established by this rule is necessary to keep persons and vessels a sufficient distance away from submarines operating in and around Mamala Bay and coastal waters of Hawaii so as to (1) avoid unnecessary and potentially dangerous contact with or distraction of Coast Guard security escorts and (2) give Coast Guard security escorts additional time and space to determine the intent of vessels that, for whatever reason, are operating too close to a submarine. Both of these effects will help ensure the security of the submarines, their Coast Guard security escorts, and the maritime public in general.

Discussion of Rule

This rule establishes a moving security zone encompassing all waters within 1,000 yards of any U.S. Navy submarine that is operating in the Sector Honolulu Captain of the Port Zone as defined in 33 CFR 3.70–10, which includes Mamala Bay and coastal waters of the State of Hawaii, and is being escorted by the Coast Guard. All persons and vessels are prohibited from entering the security zone unless authorized by the Coast Guard patrol commander. While naval vessel protection zones, under 33 CFR 165.2030, around these escorted U.S. Navy submarines are still in effect, persons would need to seek permission from the Coast Guard patrol commander to enter within 1,000 yards of these escorted submarines while they are in the Sector Honolulu Captain of the Port Zone.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard has made this determination based on the fact that (1) the security zone is only in effect for the short periods of time when submarines are operating in and around Mamala Bay and other coastal waters of Hawaii and being escorted by the Coast Guard, (2) the security zone moves with the submarines, (3) vessels will be able to transit around the security zone at most locations in Mamala Bay and other coastal waters of Hawaii, and (4) vessels may, if necessary, be authorized to enter the security zone with the permission of the Coast Guard patrol commander.

Small Entities

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

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit an area covered by the security zone. The security zone will not, however, have a significant economic impact on a substantial number of small entities because (1) the security zone is only in effect for the short periods of time when submarines are operating in and around Mamala Bay and other coastal waters of Hawaii and being escorted by the Coast Guard, (2) the security zone moves with the submarines, (3) vessels will be able to transit around the security zone at most locations in Mamala Bay and other coastal waters of Hawaii, and (4) vessels may, if necessary, be authorized to enter the security zone with the permission of the Coast Guard patrol commander.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This interim rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this interim rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this interim rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This interim rule involves the establishment of a security zone. An environmental analysis checklist and a categorical

exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1412 to read as follows:

§ 165.1412 Security Zone; Escorted U.S. Navy Submarines in Sector Honolulu Captain of the Port Zone.

(a) *Location.* The following area is a security zone: all waters, from the surface to the ocean floor, within 1,000 yards of any U.S. Navy submarine that is (1) operating in the Sector Honolulu Captain of the Port Zone, as defined in 33 CFR 3.70–10, and that (2) is being escorted by the U.S. Coast Guard.

(b) *Regulations.* In accordance with the general regulations in 33 CFR 165, Subpart D, no person or vessel may enter or remain in the security zone created by paragraph (a) of this section unless authorized by the Coast Guard patrol commander. The Coast Guard patrol commander may be contacted via VHF Channel 16 or other means reasonably available. 33 CFR part 165.30 and 165.33 contain additional provisions applicable to the security zone created in paragraph (a) of this section.

(c) *Effective period.* This rule is effective from 6:00 a.m. on June 12, 2010 Hawaiian Standard Time (HST).

(d) *Notification.* The Coast Guard security escort will attempt, when necessary and practicable, to notify any persons or vessels inside or in the vicinity of the security one created in paragraph (a) of this section of the zone's existence via VHF Channel 16 or other means reasonably available.

(e) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: June 3, 2010.

S.E. Mehling,

Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.

[FR Doc. 2010–14298 Filed 6–14–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AN71

Loan Guaranty: Elimination of Redundant Regulations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document eliminates redundant and obsolete provisions in the Department of Veterans Affairs (VA) loan guaranty regulations. The provisions being removed are no longer necessary because the phase-in of VA's new loan administration rules is complete.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Katherine Faliski, Assistant Director for Loan Processing and Valuation (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 461–9527. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On February 18, 2005 (70 FR 8472), VA proposed to amend its loan guaranty regulations to implement new program requirements for the mortgage servicing industry. The notice of proposed rulemaking was followed by publication of a supplemental notice regarding the computer system for the new requirements (71 FR 68498, Nov. 27, 2006) and a second supplemental notice regarding VA's proposal for phasing-in the requirements (72 FR 30505, June 1, 2007). The second supplemental notice stated: "When all industry segments have been brought on-line, VA will remove current §§ 36.4300 through 36.4393, and redesignate the new 4800 series to replace current §§ 36.4300 through 36.4393. At that time, all program participants would be subject to the new rules."

On February 1, 2008 (73 FR 6294), VA published a final rule amending 38 CFR part 36 to implement the new program requirements. VA temporarily designated then-existing provisions found at 38 CFR 36.4300 through 36.4393 (the "36.4300 series") as a new subpart B and established a new subpart F to include new §§ 36.4800 through 36.4893 (the "36.4800 series"). The 36.4800 series replicated most aspects of the VA Loan Guaranty Program set forth in the 36.4300 series, but also included changes related to the servicing and liquidating of guaranteed housing loans in default, and the submission of guaranty claims by loan holders.

VA implemented the phase-in of the subpart F provisions over a period of 11 months and completed the process during the 2nd quarter of FY 2009, following which the 36.4300 series became redundant and obsolete. Rather than eliminating subpart B altogether, however, we are redesignating the 36.4800 series to replace the 36.4300 series in its entirety. This action is necessary because most program participants are accustomed to referring to the 36.4300 series for regulations pertaining to the VA Loan Guaranty Program.

Administrative Procedure Act

This final rule deletes only redundant or obsolete provisions. It also redesignates current regulations without making any substantive changes. Accordingly, it is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Executive Order 12866

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

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

Unfunded Mandates

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

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number and title for the program affected by this document are 64.114, Veterans Housing—Guaranteed and Insured Loans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on June 4, 2010 for publication.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Dated: June 9, 2010.

Robert C. McFetridge,

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

■ For the reasons stated in the preamble, VA amends 38 CFR part 36 as follows:

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

Subpart B—[Removed]

■ 2. Remove subpart B.

Subpart F—[Redesignated as Subpart B]

■ 3. Redesignate subpart F as new subpart B.

§§ 36.4800 through 36.4893 [Redesignated as §§ 36.4300 through 36.4393]

■ 4. Redesignate §§ 36.4800 through 36.4893 as follows:

Old section	New section
36.4800	36.4300
36.4801	36.4301
36.4802	36.4302
36.4803	36.4303
36.4804	36.4304
36.4805	36.4305
36.4806	36.4306
36.4807	36.4307
36.4808	36.4308
36.4809	36.4309
36.4810	36.4310
36.4811	36.4311
36.4812	36.4312
36.4813	36.4313
36.4814	36.4314
36.4815	36.4315
36.4816	36.4316
36.4817	36.4317
36.4818	36.4318
36.4819	36.4319
36.4820	36.4320
36.4821	36.4321
36.4822	36.4322
36.4823	36.4323
36.4824	36.4324
36.4825	36.4325
36.4826	36.4326
36.4827	36.4327
36.4828	36.4328
36.4829	36.4329
36.4830	36.4330
36.4831	36.4331
36.4832	36.4332
36.4833	36.4333
36.4835	36.4335
36.4836 [Reserved]	36.4336 [Reserved]
36.4837	36.4337
36.4838	36.4338
36.4839	36.4339
36.4840	36.4340
36.4841	36.4341
36.4842	36.4342
36.4843	36.4343
36.4845	36.4345
36.4846	36.4346
36.4847	36.4347
36.4848	36.4348
36.4849	36.4349
36.4850	36.4350
36.4851	36.4351
36.4852	36.4352
36.4853	36.4353
36.4854	36.4354
36.4855	36.4355
36.4856	36.4356
36.4857	36.4357
36.4858 [Reserved]	36.4358 [Reserved]
36.4859	36.4359
36.4860	36.4360
36.4861	36.4361
36.4862	36.4362
36.4863	36.4363
36.4864	36.4364
36.4865	36.4365
36.4867	36.4367
36.4868	36.4368
36.4869	36.4369
36.4870	36.4370
36.4875	36.4375
36.4877	36.4377
36.4878	36.4378
36.4879	36.4379
36.4880	36.4380
36.4890	36.4390
36.4891	36.4391
36.4892	36.4392
36.4893	36.4393

[FR Doc. 2010–14156 Filed 6–14–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[EPA–HQ–OPP–2005–0327; FRL–8830–7]

RIN 2070–AJ74

Pesticide Management and Disposal; Standards for Pesticide Containers and Containment; Change to Labeling Compliance Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the pesticide container and containment regulations to provide a 4–month extension of the 40 CFR 156.159 labeling compliance date from August

16, 2010 to December 16, 2010. This change is being made because there is insufficient time for pesticide registrants, EPA and states to complete the label amendments. This change will avoid the temporary removal of a significant number of pesticides from the market while a 1–year extension proposed elsewhere in today's **Federal Register** proceeds through the rulemaking process, and while pesticide registrants, EPA and states work to update the pesticide labels to comply with the label requirements in the container and containment regulations.

DATES: This final rule is effective August 16, 2010.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0327. 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: Nancy Fitz, Field and External Affairs Division (FEAD) (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-7385; fax number: (703) 308-2962; e-mail address: *fitz.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide formulator. Potentially affected entities may include, but are not limited to:

- Pesticide formulators (NAICS code 32532), e.g., establishments that formulate and prepare insecticides, fungicides, herbicides or other pesticides from technical chemicals or concentrates produced by pesticide manufacturing establishments.

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**.

II. Background

On August 16, 2006, EPA promulgated a final rule titled "Pesticide Management and Disposal; Standards for Pesticide Containers and Containment" (71 FR 47330) (container and containment rule), establishing 40 CFR part 165 and amending 40 CFR part 156. The container and containment rule established regulations for the safe storage and disposal of pesticides to reduce the likelihood of unreasonable adverse effects on human health and the environment. The container and containment regulations include requirements for pesticide container design; procedures, standards, and label language to facilitate removal of pesticides from containers prior to their being used, recycled, or discarded; and requirements for containment of stationary pesticide containers and procedures for container refilling operations. The 2006 rule required that all pesticide products distributed or sold by a registrant as of August 16, 2009, bear labels that comply with the rule's label language requirements (40 CFR 156.159). On October 29, 2008, EPA promulgated a final rule that made various amendments to the container and containment rule, including extending the original labeling compliance date from August 16, 2009 to August 16, 2010.

Specifically, 40 CFR part 156, subpart H, titled "Container Labeling," requires the following information or statements on certain pesticide product labels:

- A statement identifying the container as nonrefillable or refillable.
- On nonrefillable containers, statements providing basic instructions for managing the container and a batch code.
- Cleaning instructions for some nonrefillable containers.
- Cleaning instructions for refillable containers at the end of their useful lives.

In addition, the container and containment rule modified several existing requirements in 40 CFR 156.10, including allowing for blank spaces on the labels of some refillable containers for the net contents and EPA establishment number and adding a reference to the container and containment regulations in 40 CFR part 156 subpart H.

The 2008 rule that amended the container and containment rule by extending the original labeling compliance date to August 16, 2010, also changed the phrase "sold or distributed" to "released for shipment" as associated with all of the compliance dates and made several other changes to the label requirements and various minor editorial changes.

III. What Action is the Agency Taking?

EPA is amending the container and containment regulations to provide a 4–month extension of the 40 CFR 156.159 labeling compliance date from August 16, 2010 to December 16, 2010. This change is being made to allow more time for the Agency to propose and solicit comments on the consideration of a 1–year extension to address concerns raised by stakeholders and as a result of further Agency consideration.

Accomplishing the label amendments required in 40 CFR part 156 subpart H is a multistep process. Registrants must identify the changes appropriate for their particular products and apply to EPA for an amended registration. EPA must review the proposed changes and determine whether they are consistent with the regulations, and advise the registrant of the Agency's findings. If the EPA approves the changes, the registrant must then seek approval of the various state pesticide regulatory agencies. Upon approval of the state agencies, the registrant must have the new labels printed and applied to its products.

In March 2010, EPA was contacted by stakeholders with concerns about being able to have all labels changed by the label compliance date of August 16, 2010. Some registrants have asserted that they will not have sufficient time to change all labels for pesticides that are released for shipment after August 16, 2010 despite efforts by registrants, EPA's Office of Pesticide Programs (OPP) and state agencies. The time constraints are due to several factors, including:

- More antimicrobial product labels than expected require alternate rinsing instructions, rather than the standard text in the regulations. Therefore, these amendments cannot be made by notification, and require more time consuming reviews by EPA.
- EPA's position on the appropriate container-related statements

(particularly rinsing and treatment of rinsate) for certain pesticides has changed over time as a result of experience with product-by-product label reviews. This has resulted in reconsideration of some decisions, and has caused some confusion in the regulated community.

• The length of time for states to review and approve labels is understood to be increasing due to the furlough days for staff in some states and staffing reductions due to budget shortfalls.

EPA has concluded that there is insufficient time to change all labels by August 2010. Since registrants can decide which registered products they wish to market at any given time, the Agency does not have a precise count of the total number of label changes that ultimately will be submitted to EPA for review. However, based upon a review of recent Agency actions and discussions with registrants, EPA estimates that the majority of label changes already have been submitted and approved. On the other hand, EPA estimates that there are at least 1,000 labels and potentially several thousand remaining pesticide product labels that EPA still needs to review. Even if all of those applications were submitted immediately, there would not be enough time for the label changes to be approved by EPA and the states, printed, and applied to all products that will be released for shipment after August 16, 2010.

Because EPA actions contributed to the large number of outstanding label changes, EPA believes that it is appropriate to extend the §156.159 compliance date by 1 year, to August 16, 2011, and has published in the Proposed Rules section of today's **Federal Register** a Notice of Proposed Rulemaking soliciting public comment on such a 1–year extension. Because that rulemaking effort could not become effective before August 16, 2010, EPA is issuing this final rule providing for a 4–month extension. As discussed in Unit IV., EPA believes an additional 4 months will be sufficient to allow the proposed rule to become final and effective, and that the proposed additional year (not cumulative with the 4–month extension) will provide enough time for EPA and the states to review the label changes and for registrants to incorporate the changes into their labels, provided that all applications are submitted soon.

During this 4–month extension, pesticide registrants should continue to submit applications for label changes for their products prior to the current deadline of August 16, 2010. EPA will give priority to applications submitted prior to August 16, 2010, with the goal of processing them to allow sufficient time for the registrant to obtain state approvals of the new labeling by the revised compliance date. Applications submitted after August 16, 2010 will be processed on a non-priority basis only after all applications submitted prior to that date have been processed. Registrants should carefully consider this and the timing of their submission to ensure that they have sufficient time to obtain state approvals by the revised compliance date.

IV. What is the Agency's Authority for Taking this Action?

This final rule is issued pursuant to the authority given the Administrator of EPA in sections 2 through 34 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136-136y. Sections 19(e) and (f) of FIFRA, 7 U.S.C. 136a(e) and (f), grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides. FIFRA section 19(f) requires EPA to promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal. FIFRA section 25(a), 7 U.S.C. 136w(a), authorizes EPA to issue regulations to carry out provisions of FIFRA.

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is contrary to the public interest, for the following reasons.

EPA is extending by 4 months the existing August 16, 2010 deadline for complying with the 40 CFR part 156 subpart H requirements that pesticide products bear label language to facilitate the safe use, refill and reuse of containers and the removal of pesticides from containers prior to their being recycled or discarded. Providing a comment period would not allow enough time to make the rule change effective before the compliance deadline. Publishing a proposed rule for comment would be contrary to the public interest because the August 16, 2010 deadline, if left unchanged, would temporarily remove from the market a significant number of pesticides important to the protection of public health and the nation's food supply, without comparable benefits to public health or the environment.

EPA had anticipated that the August 16, 2010 deadline would allow an appropriate length of time for new language to be incorporated into the labels of roughly 15,000 registered products. In order to facilitate this process, EPA has allowed expedited amendments to pesticide registrations (per 40 CFR 152.46(a)) for changes that exactly match the sample language provided in the regulation. EPA has recently become aware that a disproportionate number of the remaining products will require individualized review and approval of alternative, and often unique, label language. Moreover, a majority of the products that require individualized decisions are public health disinfectants and sanitizers, which are critical to maintaining safe and sanitary conditions in hospitals, food preparation areas, and other institutional settings. While EPA believes that the 40 CFR part 156 subpart H requirements will provide substantial benefits to public health and the environment over the long term, EPA does not believe that the public interest is served by removing these products from the market during the time necessary to approve and implement the new label language. The statutory and procedural steps required for full notice and comment rulemaking under FIFRA could not be completed before the August 16, 2010 compliance date. Therefore, EPA is issuing this final rule to extend the compliance date by 4 months to give the Agency time to complete the notice and public comment procedure, which EPA is initiating with the accompanying Notice of Proposed Rulemaking that is published in the Proposed Rules section of today's **Federal Register**.

V. Statutory and Executive Order Reviews

This final rule only amends an existing regulation to extend the current compliance date, it does not otherwise amend or impose any other requirements. As such, this action is not subject to review by the Office of Management and Budget (OMB) as a "significant regulatory action" under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does it impose or change any information

collection burden that requires additional review by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection activities contained in the regulations are already approved under OMB control number 2070–0133 (EPA ICR No. 1632). 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 40 CFR are listed in 40 CFR part 9.

Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute as stated in Unit IV. of this preamble, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531-1538). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This rule does not have tribal implications, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), or federalism implications as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

Since this action is not economically significant under Executive Order 12866, it is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and 13211, *Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This rule does not involve special consideration of environmental justice related issues as specified in Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

EPA's compliance with these statutes and Executive Orders for the existing regulations is discussed in the August 16, 2006 and October 29, 2008 **Federal Register** documents.

VI. FIFRA Mandated Reviews

As provided in FIFRA section 25(a)(2) and (d), the Secretary of Agriculture and the FIFRA Scientific Advisory Panel waived review of this final rule. Also in accordance with FIFRA section 25(a), the Agency transmitted this final rule to the Secretary of the Senate and the Clerk of the House of Representatives.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 156

Environmental protection, Labeling, Pesticides and pests.

Dated: June 9, 2010.

Lisa P. Jackson,

Administrator.

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

PART 156—[AMENDED]

■ 1. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 136 through 136y.

■ 2. Revise § 156.159 to read as follows:

§ 156.159 Compliance date.

Any pesticide product released for shipment by a registrant after December 16, 2010 must bear a label that complies with §§ 156.10(d)(7), 156.10(f), 156.10(i)(2)(ix), 156.140, 156.144, 156.146 and 156.156.

[FR Doc. 2010–14403 Filed 6–14–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2006–0409; FRL–9161–7]

Ocean Dumping; Correction of Typographical Error in 2006 Federal Register Final Rule for Designation of Ocean Dredged Material Disposal Site at Coos Bay, OR, Site F; Restoration of Coordinates for Ocean Dredged Material Disposal Site at Coos Bay, OR, Site H

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to correct a typographical error in the Final Rule for the Ocean Dumping; De-designation of Ocean Dredged Material Disposal Site and Designation of New Site near Coos Bay, Oregon.

DATES: This rule is effective on August 16, 2010 without further notice, unless EPA receives adverse comment by July 15, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit any comments, identified by Docket ID No. EPA–R10–OW–2006–0409 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for accessing the docket and materials related to this direct final rule and for submitting comments.
- *E-mail: Winkler.Jessica@epa.gov.*
- *Mail:* Jessica Winkler, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–088), Environmental Review and Sediment Management Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy during normal business hours for the regional library at the U.S. Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553–1289, between the hours of 9 a.m, to 12 p.m., and between the hours of 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Jessica Winkler, U.S. Environmental

Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–088), Environmental Review and Sediment Management Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–7369, e-mail: *winkler.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because this is a noncontroversial action and EPA anticipates no adverse comment. The sites have been used as EPA intended and as described in the preamble to the **Federal Register** and in the Site Management and Monitoring Plan (SMMP) and the typographical error was only brought to EPA's attention in late April 2010. However, in the "Proposed Rules" section of this **Federal Register,** we are publishing a separate document that will serve as the proposed rule to allow EPA to withdraw this final rule and respond to comments on this action if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, *see* the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act (MPRSA), 33 U.S.C. 1401 to 1445. EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of the Coos Bay, Oregon. Currently, the U.S. Army Corps of Engineers (Corps) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, and other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards and Marine Repair Facilities, Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. What is the background for this action?

In 1986, the Regional Administrator designated three disposal sites (Site E, original Site F and Site H) off of Coos Bay, Oregon under the MPRSA. Original Site F began to experience mounding and the Corps selected a 103 Site F to enable the three Coos Sites to accommodate the total volume of dredged material generated on an annual basis. The Corps intended to seek designation of the 103 site as soon as reasonable, however, the 103 Site F was too small for 102 designation by EPA. Consequently EPA proposed a new Site F on March 31, 2000, which was larger than the 103 site. In that proposal, EPA also proposed to de-designate the original Site F. EPA published a final rule, 71 FR 27396 (May 11, 2006), to de-designate original Site F and to designate new Site F. Figure 1, below, shows all of the Coos Sites, including Sites E and H, the de-designated Site F, the 103 configured Site F and the new Site F. The new Site F was designed to ensure that disposal of dredged material into Site F would be managed to retain material in the active littoral drift area to augment shoreline building processes and to allow material placed in the corner of the site closest to the jetty to continue augmentation toward the nearshore and toward the North Jetty. The coordinates (North American Datum—NAD 83) for new Site F, as finalized in the Final Rule preamble, were:

43°22′54.8887″ N., 124°19′28.9905″ W.
43°21′32.8735″ N., 124°20′37.7373″ W.
43°22′51.4004″ N., 124°23′32.4318″ W.
43°23′58.4014″ N., 124°22′35.4308″ W.

These coordinates were the coordinates used in the final Site Management and Monitoring Plan (SMMP) for the Coos Sites. These coordinates were to be codified at 40 CFR 228.15(n)(3). However, a typographical error in the final rule mistakenly allowed the coordinates to be codified at 40 CFR 228.15(n)(4). This typographical error led to the result on paper, but not in practice, of leaving the Original Site F coordinates unchanged and inadvertently overwriting the coordinates for Site H. The error did not result in any disposal taking place at any of the Coos Sites in locations not described in the rule preambles or in the SMMP. The error itself was not discovered until late April 2010. At all times, disposals of dredged material suitable for ocean disposal at the Coos Sites took place in the Sites as described in the preamble to the Final Rule, 71 FR 27396 (May 11, 2006), and in the final SMMP for the Coos Sites.

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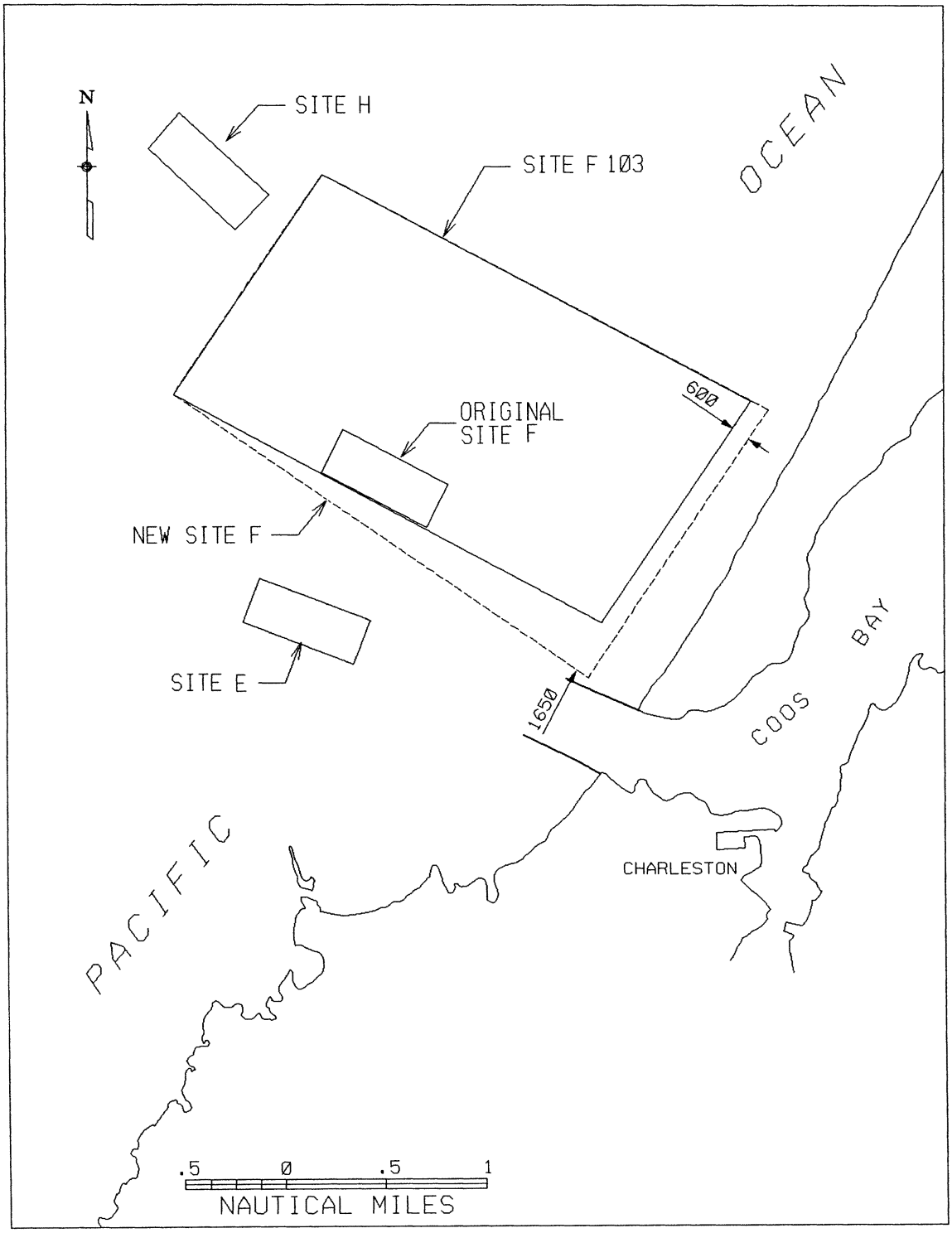

Figure 1. The Coos Sites, including Sites E and H, the de-designated (original) Site F, the 103 configured Site F and the new Site F

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IV. What action is EPA taking?

This action corrects the typographical error in EPA's final rule, 71 FR 27396 (May 11, 2006) to amend 40 CFR 228.15 by revising paragraphs (n)(3) and (n)(4) to read as set forth in the regulatory text of this final rule.

This correction is an administrative action which replaces the currently codified coordinates for Site F at 40 CFR 228.15(n)(3) with the coordinates EPA inadvertently, through a typographical error, named 40 CFR 228.15(n)(4) at 71 FR 27396, (May 11, 2006). This correction also restores the coordinates for Site H at 40 CFR 228.15(n)(4) which were overwritten through EPA's typographical error.

This correction does not require re-consultation under the Endangered Species Act (ESA), 16 U.S.C.1531 to 1544, the Magnuson-Stevens Act (MSA), 16 U.S.C. 1801 to 1891d, the Marine Mammal Protection Act of 1972 (MMPA), 16 U.S.C. 1361 to 1389; the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 to 1465; or the National Historic Preservation Act (NHPA), 16 U.S.C. 470 to 470a–2. Consultations under each of those acts were completed at the time EPA published the final rule in the **Federal Register** in 2006. The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 to 4370f, does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. EPA's action to correct the placement of coordinates in the **Federal Register** is not an action under EPA's "Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents," (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), requiring the preparation of an environmental review document.

V. Statutory and Executive Order Review

This rule corrects a typographical error by replacing the currently codified coordinates for Site F at 40 CFR 228.15(n)(3) with the coordinates EPA inadvertently, through a typographical error, named 40 CFR 228.15(n)(4) at 71 FR 27396, (May 11, 2006) and by restoring the coordinates for Site H at 40 CFR 228.15(n)(4) which were overwritten through EPA's typographical error. This action complies with applicable executive orders and statutory provisions as follows:

A. Executive Order 12866

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., because this rule does not establish or modify any information or recordkeeping requirements for the regulated community.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA determined that this action will not have a significant economic impact on small entities because the final rule will only have the effect of regulating the location of sites to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this final rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 because the correction of coordinates for Site F and the restoration of the appropriate coordinates for Site H will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

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

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

Executive Order 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to the House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective sixty days from the date of publication in the **Federal Register** if no adverse comment is received.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401, 1411, 1412.

Dated: June 3, 2010.

Dennis J. McLerran,

Regional Administrator, Region 10.

■ For the reasons set out in the preamble, EPA amends chapter I, title 40 of the Code of **Federal Register** as follows:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by revising paragraphs (n)(3) and (n)(4) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(3) Coos Bay, OR Dredged Material Site F

(i) *Location:* 43°22′54.8887″ N., 124°19′28.9905″ W.; 43°21′32.8735″ N., 124°20′37.7373″ W.; 43°22′51.4004″ N., 124°23′32.4318″ W.; 43°23′58.4014″ N., 124°22′35.4308″ W. (NAD 83).

(ii) *Size:* 4.45 kilometers long and 2.45 kilometers wide.

(iii) *Depth:* Ranges from 6 to 51 meters.

(iv) *Primary Use:* Dredged material determined to be suitable for ocean disposal.

(v) *Period of Use:* Continuing Use.

(vi) *Restriction:* Disposal shall be limited to dredged material determined to be suitable for unconfined disposal; Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP); Monitoring, as specified in the SMMP, is required.

(4) Coos Bay, OR Dredged Material Site H

(i) *Location:* 43°23′53″ N., 124°22′48″ W.; 43°23′42″ N., 124°23′01″ W.; 43°24′16″ N., 124°23′26″ W.; 43°24′05″ N., 124°23′38″ W.

(ii) *Size:* 0.13 square nautical mile.

(iii) *Depth:* Averages 55 meters.

(iv) *Primary Use:* Dredged material.

(v) *Period of Use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material in the Coos Bay area of type 2 and 3, as defined in the site designation final EIS.

* * * * *

[FR Doc. 2010–14242 Filed 6–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–HQ–RCRA–2005–0017; FRL–9160–9]

RIN 2050–AG57

Withdrawal of the Emission-Comparable Fuel Exclusion Under RCRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action withdraws the conditional exclusion from regulations promulgated on December 19, 2008 under subtitle C of the Resource Conservation and Recovery Act (RCRA) for so-called Emission Comparable Fuel (ECF). These are fuels produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate emissions that are comparable to emissions from burning fuel oil in those boilers. EPA is withdrawing this conditional exclusion because the Agency has concluded that ECF is more appropriately classified as a discarded material and regulated as a hazardous waste. The exclusions for comparable fuel and synthesis gas fuel are not addressed or otherwise affected by this final rule.

DATES: This final rule is effective June 15, 2010.

ADDRESSES: The official public docket is identified by Docket ID No. EPA–HQ–RCRA–2005–0017. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave.,

NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Mary Jackson, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Mailcode: 5302P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8453; fax number: (703) 308–8433; e-mail address: *jackson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. Does this action apply to me?

Categories and entities potentially affected by this action include:

EXAMPLE OF POTENTIALLY AFFECTED ENTITIES

NAICS code	Industry description
3241 ..	Petroleum and Coal Products Manufacturing.
3251 ..	Basic Chemical Manufacturing.
3252 ..	Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing.
3254 ..	Pharmaceutical and Medicine Manufacturing.
3255 ..	Paint, Coating, and Adhesive Manufacturing.
3259 ..	Other Chemical Product and Preparation Manufacturing.
3273 ..	Cement Manufacturing.
4884 ..	Support Activities for Road Transportation.
5614 ..	Business Support Services.
5622 ..	Waste Treatment and Disposal.
9281 ..	National Security and International Affairs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is aware of that could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, *etc.,* is affected by this action, you should examine the applicability criteria in this final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Docket Copying Costs

You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are 15 cents/page.

C. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of today's final rule will also be available on the Internet. Following the Administrator's signature, a copy of this document will be posted at *http://www.epa.gov/hwcmact.* This Web site also provides other information related to the NESHAP for hazardous waste combustors.

D. Index of Contents

The information presented in this preamble is organized as follows:

I. Statutory Authority
II. Background
  A. What is the intent of the rule?
  B. Who is affected by the rule?
III. Final Rule
IV. State Authority
  A. Applicability of the Rule in Authorized States
  B. Effect on State Authorization
V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act

I. Statutory Authority

This regulation is promulgated under the authority of sections 1004 and 2002 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6903 and 6912.

II. Background

A. What is the intent of the rule?

This rule withdraws the conditional exclusion from regulation under subtitle C of RCRA for Emission Comparable Fuel, as codified at § 261.38.[1] The conditional exclusion stated that hazardous secondary materials that meet all of the hazardous constituent specifications applicable to comparable fuel, except concentration limits for oxygenates and hydrocarbons, and that are stored and burned under prescribed conditions, are not discarded and, thus, are not solid wastes. The fundamental premise of the ECF rule is that ECF is no more hazardous than burning fuel oil, because combustion of this material will have comparable emissions. However, to ensure that the material does not pose greater risks, EPA felt compelled to promulgate a very detailed set of conditions—the equivalent of a detailed regulatory scheme—for both the storage and combustion of ECF. As discussed in the proposed rule, (Withdrawal of the ECF Exclusion Proposed Rule (74 FR 64643, December 8, 2009)), the existing subtitle C permitting process provides for the necessary review on the operation of the combustion units and the storage units to assure that the appropriate storage and combustion conditions are met.

This rule does not affect the exclusions for comparable fuel and synthesis gas fuel that were promulgated in 1998 [2] (also codified in § 261.38). In addition, this rule does not affect the clarifications and revisions to the conditions for comparable fuel that EPA promulgated concurrently with the ECF exclusion.[3]

B. Who is affected by the rule?

Entities that generate, burn, and store ECF would be potentially affected by this final rule. The rationale for the exclusion was that ECF is not a solid (and hazardous) waste as generated, and hence is not subject to the subtitle C regulations. Under today's rule, ECF is again classified as a hazardous waste, and all entities managing such hazardous secondary materials are again subject to all applicable subtitle C hazardous waste standards. Since the ECF exclusion was promulgated in December 2008 and became effective in January 2009, and since we are not aware that any States have adopted or applied for authorization for this rule, we would expect that very few facilities, if any, were managing hazardous secondary materials pursuant to this rule.

[1] *See* 73 FR 77954 (December 19, 2008).
[2] *See* 63 FR 33782 (June 19, 1998).
[3] *See* 73 FR at 77963–64.

III. Final Rule

On December 8, 2009, EPA proposed to withdraw the conditional exclusion for ECF under 261.38, including the exclusion itself in § 261.38(a), the specifications and associated conditions applicable to ECF under § 261.38(a), the implementation conditions applicable to ECF under § 261.38(b), the storage and burning conditions for ECF under § 261.38(c), the provisions for failure to comply with the conditions for the ECF exclusion under § 261.38(d)(2), the alternative storage conditions for ECF under § 261.38(e), and the notification of closure of an ECF storage unit under § 261.38(f). EPA received no major comments on the proposed rule to withdraw the ECF exclusion, and therefore today's action makes final, with no changes, the withdrawal of the conditional exclusion for ECF under § 261.38, as previously described. (The one comment that EPA received on the proposal, along with EPA's response to the comment are contained in the docket to today's final rule.) Information on the intent and rationale of the exclusion can be found in the Withdrawal of the ECF Exclusion Proposed Rule (74 FR 64643, December 8, 2009) and is part of the record for this final rule.

As noted above, this rule does not affect the exclusions for comparable fuel or synthesis gas fuel, including the specifications and associated conditions for these materials under § 261.38(a), the implementation conditions applicable to these materials under § 261.38(b), and the provision for failure to comply with the conditions for exclusion of these materials under § 261.38(d)(1).

Finally, today's final rule does not affect the clarifications and revisions to the conditions for comparable fuel that EPA promulgated concurrently with the ECF exclusion; specifically: (1) Clarification that comparable fuel that is spilled or leaked and that no longer meets the conditions of the exclusion must be managed as a hazardous waste if it exhibits a hazardous waste characteristic or if it is otherwise a listed hazardous waste (§ 261.38(b)(15)); (2) clarification that comparable fuel tank systems and container storage units become subject to the RCRA hazardous waste facility standards if not cleaned of liquids and accumulated solids within 90 days of ceasing operations as a comparable fuel storage unit (§ 261.38(b)(13)); (3) waiver of the RCRA closure requirements for tank systems and container storage units that were used only to store hazardous wastes that are subsequently excluded as comparable fuel (§ 261.38(b)(14)); (4) clarification that boiler residues, including bottom ash and emission control residue, from burning comparable fuel would be subject to regulation as hazardous waste if they exhibit a hazardous waste characteristic (§ 261.38(b)(12)); and (5) a condition [4] requiring that the one-time notice by the generator to regulatory officials must include an estimate of the average and maximum monthly and annual quantity of comparable fuel for which an exclusion is claimed (§ 261.38(b)(2)(i)(A)).

IV. State Authority

A. Applicability of the Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the Federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts Federal requirements that are more stringent or broader in scope than the existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (*see also* 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

By removing the ECF provisions, while maintaining the more stringent conditions applicable to comparable fuel in today's notice, it leads to final regulations that are considered to be more stringent than the current requirements; these provisions were not promulgated under the authority of HSWA. Therefore, States that have adopted the exclusion are required to modify their programs to remove the exclusion for ECF because they must conform to Federal regulations that are more stringent than the authorized State regulations. States that adopted the comparable fuel exclusion promulgated on June 19, 1998 and codified at § 261.38, but that have not adopted the ECF exclusion, will still need to revise their programs to adopt the more stringent conditions applicable to comparable fuel (*see* 73 FR at 77963–64) that were promulgated concurrently with the ECF exclusion on December 19, 2008.

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States will need to modify their programs is determined by the date of promulgation of a final rule in accordance with § 271.21(e)(2). Once EPA approves the modification, the State requirements would become RCRA subtitle C requirements.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR

[4] Please note that this condition applies prospectively to generators that newly claim the comparable fuel exclusion after December 19, 2008 and to generators that must submit a revised notification after December 19, 2008 because of a substantive change in the information required by the notice.

51735, October 4, 1993) and is therefore not subject to review under the EO. Our impact assessment [5] suggests that lost benefits would be, at most, $6.6 million per year. If fewer States were to have adopted the December 2008 exclusion rule, the value of lost benefits would be smaller.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1361.15. Withdrawing the ECF exclusion will result in an increase in the reporting and recordkeeping burden for ECF generators and burners, back to the level prior to promulgation of the exclusion. That is, under the ECF conditional exclusion, because ECF was no longer classified as a hazardous waste, the generator and burner were not required to comply with the paperwork, reporting, and recordkeeping requirements under the subtitle C hazardous waste regulations. However, ECF generators and burners were subject to an annual public reporting and recordkeeping burden for the collection of information required under the conditional exclusion. Thus, overall, the reporting and recordkeeping burden for ECF generators and burners resulted in a net annual reduction of 32,900 hours (assuming that all authorized States adopted the rule, which has not occurred) and a savings of $1.3 million in capital and operation and maintenance costs (based on the same assumption). Therefore, withdrawing the ECF conditional exclusion will result in a reporting and recordkeeping burden of 32,900 hours and a cost of $1.3 million in capital, and operation and maintenance costs, again assuming full adoption by authorized States. However, since we believe this has not occurred, the new burden would be significantly less. If authorized States have not adopted the rule, withdrawing the ECF conditional exclusion will not change the reporting and recordkeeping burden from what existed prior to promulgation of the conditional exclusion. OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR 261.38 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0073. Burden is defined at 5 CFR 1320.3(b). EPA has established a public docket for this final rule, which includes the ICR prepared in support of the final action. The Docket ID number is EPA–HQ–RCRA–2005–0017.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are facilities that generate, burn on-site, and store ECF. We have determined that the affected ECF generators are not owned by small governmental jurisdictions or nonprofit organizations. Therefore, only small businesses were analyzed for small entity impacts. A small entity is defined either by the number of employees or by the dollar amount of sales. The level at which a business is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration.

We have determined that this final rule is projected to result in increased costs to companies that may have started to use the conditional exclusion, as identified in the ECF Final Rule, although we suspect that very few facilities, if any, have actually begun to comply with this rule. However, any cost impacts to potentially affected small entities are not expected to be significant. The May 14, 2008 economic assessment [6] identified 34 facilities projected to take advantage of the ECF final rule (*see* Appendix E to the economic assessment document). Based on the corporate ownership of these facilities, one facility was confirmed as a small business based on the Small Business Administration size standards.[7] The size category of one other facility was undetermined. All other facilities were found to be owned by large businesses or the Federal government (*e.g.,* DOE). For the one identified small business and the one of undetermined size, impacts to these companies was estimated to be up to a maximum of one percent of gross annual revenues. This impact estimate was based on the average annual gross revenues for the NAICS category (2002 Census data) and the average cost savings per generator, as reported in Exhibit 15 of the revised assessment.[8] This impact finding assumes both "small businesses" have fully implemented the ECF final rule and would therefore experience cost increases as a result of this withdrawal. However, as discussed above, we suspect that very few facilities, if any, have begun to comply with this rule.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Total annual cost impacts of this action are not expected to exceed $6.6 million. Thus, this final rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. No

[5] *Assessment of the Potential Costs, Benefits, and Other Impacts of the Withdrawal of the Emission-Comparable Fuel Exclusion Under RCRA—Final Rule,* May 11, 2010.

[6] USEPA, "Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuel Exclusion-Final Rule," May 14, 2008.

[7] *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[8] USEPA, "Revised Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuel Exclusion-Final Rule," July 15, 2009.

small governments are known to own or manage any of the potentially affected entities.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rulemaking primarily and directly affects generators and burners of ECF. There are no State and local government bodies that would incur direct compliance costs by this rulemaking. Thus, Executive Order 13132 does not apply to this final rule.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule will neither impose substantial direct compliance costs on Tribal governments nor preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA specifically solicited comment on the proposed action from Tribal officials. No comments were received.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this final rule present a disproportionate risk to children. This action's health and risk assessments are contained in the original document(s) that established these materials as hazardous waste.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Because EPA is withdrawing the conditional exclusion for ECF under § 261.38, EPA is not using any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action reverses the ECF final rule thereby reinstating the more stringent management requirements for these materials.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 15, 2010.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: June 7, 2010.

Lisa P. Jackson,

Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6903, 6912(b), 6925.

■ 2. Section 261.4 is amended by revising paragraph (a)(16) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(16) Comparable fuels or comparable syngas fuels that meet the requirements of § 261.38.

* * * * *

■ 3. Section 261.38 is revised to read as follows:

§ 261.38 Exclusion of comparable fuel and syngas fuel.

(a) *Specifications for excluded fuels.* Wastes that meet the specifications for comparable fuel or syngas fuel under paragraphs (a)(1) or (a)(2) of this section, respectively, and the other requirements of this section, are not solid wastes.

(1) *Comparable fuel specifications.*—(i) *Physical specifications.*—(A) *Heating value.* The heating value must exceed 5,000 Btu/lbs. (11,500 J/g).

(B) *Viscosity.* The viscosity must not exceed: 50 cS, as-fired.

(ii) *Constituent specifications.* For compounds listed in Table 1 to this section, the specification levels and, where non-detect is the specification, minimum required detection limits are: (*see* Table 1 of this section).

(2) *Synthesis gas fuel specifications.*—Synthesis gas fuel (*i.e.,* syngas fuel) that is generated from hazardous waste must:

(i) Have a minimum Btu value of 100 Btu/Scf;

(ii) Contain less than 1 ppmv of total halogen;

(iii) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N_2);

(iv) Contain less than 200 ppmv of hydrogen sulfide; and

(v) Contain less than 1 ppmv of each hazardous constituent in the target list of appendix VIII constituents of this part.

(3) *Blending to meet the specifications.* (i) Hazardous waste shall not be blended to meet the comparable fuel specification under paragraph (a)(1) of this section, except as provided by paragraph (a)(3)(ii) of this section:

(ii) *Blending to meet the viscosity specification.* A hazardous waste blended to meet the viscosity specification for comparable fuel shall:

(A) As generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of paragraphs (a)(1)(i)(A) and (a)(1)(ii) of this section;

(B) Be blended at a facility that is subject to the applicable requirements of parts 264, 265, or 267 or § 262.34 of this chapter; and

(C) Not violate the dilution prohibition of paragraph (a)(6) of this section.

(4) *Treatment to meet the comparable fuel specifications.* (i) A hazardous waste may be treated to meet the specifications for comparable fuel set forth in paragraph (a)(1) of this section provided the treatment:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264, 265, or 267, or § 262.34 of this chapter; and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(5) *Generation of a syngas fuel.* (i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (a)(2) of this section provided the processing:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264, 265, or 267, or § 262.34 of this chapter or is an exempt recycling unit pursuant to § 261.6(c); and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a syngas fuel remain a hazardous waste.

(6) *Dilution prohibition.* No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of paragraphs (a)(1)(i)(A) or (a)(1)(ii) of this section for comparable fuel, or paragraph (a)(2) of this section for syngas.

(b) *Implementation.*—(1) *General.*—(i) Wastes that meet the specifications provided by paragraph (a) of this section for comparable fuel or syngas fuel are excluded from the definition of solid waste provided that the conditions under this section are met. For purposes of this section, such materials are called excluded fuel; the person claiming and qualifying for the exclusion is called the excluded fuel generator and the person burning the excluded fuel is called the excluded fuel burner.

(ii) The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this section and keeping records necessary to document compliance with those conditions.

(2) *Notices.* (i) *Notices to State RCRA and CAA Directors in authorized States or regional RCRA and CAA Directors in unauthorized States.* (A) The generator must submit a one-time notice, except as provided by paragraph (b)(2)(i)(C) of this section, to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:

(1) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(2) The applicable EPA Hazardous Waste Code(s) that would otherwise apply to the excluded fuel;

(3) The name and address of the units meeting the requirements of paragraphs (b)(3) and (c) of this section, that will burn the excluded fuel;

(4) An estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by paragraph (b)(2)(i)(C) of this section; and

(5) The following statement, which shall be signed and submitted by the person claiming the exclusion or his authorized representative:

> Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all comparable fuels identified in this notification. Copies of the records and information required at 40 CFR 261.38(b)(8) are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(B) If there is a substantive change in the information provided in the notice required under this paragraph, the generator must submit a revised notification.

(C) Excluded fuel generators must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed only in notices submitted after December 19, 2008 for newly excluded fuel or for revised notices as required by paragraph (b)(2)(i)(B) of this section.

(ii) *Public notice.* Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded Under the Resource Conservation and Recovery Act" and containing the following information:

(A) Name, address, and RCRA ID number of the generating facility(ies);

(B) Name and address of the burner and identification of the unit(s) that will burn the excluded fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the excluded fuel to be burned; and

(E) Name and mailing address of the Regional or State Directors to whom the generator submitted a claim for the exclusion.

(3) *Burning.* The exclusion applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable requirements implementing section 112 of the Clean Air Act:

(i) Industrial furnaces as defined in § 260.10 of this chapter;

(ii) Boilers, as defined in § 260.10 of this chapter, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a

manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter and applicable CAA MACT standards.

(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(4) *Fuel analysis plan for generators.* The generator of an excluded fuel shall develop and follow a written fuel analysis plan which describes the procedures for sampling and analysis of the material to be excluded. The plan shall be followed and retained at the site of the generator claiming the exclusion.

(i) At a minimum, the plan must specify:

(A) The parameters for which each excluded fuel will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the excluded fuel to be analyzed;

(D) The frequency with which the initial analysis of the excluded fuel will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the determination, any information prepared by the generator in making such determination.

(ii) For each analysis, the generator shall document the following:

(A) The dates and times that samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, *etc.*), laboratory quality assurance data, and the description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating whether the exclusion specifications have been met; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (b)(9) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of an excluded syngas fuel, a fuel analysis plan containing the elements of paragraph (b)(4)(i) of this section to the appropriate regulatory authority. The approval of fuel analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(5) *Excluded fuel sampling and analysis.* (i) *General.* For wastes for which an exclusion is claimed under the specifications provided by paragraphs (a)(1) or (a)(2) of this section, the generator of the waste must test for all the constituents in appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the fuel. The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not determine that any of the following categories of constituents with a specification in Table 1 to this section should not be present:

(A) A constituent that triggered the toxicity characteristic for the constituents that were the basis for listing the hazardous secondary material as a hazardous waste, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

Note to paragraph (b)(5): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the excluded fuel above the exclusion specifications.

(ii) *Use of process knowledge.* For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge pursuant to paragraph (b)(5)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(1) and (a)(2) of this section, as applicable, have been met.

(iii) The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel. For the fuel to be eligible for exclusion, a generator must demonstrate that:

(A) The 95% upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and

(B) The analyses could have detected the presence of the constituent at or below the specification level.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in § 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with the fuel analysis plan developed under paragraph (b)(4) of this section.

(vii) *Viscosity condition for comparable fuel.* (A) Excluded comparable fuel that has not been blended to meet the kinematic viscosity specification shall be analyzed as-generated.

(B) If hazardous waste is blended to meet the kinematic viscosity specification for comparable fuel, the generator shall:

(*1*) Analyze the hazardous waste as-generated to ensure that it meets the constituent and heating value specifications of paragraph (a)(1) of this section; and

(*2*) After blending, analyze the fuel again to ensure that the blended fuel meets all comparable fuel specifications.

(viii) Excluded fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change its chemical or physical

properties in a manner than may affect conformance with the specifications.

(6) (Reserved)

(7) *Speculative accumulation.* Excluded fuel must not be accumulated speculatively, as defined in § 261.1(c)(8).

(8) *Operating record.* The generator must maintain an operating record on site containing the following information:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA ID number of the person claiming the exclusion;

(B) For each excluded fuel, the EPA Hazardous Waste Codes that would be applicable if the material were discarded; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the excluded fuel. If the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste;

(iii) The monthly and annual quantities of each fuel claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the excluded fuel as required under paragraph (b)(5)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (b)(4) of this section;

(vi) If the comparable fuel was generated through treatment or blending, documentation of compliance with the applicable provisions of paragraphs (a)(3) and (a)(4) of this section;

(vii) If the excluded fuel is to be shipped off-site, a certification from the burner as required under paragraph (b)(10) of this section;

(viii) The fuel analysis plan and documentation of all sampling and analysis results as required by paragraph (b)(4) of this section; and

(ix) If the generator ships excluded fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the excluded fuel for burning;

(B) The quantity of excluded fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under paragraph (b)(4) of this section; and

(E) A one-time certification by the burner as required under paragraph (b)(10) of this section.

(9) *Records retention.* Records must be maintained for a period of three years.

(10) *Burner certification to the generator.* Prior to submitting a notification to the State and Regional Directors, a generator of excluded fuel who intends to ship the excluded fuel off-site for burning must obtain a one-time written, signed statement from the burner:

(i) Certifying that the excluded fuel will only be burned in an industrial furnace, industrial boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (b)(3) of this section;

(ii) Identifying the name and address of the facility that will burn the excluded fuel; and

(iii) Certifying that the State in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

(11) *Ineligible waste codes.* Wastes that are listed as hazardous waste because of the presence of dioxins or furans, as set out in appendix VII of this part, are not eligible for these exclusions, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to the full RCRA hazardous waste management requirements.

(12) *Regulatory status of boiler residues.* Burning excluded fuel that was otherwise a hazardous waste listed under §§ 261.31 through 261.33 does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous wastes.

(13) *Residues in containers and tank systems upon cessation of operations.* (i) Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to regulation under parts 262 through 265, 267, 268, 270, 271, and 124 of this chapter.

(ii) Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed under §§ 261.31 through 261.33 when the exclusion was claimed.

(iii) Liquid and accumulated solid residues that are removed from a container or tank system and which do not meet the specifications for exclusion under paragraphs (a)(1) or (a)(2) of this section are solid wastes subject to regulation as hazardous waste if:

(A) The waste exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24; or

(B) The fuel were otherwise a hazardous waste listed under §§ 261.31 through 261.33. The hazardous waste code for the listed waste applies to these liquid and accumulated solid resides.

(14) *Waiver of RCRA Closure Requirements.* Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under § 262.34 of this chapter, are not subject to the closure requirements of 40 CFR Parts 264, 265, and 267 provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this section, and that afterward will be used only to manage fuel excluded under this section.

(15) *Spills and leaks.* (i) Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed in §§ 261.31 through 261.33.

(ii) For excluded fuel that would have otherwise been a hazardous waste listed in §§ 261.31 through 261.33 and which is spilled or leaked, the hazardous waste code for the listed waste applies to the spilled or leaked material.

(16) Nothing in this section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103, which establish reporting obligations for releases of hazardous substances, or the Department of Transportation requirements for hazardous materials in 49 CFR parts 171 through 180.

(c) *Failure to comply with the conditions of the exclusion.* An excluded fuel loses its exclusion if any person managing the fuel fails to comply with the conditions of the exclusion under this section, and the material must be managed as hazardous waste from the point of generation. In such situations, EPA or an authorized State agency may take enforcement action under RCRA section 3008(a).

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Table 1 to § 261.38--Detection and Detection Limit Values for Comparable Fuel Specification

Chemical name	CAS No.	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Total Nitrogen as N	NA	4900	.....
Total Halogens as Cl	NA	540	.....
Total Organic Halogens as Cl	NA	([a])	.....
Polychlorinated biphenyls, total [Aroclors, total]	1336-36-3	ND	1.4
Cyanide, total	57-12-5	ND	1
Metals:			
Antimony, total	7440-36-0	12	.....
Arsenic, total	7440-38-2	0.23	.....
Barium, total	7440-39-3	23	.....
Beryllium, total	7440-41-7	1.2	.....
Cadmium, total	7440-43-9	1.2	.....
Chromium, total	7440-47-3	2.3	.....
Cobalt	7440-48-4	4.6	.....
Lead, total	7439-92-1	31	.....
Manganese	7439-96-5	1.2	.....
Mercury, total	7439-97-6	0.25	.....
Nickel, total	7440-02-0	58	.....
Selenium, total	7782-49-2	0.23	.....
Silver, total	7440-22-4	2.3	.....
Thallium, total	7440-28-0	23	.....
Hydrocarbons:			
Benzo[a]anthracene	56-55-3	2400	.....
Benzene	71-43-2	4100	.....
Benzo[b]fluoranthene	205-99-2	2400	.....
Benzo[k]fluoranthene	207-08-9	2400	.....
Benzo[a]pyrene	50-32-8	2400	.....
Chrysene	218-01-9	2400	.....
Dibenzo[a,h]anthracene	52-70-3	2400	.....
7,12-Dimethylbenz[a]anthracene	57-97-6	2400	.....
Fluoranthene	206-44-0	2400	.....
Indeno(1,2,3-cd)pyrene	193-39-5	2400	.....
3-Methylcholanthrene	56-49-5	2400	.....
Naphthalene	91-20-3	3200	.....
Toluene	108-88-3	36000	.....
Oxygenates:			
Acetophenone	98-86-1	2400	.....
Acrolein	107-02-8	39	.....
Allyl alcohol	107-18-6	30	.....
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117-81-7	2400	.....
Butyl benzyl phthalate	85-68-7	2400	.....
o-Cresol [2-Methyl phenol]	95-48-7	2400	.....
m-Cresol [3-Methyl phenol]	108-39-4	2400	.....
p-Cresol [4-Methyl phenol]	106-44-5	2400	.....
Di-n-butyl phthalate	84-74-2	2400	.....

Diethyl phthalate	84-66-2	2400	.....
2,4-Dimethylphenol	105-67-9	2400	.....
Dimethyl phthalate	131-11-3	2400	.....
Di-n-octyl phthalate	117-84-0	2400	.....
Endothall	145-73-3	100	.....
Ethyl methacrylate	97-63-2	39	.....
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	100	.....
Isobutyl alcohol	78-83-1	39	.....
Isosafrole	120-58-1	2400	.....
Methyl ethyl ketone [2-Butanone]	78-93-3	39	.....
Methyl methacrylate	80-62-6	39	.....
1,4-Naphthoquinone	130-15-4	2400	.....
Phenol	108-95-2	2400	.....
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	30	.....
Safrole	94-59-7	2400	.....
Sulfonated Organics:			
Carbon disulfide	75-15-0	ND	39
Disulfoton	298-04-4	ND	2400
Ethyl methanesulfonate	62-50-0	ND	2400
Methyl methanesulfonate	66-27-3	ND	2400
Phorate	298-02-2	ND	2400
1,3-Propane sultone	1120-71-4	ND	100
Tetraethyldithiopyrophosphate [Sulfotepp]	3689-24-5	ND	2400
Thiophenol [Benzenethiol]	108-98-5	ND	30
O,O,O-Triethyl phosphorothioate	126-68-1	ND	2400
Nitrogenated Organics:			
Acetonitrile [Methyl cyanide]	75-05-8	ND	39
2-Acetylaminofluorene [2-AAF]	53-96-3	ND	2400
Acrylonitrile	107-13-1	ND	39
4-Aminobiphenyl	92-67-1	ND	2400
4-Aminopyridine	504-24-5	ND	100
Aniline	62-53-3	ND	2400
Benzidine	92-87-5	ND	2400
Dibenz[a,j]acridine	224-42-0	ND	2400
O,O-Diethyl O-pyrazinyl phosphorothioate [Thionazin]	297-97-2	ND	2400
Dimethoate	60-51-5	ND	2400
p-(Dimethylamino) azobenzene [4-Dime thylaminoazobenzene]	60-11-7	ND	2400
3,3[prime]-Dimethylbenzidine	119-93-7	ND	2400
α,α-Dimethylphenethylamine	122-09-8	ND	2400
3,3[prime]-Dimethoxybenzidine	119-90-4	ND	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	ND	2400
4,6-Dinitro-o-cresol	534-52-1	ND	2400
2,4-Dinitrophenol	51-28-5	ND	2400
2,4-Dinitrotoluene	121-14-2	ND	2400
2,6-Dinitrotoluene	606-20-2	ND	2400
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88-85-7	ND	2400
Diphenylamine	122-39-4	ND	2400
Ethyl carbamate [Urethane]	51-79-6	ND	100
Ethylenethiourea (2-Imidazolidinethione)	96-45-7	ND	110

Famphur	52-85-7	ND	2400
Methacrylonitrile	126-98-7	ND	39
Methapyrilene	91-80-5	ND	2400
Methomyl	16752-77-5	ND	57
2-Methyllactonitrile, [Acetone cyanohydrin]	75-86-5	ND	100
Methyl parathion	298-00-0	ND	2400
MNNG (N-Metyl-N-nitroso-N[prime]-nitroguanidine)	70-25-7	ND	110
1-Naphthylamine, [α-Naphthylamine]	134-32-7	ND	2400
2-Naphthylamine, [β-Naphthylamine]	91-59-8	ND	2400
Nicotine	54-11-5	ND	100
4-Nitroaniline, [p-Nitroaniline]	100-01-6	ND	2400
Nitrobenzene	98-96-3	ND	2400
p-Nitrophenol, [p-Nitrophenol]	100-02-7	ND	2400
5-Nitro-o-toluidine	99-55-8	ND	2400
N-Nitrosodi-n-butylamine	924-16-3	ND	2400
N-Nitrosodiethylamine	55-18-5	ND	2400
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86-30-6	ND	2400
N-Nitroso-N-methylethylamine	10595-95-6	ND	2400
N-Nitrosomorpholine	59-89-2	ND	2400
N-Nitrosopiperidine	100-75-4	ND	2400
N-Nitrosopyrrolidine	930-55-2	ND	2400
2-Nitropropane	79-46-9	ND	2400
Parathion	56-38-2	ND	2400
Phenacetin	62-44-2	ND	2400
1,4-Phenylene diamine, [p-Phenylenediamine]	106-50-3	ND	2400
N-Phenylthiourea	103-85-5	ND	57
2-Picoline [alpha-Picoline]	109-06-8	ND	2400
Propylthioracil, [6-Propyl-2-thiouracil]	51-52-5	ND	100
Pyridine	110-86-1	ND	2400
Strychnine	57-24-9	ND	100
Thioacetamide	62-55-5	ND	57
Thiofanox	39196-18-4	ND	100
Thiourea	62-56-6	ND	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	ND	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	ND	57
o-Toluidine	95-53-4	ND	2400
p-Toluidine	106-49-0	ND	100
1,3,5-Trinitrobenzene, [sym-Trinitobenzene]	99-35-4	ND	2400
Halogenated Organics:			
Allyl chloride	107-05-1	ND	39
Aramite	140-57-8	ND	2400
Benzal chloride [Dichloromethyl benzene]	98-87-3	ND	100
Benzyl chloride	100-44-77	ND	100
bis(2-Chloroethyl)ether [Dichoroethyl ether]	111-44-4	ND	2400
Bromoform [Tribromomethane]	75-25-2	ND	39
Bromomethane [Methyl bromide]	74-83-9	ND	39
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101-55-3	ND	2400
Carbon tetrachloride	56-23-5	ND	39
Chlordane	57-74-9	ND	14

p-Chloroaniline	106-47-8	ND	2400
Chlorobenzene	108-90-7	ND	39
Chlorobenzilate	510-15-6	ND	2400
p-Chloro-m-cresol	59-50-7	ND	2400
2-Chloroethyl vinyl ether	110-75-8	ND	39
Chloroform	67-66-3	ND	39
Chloromethane [Methyl chloride]	74-87-3	ND	39
2-Chloronaphthalene [beta-Chloronaphthalene]	91-58-7	ND	2400
2-Chlorophenol [o-Chlorophenol]	95-57-8	ND	2400
Chloroprene [2-Chloro-1,3-butadiene]	1126-99-8	ND	39
2,4-D [2,4-Dichlorophenoxyacetic acid]	94-75-7	ND	7
Diallate	2303-16-4	ND	3400
1,2-Dibromo-3-chloropropane	96-12-8	ND	39
1,2-Dichlorobenzene [o-Dichlorobenzene]	95-50-1	ND	2400
1,3-Dichlorobenzene [m-Dichlorobenzene]	541-73-1	ND	2400
1,4-Dichlorobenzene [p-Dichlorobenzene]	106-46-7	ND	2400
3,3[prime]-Dichlorobenzidine	91-94-1	ND	2400
Dichlorodifluoromethane [CFC-12]	75-71-8	ND	39
1,2-Dichloroethane [Ethylene dichloride]	107-06-2	ND	39
1,1-Dichloroethylene [Vinylidene chloride]	75-35-4	ND	39
Dichloromethoxy ethane [Bis(2-chloroethoxy)methane]	111-91-1	ND	2400
2,4-Dichlorophenol	120-83-2	ND	2400
2,6-Dichlorophenol	87-65-0	ND	2400
1,2-Dichloropropane [Propylene dichloride]	78-87-5	ND	39
cis-1,3-Dichloropropylene	10061-01-5	ND	39
trans-1,3-Dichloropropylene	10061-02-6	ND	39
1,3-Dichloro-2-propanol	96-23-1	ND	30
Endosulfan I	959-98-8	ND	1.4
Endosulfan II	33213-65-9	ND	1.4
Endrin	72-20-8	ND	1.4
Endrin aldehyde	7421-93-4	ND	1.4
Endrin Ketone	53494-70-5	ND	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106-89-8	ND	30
Ethylidene dichloride [1,1-Dichloroethane]	75-34-3	ND	39
2-Fluoroacetamide	640-19-7	ND	100
Heptachlor	76-44-8	ND	1.4
Heptachlor epoxide	1024-57-3	ND	2.8
Hexachlorobenzene	118-74-1	ND	2400
Hexachloro-1,3-butadiene [Hexachlorobutadiene].	87-68-3	ND	2400
Hexachlorocyclopentadiene	77-47-4	ND	2400
Hexachloroethane	67-72-1	ND	2400
Hexachlorophene	70-30-4	ND	59000
Hexachloropropene [Hexachloropropylene]	1888-71-7	ND	2400
Isodrin	465-73-6	ND	2400
Kepone [Chlordecone]	143-50-0	ND	4700
Lindane [gamma-BHC] [gamma-Hexachlorocyclohexane]	58-89-9	ND	1.4
Methylene chloride [Dichloromethane]	75-09-2	ND	39
4,4[prime]-Methylene-bis(2-chloroaniline)	101-14-4	ND	100
Methyl iodide [Iodomethane]	74-88-4	ND	39

Pentachlorobenzene	608-93-5	ND	2400
Pentachloroethane	76-01-7	ND	39
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene].	82-68-8	ND	2400
Pentachlorophenol	87-88-5	ND	2400
Pronamide	23950-58-5	ND	2400
Silvex [2,4,5-Trichlorophenoxypropionic acid]..	93-72-1	ND	7
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746-01-6	ND	30
1,2,4,5-Tetrachlorobenzene	95-94-3	ND	2400
1,1,2,2-Tetrachloroethane	79-35-4	ND	39
Tetrachloroethylene [Perchloroethylene]	127-18-4	ND	39
2,3,4,6-Tetrachlorophenol	58-90-2	ND	2400
1,2,4-Trichlorobenzene	120-82-1	ND	2400
1,1,1-Trichloroethane [Methyl chloroform]	71-56-6	ND	39
1,1,2-Trichloroethane [Vinyl trichloride]	79-00-5	ND	39
Trichloroethylene	79-01-6	ND	39
Trichlorofluoromethane [Trichlormonofluoromethane]	75-69-4	ND	39
2,4,5-Trichlorophenol	95-95-4	ND	2400
2,4,6-Trichlorophenol	88-06-2	ND	2400
1,2,3-Trichloropropane	96-18-4	ND	39
Vinyl Chloride	75-01-4	ND	39

Notes:

NA--Not Applicable.

ND--Nondetect.

([a]) 25 or individual halogenated organics listed below.

[FR Doc. 2010–14097 Filed 6–14–10; 8:45 am]

BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1999–0013; FRL–9162–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Many Diversified Interests, Inc. Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final Notice of Deletion of the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the Many Diversified Interests, Inc. (MDI) Superfund Site located in Houston, Texas (Harris County), from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Texas, through the Texas Commission on Environmental Quality, because EPA has determined that all appropriate response actions at these identified parcels under CERCLA have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the MDI Superfund Site. Operable Unit 2, Operable Unit 3, and the ground water underlying the remainder of Operable Unit 1 will remain on the NPL and are not being considered for deletion as part of this action.

DATES: This direct final partial deletion is effective August 16, 2010 unless EPA receives adverse comments by July 15, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: *Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1999–0013, by one of the following methods:*

- *http://www.regulations.gov:* Follow internet on-line instructions for submitting comments.
- *E-mail:* Rafael Casanova, *casanova.rafael@epa.gov.*
- *Fax:* 214–665–6660.
- *Mail:* Rafael A. Casanova; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733.
- *Hand Delivery:* U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; Contact: Rafael A. Casanova (214) 665–7437. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–AFUND–1999–0013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is

an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

1. U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; Hours of operation: Monday thru Friday, 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m. Contact: Rafael A. Casanova (214) 665–7437.

2. Blanche Kelso Bruce Music Magnet Elementary School; 510 Jensen; Houston, Texas 77020; Hours of operation: Monday thru Friday, 9 a.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rafael A. Casanova, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733; telephone number: (214) 665–7437; *e-mail: casanova.rafael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Partial Deletion Procedures
IV. Basis for Site Partial Deletion
V. Partial Deletion Action

I. Introduction

EPA Region 6 is publishing this direct final Notice of Partial Deletion for the Many Diversified Interests, Inc. Superfund Site (Site), from the National Priorities List (NPL). This partial deletion pertains to the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the Site. The NPL constitutes appendix B of 40 CFR part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Many Diversified Interests, Inc. Superfund Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective August 16, 2010 unless EPA receives adverse comments by July 15, 2010. Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and the partial deletion will not take effect. EPA, will as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the Many Diversified Interests, Inc. Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to partially delete the Site parcels from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. The soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the Many Diversified Interests, Inc. Superfund Site will not require five-year reviews. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Partial Deletion Procedures

The following procedures apply to the deletion of the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the Many Diversified Interests, Inc. Superfund Site:

1. EPA has consulted with the state of Texas prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the "Proposed Rules" section of the **Federal Register**.

2. EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent for

Partial Deletion prior to their publication today, and the state, through the Texas Commission on Environmental Quality, has concurred on this partial deletion of the Site from the NPL.

3. Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, the Houston Chronicle. The newspaper announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

4. The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

5. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Site Partial Deletion

The following information provides EPA's rationale for deleting the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the Many Diversified Interests, Inc. Superfund Site from the NPL. A map of the Site, including the aerial extent of Operable Unit 1 and the underlying 8 acres of ground water proposed for deletion, is available in the deletion docket.

Site Location and History

The Many Diversified Interests, Inc. Superfund Site (Site, CERCLIS ID—TXD008083404), a former foundry (Operable Unit 1), occupied a 36-acre tract of land located at 3617 Baer Street in Houston, Texas (Harris County). The Site also consists of the residential areas (off-site soils of Operable Units 2 and 3) surrounding the former foundry. Figures, with coordinates, of the areas to be deleted will be made available at the Site information repositories and included with the deletion docket. The Site is located approximately two miles east of downtown Houston and one block south of Interstate Highway 10 in an area of mixed industrial and residential land use. This part of Houston is known as the "Fifth Ward." The Site is bordered by Hare Street to the north, National Vinegar Company and Press Street to the east, the former Texas & New Orleans railroad right-of-way to the south, and Bringhurst Street to the west. Operable Units 2 and 3 include the residential yards and "high access areas" (*e.g.,* schools, day care centers, playgrounds, churches, etc.) surrounding the former foundry.

Operations at the metal casting foundry began in 1926. The facility primarily manufactured specialty molded parts such as large wheels, tracks, and mining equipment. The process area consisted of two casting plants. Various grades of steel, including high carbon, chrome, molybdenum, high nickel, and stainless steel were cast at the facility. Scrap metal and iron were melted in the carbon arc furnaces, tested, corrected for the elements needed for the different grades of steel, and poured into molds. Molds and cores were constructed by mixing sand with flour binders. Castings were cleaned (by mechanical grinding, shot blasting, or sandblasting) and heat-treated. Final machining was performed either at the site or the customer's shop, if needed.

During the mid-1980s, the southern portion of the Site was leased to Can-Am Resource Group (Can-Am). Can-Am conducted a spent catalyst recycling operation using an experimental process. Catalyst is a substance that speeds up a chemical reaction to create a desirable product, such as gasoline for vehicles or other usable products. Can-Am reportedly obtained several thousand drums of spent catalyst from chemical plants and refineries located along the Houston Ship Channel and stored them at the Site.

Site Conditions Resulting in Listing

The EPA believes that the air emissions from the operations of the former foundry, which contained particles of lead, may have caused the on-site (Operable Unit 1) and off-site (Operable Units 2 and 3) soils to become contaminated through the air deposition of these particles. Foundry practices may have also contributed to the on-site lead contamination of the soils. Other probable sources of lead contamination that may have impacted the on- and off-site soils may include lead-based paint and historical deposition from vehicular lead-based fuel emissions, among other possible sources. The leaking drums of spent catalyst from chemical plants and refineries, stored at the Site by Can-Am, also caused the soils to become contaminated, posing a threat to the residential areas of the Site.

Operable Units

The EPA organized the Site into Operable Units 1 (On-Site Soils and Ground Water), 2 (Off-Site Residential Yards and High Access Areas), and 3 (Residential Crawlspaces and Those Residential Areas Not Addressed Under Operable Unit 2) as discrete actions that address the distinct geographical portions and the different media (on-site soils and ground water, and off-site residential yard and crawlspace soils) affected by the Site. The soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 are the subject of this direct notice for partial deletion.

Operable Unit 1 (On-Site Soils and Ground Water)

Operable Unit 1 (On-Site Soils and Ground Water) consists of the soils and ground water within the fenced boundaries of the former foundry.

In September 1998, EPA issued an action memorandum to address the removal of approximately 5,355 deteriorating drums of waste from the Site and 100,000 yd^3 of contaminated on-site soils. In May 1999, EPA issued unilateral administrative orders directing the potentially responsible parties to conduct a removal action to address the drummed wastes at the Site.

The Proposed Plan for Operable Unit 1 was made available for public comment on February 1, 2004. The Record of Decision for Operable Unit 1, which identified the Selected Remedy for Operable Unit 1, was issued on July 30, 2004. In September 2006, EPA and Clinton Gregg Investments, Ltd. (CGI) entered into an "Agreed Order on Consent and Covenant Not to Sue." This is the first-ever agreement in the nation by a non-liable party to clean up a Superfund Site. The purchaser of the former foundry property (Operable Unit 1) agreed to implement and fund the Selected Remedy. Partial deletion of the soils of Operable Unit 1 and the underlying ground water of the

approximately 8-acre western portion of Operable Unit 1 of the Site was requested by CGI to facilitate the residential development of the Site.

Operable Unit 2 (Off-Site Residential Yards and High Access Areas)

Operable Unit 2 (Off-Site Residential Yards and High Access Areas) consists of the residential yards and high access areas surrounding the fenced boundaries of the former foundry (Operable Unit 1). In 1998, the Texas Natural Resource Conservation Commission (now the Texas Commission on Environmental Quality) performed a removal action that addressed 89 residential yards, contaminated with lead, in the vicinity of the Site. In November 2003 and June 2005, EPA completed removal actions at 59 residential yards and high access areas, which included the Blanche Kelso Bruce Elementary School, Fifth Ward Multi-Service Center, and several churches. The purpose of these removal actions was to remove surface soil with concentrations of lead that equaled or exceeded the cleanup goal of 500 mg/kg to reduce the exposure of children and adults to lead. EPA believes that these removal actions addressed all of the residential yards and High Access Areas that could have been affected by the air emissions of particulates containing lead from the former foundry and for which access was granted for sampling.

The ground water medium was not a component of the investigation for Operable Unit 2. The Proposed Plan for Operable Unit 2 was made available for public comment on July 28, 2005. The Record of Decision for Operable Unit 2, which identified the Selected Remedy for Operable Unit 2, was issued on September 23, 2005. The Selected Remedy for Operable Unit 2 was "no further action" since the previous removal actions eliminated the existing and potential risks to human health and the environment so that no further action was necessary. Operable Unit 2 is not being considered for partial deletion at this time and is not discussed further in this direct notice of partial deletion.

Operable Unit 3 (Residential Crawlspaces and Those Residential Areas Not Addressed Under Operable Unit 2)

Operable Unit 3 (Off-Site Residential Crawlspaces and Those Residential Areas Not Addressed Under Operable Unit 2) consists of the residential crawlspaces and yards surrounding the fenced boundaries of the former foundry (Operable Unit 1) which were not addressed under Operable Unit 2 because the owners could not be located, or they were not responsive to the EPA's request for sampling, or they denied the EPA access for sampling.

In April 2006 and 2009, the EPA completed removal actions at the northeastern portion of the Kelly Village Housing Complex and six (6) additional residential yards of the Site, respectively. The purpose of these removal actions was to remove surface soil with concentrations of lead that equaled or exceeded the cleanup goal of 500 mg/kg to reduce the exposure of children and adults to lead. EPA believes that these removal actions addressed all of the Kelly Village areas and surrounding residential yards which could have been affected by the air emissions of particulates containing lead from the former foundry and for which the EPA was granted access for sampling.

The ground water medium was not a component of the investigation for Operable Unit 3. The Proposed Plan for Operable Unit 3 was made available for public comment in June 2009. The Record of Decision for Operable Unit 3, which identified the Selected Remedy for Operable Unit 3, was issued on August 31, 2009. The Selected Remedy for Operable Unit 3 crawlspaces was "no action warranted" since the Baseline Human Health Risk Assessment concluded that current or potential future Site conditions pose no unacceptable risks to human health or to the environment so that no action is warranted. The Selected Remedy Operable Unit 3 residential yards was "no further action" since the previous removal actions eliminated the existing and potential risks to human health and the environment so that no further action was necessary. Operable Unit 3 is not being considered for partial deletion at this time and is not discussed further in this direct notice of partial deletion.

Remedial Investigation and Feasibility Study for Operable Unit 1

The remedial investigation for Operable Unit 1 addressed the following key issues in order to determine the nature and extent of contamination at the Site:

- Determine the distribution of metal concentrations in near-surface soils (specifically lead deposited as a result of air dispersion and deposition of emissions from the former foundry),
- Determine the nature and extent of contaminants of potential concern in soils associated with the historic foundry operations at the Site, and
- Determine the nature and extent of contamination in ground water at the Site (Operable Unit 1).

The contaminant found above risk-based levels in the soils included lead. The contaminants found above risk-based levels in the ground water included benzo(a)pyrene, total petroleum hydrocarbons, manganese, and molybdenum. A total of five alternatives were developed for the Site during the feasibility study for Operable Unit 1. The EPA chose stabilization/solidification of lead-contaminated soils with off-site disposal, source removal and monitored natural attenuation for the ground water, and the placement of institutional controls for both the soils and ground water as the Selected Remedy for the Site.

Selected Remedy for Operable Unit 1

The major components of the Selected Remedy described in the Record of Decision for Operable Unit 1 (On-Site Soils and Ground Water) for the Site consisted of:

- Excavation and Treatment (solidification/stabilization, if necessary) of approximately 13,600 cubic yards (yd^3) of soils with lead concentrations equal to or greater than 500 milligrams per kilogram (mg/kg) to a maximum depth of 1.5 feet below ground surface (bgs), and approximately 3,000 yd^3 of soils stockpiled at the Site from a previous removal action were also treated, if necessary. Transportation and Disposal (at a permitted off-site waste disposal facility) of the treated and untreated soils;
- Transportation and Disposal (at a permitted off-site waste disposal facility) of approximately 31,621 yd^3 of debris (nonhazardous debris, foundry sand, and slag), the Asbestos-Containing Material in the on-site building and scattered throughout the Site, and an Underground Storage Tank in the vicinity of Monitoring Well (MW) 20;
- Excavation and Disposal (at a permitted off-site waste disposal facility) of approximately 2,100 yd^3 of soils contaminated with benzo(a)pyrene, or other organics, at the MW–3 location; light nonaqueous-phase liquids at the MW–11 location; and Total Petroleum Hydrocarbons at the MW–20 location. Soil cleanup levels for these isolated source areas were determined during the remedial design and remedial action for the Selected Remedy;
- Implementation of Monitored Natural Attenuation for the ground water, which included source removal and Long-Term Monitoring for the ground water to ensure that constituents (total petroleum hydrocarbons and benzo[a]pyrene) above cleanup goals are naturally attenuating; and
- Implementation of Institutional Controls for both the soils and ground

water to prevent exposure to soil contamination above acceptable cleanup levels and to prevent exposure to contaminated ground water in the shallow water-bearing zone.

Remedial Action Objectives for Operable Unit 1

The Remedial Action Objectives accomplished for Operable Unit 1 of the Site were:

- Remove the asbestos-containing material stockpiled on the Site and left in the existing building,
- Reduce the risk posed to residential receptors by lead concentrations in the soils equal to or greater than the cleanup goal for the Site (500 mg/kg),
- Remove soil visibly contaminated with waste oil in the vicinity of MW–3 and MW–20 that was acting as a potential continuing source of ground water contamination,
- Remove soil visibly contaminated with waste oil in the vicinity of MW–11 that has the potential to act as a source of ground water contamination,
- Remediate ground water in the northwest corner of the Site, at MW–20, and remove the free product associated with an underground storage tank, and
- Mitigate the threat posed by exposure to ground water throughout the rest of the Site.

The basis for the Remedial Action Objectives for the Operable Unit 1 soil was to cleanup the Site to residential standards, the anticipated future land use for the fenced boundaries of the Site. The basis for the Remedial Action Objectives for the ground water was to ensure that current and future receptors are not exposed to contaminated ground water during the implementation of the Selected Remedy.

Response Actions for Operable Unit 1

The remedial design for Operable Unit 1 included the following design determinations:

- Defining the lead removal and sampling techniques (including confirmation sampling);
- Detailing a lead-impacted soil treatment process;
- Determining source removal criteria for light nonaqueous phase liquid-impacted areas,
- Defining the disposal/sampling needs for each waste stream, and
- Defining the monitoring wells for the monitored natural attenuation program.

The remedial action for Operable Unit 1 included:

- Demolition and disposal of an abandoned 2-story office building, and several 1-story utility structures;
- Transportation and disposal of the asbestos-containing material in the on-site building and scattered throughout the Site;
- Transportation and disposal (at a permitted off-site waste disposal facility) of approximately 31,621 yd^3 of debris (non-hazardous debris, foundry sand, and slag) and the asbestos-containing material in the on-site building and scattered throughout the Site;
- Removal and disposal of an electrical transformer, and underground storage tank in the vicinity of MW–20 and Lead Area 1, and the management and disposal of foundry bag filters identified as a listed K061 waste material;
- Excavation and treatment (solidification/stabilization, if necessary) of approximately 13,600 yd^3 of soils with lead concentrations equal to or greater than 500 mg/kg to a maximum depth of 1.5 feet bgs and approximately 3,000 yd^3 of soils stockpiled at the Site from a previous removal action, and transportation and disposal (at a permitted off-site wastes disposal facility) of the treated and untreated soils;
- Excavation and disposal (at a permitted off-site waste disposal facility) of approximately 2,100 yd^3 of soils contaminated with benzo(a)pyrene, or other organics, at the MW–11 location, and total petroleum hydrocarbons at the MW–20 location;
- Confirmation sampling for several locations identified to have been impacted by either semi-volatile organic compounds or polychlorinated biphenyls in the soils; and lead confirmation sampling for the Site soils;
- Installation of additional monitoring wells to be utilized during the monitored natural attenuation program.

Cleanup Goals for Operable Unit 1

Soil remedial action activities were conducted at Operable Unit 1 from May 2007 through June 2008. The soil remedial action for Operable Unit 1 of the Site consisted of the sampling and excavation, including the proper disposal, of the soils contaminated with lead equal to or greater than the 500 mg/kg residential soil lead cleanup level specified in the Record of Decision for Operable Unit 1. The soil remedial action also consisted of the sampling and excavation of soils contaminated with total petroleum hydrocarbons and other organics identified in the Record of Decision for Operable Unit 1. Confirmation sampling was also conducted to verify that this area did not contain soil with lead or organic concentrations (total petroleum hydrocarbons, benzo(a)pyrene, and polychlorinated biphenyls) equal to or greater than the cleanup level. Institutional controls were not required for the soils since sampling indicated that soil lead concentrations did not exceed the cleanup level below 1.5 feet bgs. Sampling data gathered from the ground water monitoring wells located in the approximately 8-acre western portion of Operable Unit 1 indicated that the underlying ground water had not been impacted by the hazardous substances identified in the Selected Remedy for Operable Unit 1 of the Site. The ground water flows to the east southeast at this portion of the Site and the contaminants are not expected to contaminate the ground water underlying the 8-acre western portion of the Site. Therefore, EPA determined that the ground water underlying the approximately 8-acre western portion of Operable Unit 1 would not require institutional controls.

The EPA conducted pre-final and final construction inspections for Operable Unit 1 on June 25, 2008, and determined that CGI completed the Selected Remedy for Operable Unit 1 in accordance with the remedial design plans and specifications, the remedial action sampling and analysis plan, the Record of Decision for Operable Unit 1, and the Agreed Order on Consent. The EPA approved the "Final Soil Remedial Action Report" (dated 08/29/08) on December 12, 2008, and issued a final certification of completion of the soil remedial action on August 19, 2009.

Since all the contaminants were remediated in the Operable Unit 1 soils, and monitoring data indicated that the ground water underlying the 8-acre western portion of the Site was not contaminated, no operation and maintenance, monitoring, or five-year reviews are required.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k) and CERCLA Section 117, 42 U.S.C. 9617. Documents in the partial deletion docket which the EPA relied on for recommendation for the partial deletion from the NPL are available to the public in the information repositories, and a notice of availability of the Notice of Intent for Partial Deletion has been published in the Houston Chronicle to satisfy public participation procedures required by 40 CFR 300.425(e)(4).

Determination That the Criteria for Deletion Have Been Met

In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is

appropriate. The EPA, in consultation with the State of Texas (through the Texas Commission on Environmental Quality), has determined that the potentially responsible parties have completed the removal action for Operable Unit 1 according to the May 1999 "Unilateral Administrative Order," and that Clinton Gregg Investments, Ltd. has completed the soil remedial action for Operable Unit 1 according to the July 2004 "Record of Decision" and the September 2006 "Agreed Order on Consent and Covenant Not to Sue." Additionally, EPA completed the removal action at Operable Unit 1 according to the September 1998 "Action Memorandum."

V. Partial Deletion Action

The EPA, with concurrence of the State of Texas, through the Texas Commission on Environmental Quality, has determined that all appropriate response actions under CERCLA have been completed. Therefore, EPA is deleting the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the Many Diversified Interests, Inc. Superfund Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 16, 2010 unless EPA receives adverse comments by July 15, 2010. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 4, 2010.

Lawerence E. Starfield,

Acting Regional Administrator, Region 6.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by revising the entry under "Many Diversified Interests, Inc., Texas" to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
*	* * * * * *		*
TX	Many Diversified Interests, Inc	Houston	P
*	* * * * * *		*

(a) * * *
* P = Sites with partial deletion(s).

[FR Doc. 2010–14232 Filed 6–14–10; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 03–66; RM–10586; FCC 10–107]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies the construction deadline applicable to new initial Broadband Radio Service (BRS) licenses granted on or after November 6, 2009. Specifically, the Commission permits these BRS licensees to demonstrate substantial service four years from the date of license grant rather than on or before May 1, 2011. The Commission further modifies the construction rule by clarifying that BRS and Educational Broadband Service (EBS) licensees may demonstrate substantial service by meeting one of the safe harbors specified in the rule and that they may, under certain circumstances, demonstrate substantial service by combining licenses. Finally, on its own motion, the Commission corrects a clerical error in its rules governing the pre-transition frequency assignments for BRS Channel 1. These actions clarify the requirements necessary for BRS and EBS licensees to demonstrate substantial service and ensure that BRS licensees of new initial licenses are given a reasonable period of time to deploy service, while ensuring that spectrum is rapidly placed in use.

DATES: Effective July 15, 2010.

FOR FURTHER INFORMATION CONTACT: Nancy M. Zaczek, Wireless Telecommunications Bureau, Broadband Division, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418–0274 or via the Internet to *Nancy.Zaczek@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Broadband Radio Service/Educational Broadband Service Third Report and Order* (*BRS/EBS 3rd R&O*), FCC 10–107, adopted on June 1, 2010, and released on June 3, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300

or 1–800–378–3160, contact BCPI at its Web site: *http://www.bcpiweb.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 10–107. The complete text of this document is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC-10-107A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

SUMMARY:

I. Background

A. Introduction

1. In the April 2006, *BRS/EBS Second Report and Order,* the Commission adopted May 1, 2011 as the uniform date by which all BRS Basic Trading Area (BTA) authorization holders and incumbent BRS and EBS licensees must demonstrate substantial service. The Commission adopted May 1, 2011 as the date for BRS licensees to demonstrate substantial service because it is the date that renewal applications for incumbent BRS licenses are due. Moreover, May 1, 2011 is approximately five years from the date of release of the *BRS/EBS Second Report and Order,* which gave existing BRS licensees five years to build out their systems, while they simultaneously transitioned to the new band plan and technical rules. Thus, the Commission concluded, requiring BRS licensees to demonstrate substantial service by May 1, 2011 struck the appropriate balance between ensuring that the band is promptly placed in use and giving licensees fair opportunity to transition their facilities. The Commission then required that BRS incumbent licensees file their demonstration of substantial service with their respective renewal applications.

2. On April 24, 2009, the Bureau announced Auction 86, in which it intended to auction 78 BRS BTA licenses, 75 of which were overlay licenses that were originally offered in Auction 6 and were available as a result of default, cancellation, or termination. Three additional licenses were created by the Commission in the *BRS/EBS Fourth MO&O,* when the Commission amended its rules to establish three Gulf of Mexico Service Areas for BRS. Under the rules adopted in the *BRS/EBS Second Report and Order,* auction winners would be required to demonstrate substantial service on or before May 1, 2011.

3. On September 11, 2009, the Commission released the *BRS/EBS Third Further Notice of Proposed Rulemaking* (*BRS/EBS Third FNPRM*), 74 FR 49335 (September 28, 2009), concluding that applicants that win BRS licenses in Auction 86, and any subsequent auction of BRS licenses, should demonstrate substantial service on or before four years from the date their respective licenses are granted. The Commission tentatively concluded that a four-year time period would allow new licensees sufficient time to build out their systems and put the spectrum to use. The Commission also proposed to revise the introductory text to § 27.14(o) of the Commission's rules to more clearly state the Commission's intent to allow BRS or EBS licensees to demonstrate substantial service if their respective lessees met one of the safe harbors adopted by the Commission and to allow licenses to be combined for purposes of demonstrating substantial service under certain circumstances.

4. On October 27, 2009, the Commission began Auction 86, the auction of 78 BRS BTA licenses. On November 6, 2009, the Wireless Telecommunications Bureau announced the closing of the auction.

B. BRS/EBS Third Report and Order

5. In this *BRS/EBS Third Report and Order,* we adopt our proposal in the *BRS/EBS Third FNPRM,* to modify the construction deadline for new initial BRS licenses to provide licensees with four years from license grant to demonstrate substantial service. As noted in the *BRS/EBS Third FNPRM,* we believe that the substantial service deadline should ensure that spectrum is promptly placed in use while allowing licensees a reasonable opportunity to construct. We agree with most commenters that, with respect to new initial BRS licenses, a four year term strikes the appropriate balance in serving these goals. We recognize that the May 1, 2011 deadline adopted in 2006 does not provide adequate time to build out new initial BRS licenses, particularly since licenses for the recently-completed Auction 86 have not yet been issued.

6. We note that we do revise our proposal in the *BRS/EBS Third FNPRM* in one respect. We had originally proposed to make the new substantial service date effective when the new version of § 27.14(o) of the Commission's rules became effective. Because Auction 86 has now closed, we amend § 27.14(o) to apply the new substantial service date to initial licenses granted on or after the date the *Closing Public Notice* was released, November 6, 2009. This change will allow all licensees awarded licenses in Auction 86 to take advantage of the new substantial service date.

7. We also adopt our proposal to revise the introductory text to § 27.14(o) of the Commission's rules to more clearly state the Commission's intent to allow BRS or EBS licensees to demonstrate substantial service if a lessee has met one of the specified safe harbors, and to allow licenses to be combined for purposes of demonstrating substantial service under certain circumstances.

8. On our own motion, we correct a clerical error in § 27.5(i)(1) of the Commission's rules. The listing for BRS Channel 1 in the pre-transition frequency assignments currently reads as "RS Channel 1."

9. Our actions today will provide licensees who are awarded new initial BRS licenses, including through the Auction 86 process, with a reasonable period of time to deploy service, while ensuring that spectrum is rapidly placed in use.

II. Procedural Matters

Paperwork Reduction Analysis

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

III. Final Regulatory Flexibility Act Certification

11. For the reasons described below, we now certify that the policies and rules adopted in the *BRS/EBS Third Report and Order* will not have a significant economic impact on a substantial number of small entities. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the

U.S. Small Business Administration (SBA).

12. In the *BRS/EBS Third Report and Order,* the Commission extends the deadline for demonstrating substantial service for those licensees that are granted an initial BRS license on or after November 6, 2009. The Commission takes this action in the context of its decision to auction 78 available BRS BTA licenses in Auction No. 86, which began on October 27, 2009. The Wireless Telecommunications Bureau announced the close of Auction No. 86 on November 6, 2009. This action will not create any additional burdens for BRS licensees because all BRS licensees must demonstrate substantial service. Moreover, this decision relieves licensees granted an initial license on or after November 6, 2009 from having to meet the May 1, 2011 deadline, but would require them to demonstrate substantial service four years from the date of license grant.

13. Therefore, we certify that the requirements of the *BRS/EBS Third Report and Order* will not have a significant economic impact on a substantial number of small entities.

IV. Report to Congress

14. The Commission will send a copy of this *BRS/EBS Third Report and Order,* including a copy of this Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

15. Accordingly, it is ordered, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this *Third Report and Order* is hereby adopted.

16. It is further ordered, pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i) that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Third Report and Order,* including the Final Regulatory Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Communications common carriers, Radio.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 27 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 2. Amend § 27.5 by revising paragraph (i)(1) to read as follows:

§ 27.5 Frequencies.

* * * * *

(i) * * *

(1) Pre-transition frequency assignments.

BRS Channel 1: 2150–2156 MHz or 2496–2500 MHz
BRS Channel 2: 2156–2162 MHz or 2686–2690 MHz
BRS Channel 2A: 2156–2160 MHz
EBS Channel A1: 2500–2506 MHz
EBS Channel B1: 2506–2512 MHz
EBS Channel A2: 2512–2518 MHz
EBS Channel B2: 2518–2524 MHz
EBS Channel A3: 2524–2530 MHz
EBS Channel B3: 2530–2536 MHz
EBS Channel A4: 2536–2542 MHz
EBS Channel B4: 2542–2548 MHz
EBS Channel C1: 2548–2554 MHz
EBS Channel D1: 2554–2560 MHz
EBS Channel C2: 2560–2566 MHz
EBS Channel D2: 2566–2572 MHz
EBS Channel C3: 2572–2578 MHz
EBS Channel D3: 2578–2584 MHz
EBS Channel C4: 2584–2590 MHz
EBS Channel D4: 2590–2596 MHz
BRS Channel E1: 2596–2602 MHz
BRS Channel F1: 2602–2608 MHz
BRS Channel E2: 2608–2614 MHz
BRS Channel F2: 2614–2620 MHz
BRS Channel E3: 2620–2626 MHz
BRS Channel F3: 2626–2632 MHz
BRS Channel E4: 2632–2638 MHz
BRS Channel F4: 2638–2644 MHz
EBS Channel G1: 2644–2650 MHz
BRS Channel H1: 2650–2656 MHz
EBS Channel G2: 2656–2662 MHz
BRS Channel H2: 2662–2668 MHz
EBS Channel G3: 2668–2674 MHz
BRS Channel H3: 2674–2680 MHz
EBS Channel G4: 2680–2686 MHz
I Channels: 2686–2690 MHz

* * * * *

■ 3. Amend § 27.14 by revising paragraph (o) introductory text to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

* * * * *

(o) BRS and EBS licensees originally issued a BRS or EBS license prior to November 6, 2009 must make a showing of substantial service no later than May 1, 2011. With respect to initial BRS licenses issued on or after November 6, 2009, the licensee must make a showing of substantial service within four years from the date of issue of the license. Incumbent BRS licensees that are required to demonstrate substantial service by May 1, 2011 must file their substantial service showings with their renewal applications. "Substantial service" is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Substantial service for BRS and EBS licensees is satisfied if a licensee meets the requirements of paragraph (o)(1), (o)(2), or (o)(3) of this section. If a licensee has not met the requirements of paragraph (o)(1), (o)(2), or (o)(3) of this section, then demonstration of substantial service shall proceed on a case-by-case basis. Except as provided in paragraphs (o)(4) and (o)(5) of this section, all substantial service determinations will be made on a license-by-license basis. Failure by any licensee to demonstrate substantial service will result in forfeiture of the license and the licensee will be ineligible to regain it.

* * * * *

[FR Doc. 2010–14387 Filed 6–14–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100317152–0176–01]

RIN 0648–AY77

Atlantic Highly Migratory Species; 2010 Atlantic Bluefin Tuna Quota Specifications

Correction

In rule document 2010–13207 beginning on page 30732 in the issue of Wednesday, June 2, 2010 make the following correction:

On page 30734, Table 1 is being reprinted to read as set forth below.

Table 1. Atlantic Bluefin Tuna Final Quota Specifications (in metric tons) for the 2010 Fishing Year (January 1-December 31, 2010)

Category (% share of baseline quota)	Baseline Allocation	Dead Discard Deduction	Adjustment to Baseline Quota[1]	Final 2010 Fishing Year Quota
Angling (19.7)	187.6 SUBQUOTAS: School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 85.6 North 40.4 South 45.2 Trophy 4.3 North 1.4 South 2.9		37.8	225.4 SUBQUOTAS: School 97.7 Reserve 18.1 North 37.6 South 42.1 Lg. Sch/Sm. Med 122.5 North 57.8 South 64.7 Trophy 5.2 North 1.7 South 3.5
General (47.1)	Total: 448.6 SUBQUOTAS: Jan 23.8 Jun-Aug 224.3 Sept 118.9 Oct-Nov 58.3 Dec 23.3		90.3	538.9 SUBQUOTAS: Jan 28.6 Jun-Aug 269.4 Sept 142.8 Oct-Nov 70.1 Dec 28.0
Harpoon (3.9)	37.1		7.5	44.6
Purse Seine (18.6)	177.2		35.6	212.8
Longline (8.1)	77.1 SUBQUOTAS: North (-NED) 30.9 NED 25.0[3] South 46.2	-172.8	170.7[2]	75.0 SUBQUOTAS: North (-NED) 30.0 NED 25.0[3] South 45.0
Trap (0.1)	1.0		0.2	1.1
Reserve (2.5)	23.8		46.5[4]	70.3
Total (100)[5]	**952.4**	**-172.8**	**388.6**	**1,168.2**

(1) The distribution of 388.6 mt of underharvest (per ICCAT recommendation) to the quota categories is consistent with FMP allocations, after considerations as calculated below for the Longline category and the Reserve.
(2) Adjustment to Longline category quota is intended to provide sufficient quota for the 2010 fishing year. Longline category quota=77.1-172.8+170.7=75 mt. Dead discard deduction consistent with § 635.27(a)(10).
(3) 25 mt to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in total baseline allocation, which is allocated according to the category percentages contained in the Consolidated HMS FMP.
(4) Allocation of 46.5 mt to the Reserve for potential ICCAT transfer and other domestic management objectives.
(5) Totals are subject to rounding error.

[FR Doc. C1–2010–13207 Filed 6–14–10; 8:45 am]
BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

Docket No. 0912281446–0111–02

RIN 0648–XW90

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

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 sardine off the coasts of Washington, Oregon and California. This action is necessary because the directed harvest allocation total for the first seasonal period (January 1–June 30) is projected to be reached by the effective date of this rule. From the effective date of this rule until June 30, 2010, Pacific sardine can only be harvested as part of the live bait fishery or incidental to other fisheries; the incidental harvest of Pacific sardine is limited to 30–percent by weight of all fish per trip. Fishing vessels must be at shore and in the process of offloading at 12:01 am Pacific Daylight Time on date of closure.

DATES: Effective 12:01 am Pacific Daylight Time (PDT) June 12, 2010, through June 30, 2010

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: This document announces that based on the best available information recently obtained from the fishery and information on past effort, the directed fishing harvest allocation for the first allocation period (January 1–June 30) will be reached and therefore directed fishing for Pacific sardine is being closed until July 1, 2010. Fishing vessels must be at shore and in the process of offloading at the time of closure. From 12:01 am on the date of closure through June 30, 2010, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries, with the incidental harvest of Pacific sardine limited to 30–percent by weight of all fish caught during a trip.

NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the **Federal Register** establish the harvest guideline (HG) and allowable harvest levels for each Pacific sardine fishing season (January 1 - December 31). If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest is allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking.

Under 50 CFR 660.509, if the total HG or these apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution of the live bait portion of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS 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) for the closure of the directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel.

Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: June 9, 2010.

Carrie Selberg,

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

[FR Doc. 2010–14385 Filed 6–10–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 114
Tuesday, June 15, 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.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Parts 9, 11, and 12

Regulations Affecting Publication of the United States Government Manual

AGENCY: Administrative Committee of the Federal Register.

ACTION: Proposed rule.

SUMMARY: The Administrative Committee of the Federal Register proposes to update its regulations for the Federal Register system to remove from its regulations the requirement that the *United States Government Manual* (*Manual*) be published and distributed in a soft bound edition. This proposal would also eliminate the requirement to make soft bound print copies available to officials of the United States government without charge. The general public and United States government officials will have access to a redesigned online version of the *Manual.* Soft bound printed copies of the *Manual* may still be issued and would be available from the U.S. Government Bookstore. This action does not represent an increase in the burdens on agencies or the public.

DATES: Comments must be received on or before July 15, 2010.

ADDRESSES: Docket materials are available at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001, 202–741–6030. Please contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection of docket materials. The Office of the Federal Register's official hours of business are Monday through Friday, 8:45 a.m. to 5:15 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Amy P. Bunk, Director of Legal Affairs and Policy, Office of the Federal Register, at *Fedreg.legal@nara.gov*, or 202–741–6030.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Under the Federal Register Act (44 U.S.C. Chapter 15), the Administrative Committee of the Federal Register (Administrative Committee) is responsible for issuing regulations governing Federal Register publications. The Administrative Committee has general authority under 44 U.S.C. 1506 to determine the manner and form for publishing the **Federal Register** and its special editions, including the *United States Government Manual* (*Manual*).

Title 1 part 9 of the *Code of Federal Regulations* regulates the publication of the *United States Government Manual.* This publication has been issued as a special edition of the **Federal Register** since the publication was transferred to the Office of the Federal Register from the Office of Government Reports within the Bureau of Budget when that Office was abolished on June 30, 1948. The first manual, the *United States Government Organization Manual,* produced under the authority of regulations of the Administrative Committee, was issued on August 4, 1949, and sold for $1.00 per copy. Now known as the *United States Government Manual* (*Manual*), it continued to be one of the Government Printing Office's (GPO) "best sellers" until public demand for printed editions began to decline in favor of more current information found on the Internet.

Under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (44 U.S.C. Chapter 41), the OFR/GPO partnership developed an online edition of the *Manual* in both text-only files and PDF files. At present, the online version is a direct output of the printed edition. The files begin with documents from the 1995–1996 edition of the *Manual* and continue through the present. In its present form, as an annual-only publication, some agency information published in the *Manual* may be out of date as soon as purchasers receive their copy. This proposed rule addresses the declining demand for the printed version and the timeliness of publication by establishing a new electronic format for the publication. The proposed rule addresses the rising costs of print production by discontinuing the requirement that OFR/GPO print and make official distribution of the annual edition of the *Manual.* Under this proposal, the *Manual* would be published and officially distributed as a currently updated online database. The new online version of the *Manual* would contain the same information as has appeared in the printed edition. OFR editors would continue to review all material submitted for publication in the *Manual* to assure the accuracy and integrity of the *Manual.* The database structure of the new electronic version of the *Manual* would enable Federal agencies to submit updated information on an ongoing basis, as new officials take office, and agency programs undergo changes.

OFR/GPO would still have the flexibility to produce a printed product based on the strength of customer demand. In the near term, OFR/GPO expect that there will be sufficient demand from individuals and organizations to produce a printed edition of the *Manual,* which will continue to be available to individual patrons and institutions through the U.S. Government Bookstore, and to libraries through the Federal Depository Library Program. However, government agencies would no longer receive free copies of the printed edition. GPO will provide agencies an opportunity to order copies before printing at the rider rate. (A rider rate is available before the start of printing production and represents the minimal cost of producing additional copies as a continuation of the initial printing run.) In the long term, the annual printed edition of the *Manual* may be discontinued entirely if customer demand significantly decreases. The proposed changes to this publication would not expand any regulated community or impose any additional regulatory burden.

With the advent of the Internet, the printed soft bound copies of the *Manual* became outdated in many cases before the official copies were mailed to Federal officials. In addition, the soft bound print publication has lost a majority of its sales making the cost of publishing the soft bound editions of the *Manual* cost prohibitive. Currently, the *Manual* has the same publication dilemma faced by the *Weekly Compilation of Presidential Documents* before the Administrative Committee issued its January 2009 rule to discontinue printing that publication. The *Manual* is presently mailed

annually via United States Post Office bulk rate postage to Federal officials for official use. As mentioned above, by the time these officials receive their copy of the *Manual,* the information published in it is, or may be, out of date. These officials can obtain much of the same information from other sources, but without the guaranty of accuracy and integrity provided by the OFR editors. The new online version of the *Manual* will increase access to the information regarding the Federal government and allow for more frequent updating.

In this proposal, the Administrative Committee proposes non-substantive formatting changes to § 11.4 and substantive changes to part 12 to remove § 12.3. Under the FRA, the Administrative Committee is responsible for setting the number of official use copies of Federal Register publications distributed free of charge to various offices within the Federal government. *See,* 44 U.S.C. 1506(4). To fulfill the requirements of the FRA, the 1 CFR part 12, entitled "Official Distribution within Federal Government" sets out the number of official copies of Federal Register publications that various Federal government entities are entitled to receive. Specifically, § 12.3 addresses the number of printed copies of the *Manual* available to Federal entities without charge. Because the *Manual* has been published in a soft bound edition that may not adequately serve the needs of Federal officials, the Administrative Committee believes that distributing the *Manual* in an electronic-only format to Federal officials for their official use would meet the intent of the FRA to distribute **Federal Register** publications for official use without charge. Thus, the Administrative Committee would remove this section.

Regulatory Analysis

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

Executive Order 12866

The proposed rule has been drafted in accordance with Executive Order 12866, section 1(b), "Principles of Regulation." The Administrative Committee has determined that this proposed rule is not a significant regulatory action as defined under section 3(f) of Executive Order 12866. The proposed rule has not been submitted to the Office of Management and Budget under section 6(a)(3)(E) of Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will not have a significant impact on small entities since it imposes no requirements. Members of the public can access **Federal Register** publications free through GPO's Web site.

Federalism

This proposed rule has no federalism implications under Executive Order 13132. It does not impose compliance costs on state or local governments or preempt state law.

Congressional Review

This proposed rule is not a major rule as defined by 5 U.S.C. 804(2). The Administrative Committee will submit a rule report, including a copy of this proposed rule, to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

List of Subjects

1 CFR Part 9

Government publications, United States Government Manual.

1 CFR Part 11

Code of Federal Regulations, **Federal Register,** Government publications, Public Papers of Presidents of United States, United States Government Manual, Daily Compilation of.

1 CFR Part 12

Code of Federal Regulations, **Federal Register**, Government publications, Public Papers of Presidents of United States, United States Government Manual, Daily Compilation of.

For the reasons discussed in the preamble, under the authority at 44 U.S.C. 1506 and 1510, the Administrative Committee of the Federal Register, proposes to amend parts 9, 11, and 12 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

1. Revise part 9 to read as follows:

PART 9—THE UNITED STATES GOVERNMENT MANUAL

Sec.
9.1 Publication required.
9.2 Scope.

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

§ 9.1 Publication required.

(a) The Director publishes a special edition of the **Federal Register** called "The United States Government Manual" as authorized by the Administrative Committee.

(b) The Director may update the *Manual* when such supplementation is considered to be in the public interest.

§ 9.2 Scope.

(a) The *Manual* will contain appropriate information about the Executive, Legislative, and Judicial branches of the Federal Government, which for the major Executive agencies will include—

(1) Descriptions of the agency's legal authorities, public purposes, programs and functions;

(2) Established places and methods whereby the public may obtain information and make submittals or requests; and

(3) Lists of officials heading major operating units.

(b) Brief information about quasi-official agencies and supplemental information that in the opinion of the Director is of enough public interest to warrant inclusion will also be included in the *Manual.*

PART 11—[AMENDED]

2. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

3. Revise § 11.4 as follows:

§ 11.4 The United States Government Manual.

(a) Copies of a bound, paper edition of the *Manual* may be sold at a price determined by the Superintendent of Documents under the general direction of the Administrative Committee.

(b) The online edition of the *Manual,* issued under the authority of the Administrative Committee, is available through the Government Printing Office's Web site.

PART 12—[AMENDED]

4. The authority citation for part 12 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

§ 12.3 [Removed]

5. Remove § 12.3.

By order of the Committee.

Raymond A. Mosley,

Secretary, Administrative Committee of the Federal Register.

[FR Doc. 2010–14465 Filed 6–14–10; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AO–370–A8; AMS–FV–06–0213; FV07–930–2 W]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Withdrawal of Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of a proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is withdrawing a proposed rule published in the June 4, 2010 [75 FR 31719], issue of the **Federal Register**, inviting written exceptions to proposed amendments to Marketing Agreement and Order No. 930 (order), which regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The proposed rule was published in error.

DATES: The proposed rule published at 75 FR 31719, June 4, 2010, is withdrawn as of June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service (AMS) proposed to amend Marketing Agreement and Order No. 930 (order) regulating the handling of tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. As part of the amendment process, a proposed rule was published in the **Federal Register** on May 12, 2009, at 74 FR 22112, and the period for filing exceptions closed June 11, 2009. A duplicate of the proposed rule was inadvertently published in the **Federal Register** on June 4, 2010, at 75 FR 31719. However, it is not AMS's intention to reopen the comment period. Accordingly, the proposed rule published at 75 FR 31719 in the June 4, 2010, issue of the **Federal Register** is hereby withdrawn.

Authority: 7 U.S.C. 601–674.

Dated: June 9, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–14287 Filed 6–14–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150—AI86

[NRC–2010–0140]

List of Approved Spent Fuel Storage Casks: MAGNASTOR System, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage cask regulations by revising the NAC International, Inc. (NAC), MAGNASTOR System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to Certificate of Compliance (CoC) Number 1031. Amendment No. 1 would modify the CoC to change the Technical Specifications (TS) related to neutron absorber qualification and acceptance testing. Specifically, the amendment would revise TS 4.1.1.b and incorporate by reference into the MAGNASTOR CoC, Sections 10.1.6.4.5, 10.1.6.4.6, 10.1.6.4.7, and 10.1.6.4.8 of the Final Safety Analysis Report regarding the acceptance testing of borated aluminum alloy and borated metal matrix composite neutron absorber material. The amendment would also include other changes in Appendices A and B of the TS to incorporate minor editorial corrections.

DATES: Comments on the proposed rule must be received on or before July 15, 2010.

ADDRESSES: Please include Docket ID NRC–2010–0140 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see the Section "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0140. Address questions about NRC dockets to Carol Gallagher, telephone 301–492–3668, e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking *Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (Telephone 301–415–1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION: For additional supplementary information, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or

received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.* An electronic copy of the proposed CoC, TS, and preliminary safety evaluation report (SER) can be found under ADAMS Package Number ML100130178. The ADAMS Accession Number for the NAC application, dated March 26, 2009, is ML090890292.

CoC No. 1031, the TS, the preliminary SER, and the environmental assessment are available for inspection at the NRC PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

Federal Rulemaking Web Site: Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0140.

Procedural Background

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1031 and does not include other aspects of the MAGNASTOR System design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this **Federal Register**. Adequate protection of public health and safety and the environment continues to be ensured. The direct final rule will become effective on August 30, 2010. However, if the NRC receives significant adverse comments on the direct final rule by July 15, 2010, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous Waste, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent nuclear fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009.

Amendment Number 1 Effective Date: August 30, 2010.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR.

Dated at Rockville, Maryland, this 25th day of May, 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2010–14333 Filed 6–14–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–524 Series and RB211 Trent 500, 700, and 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), 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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During manufacture of a number of HP Compressor Stage 1 and 2 discs with axial dovetail slots, anomalies at the disc post corners have been found. Fatigue crack initiation and subsequent crack propagation at the disc post may result in release of two blades and the disc post. This may potentially be beyond the containment capabilities of the engine casings. Thus, these anomalies present at the disc posts constitute a potentially unsafe condition.

We are proposing this AD to detect cracks in the high-pressure compressor (HPC) Stage 1 and 2 disc posts, which could result in failure of the disc post and HPC blades, release of uncontained engine debris, and damage to the airplane.

DATES: We must receive comments on this proposed AD by July 30, 2010.

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

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

Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011 44 1332 242424, fax: 011 44 1332 249936; e-mail: *tech.help@rolls-royce.com,* for the service information identified in this proposed AD.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0073R1, dated April 8, 2009, (referred to after this as "the MCAI") to correct an unsafe condition for the specified products. The MCAI states:

During manufacture of a number of HP Compressor Stage 1 and 2 discs with axial dovetail slots, anomalies at the disc post corners have been found. Fatigue crack initiation and subsequent crack propagation at the disc post may result in release of two blades and the disc post. This may potentially be beyond the containment capabilities of the engine casings. Thus, these anomalies present at the disc posts constitute a potentially unsafe condition.

For the reasons described above, this AD requires repetitive inspections of the axial dovetail slots and follow-on corrective action, depending on findings.

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

Relevant Service Information

Rolls-Royce plc has issued Alert Service Bulletin RB.211–72–AF964, Revision 1, dated June 6, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the United Kingdom, 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 provided by EASA, and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 371 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. No parts would be required per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $630,700.

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:

Rolls-Royce plc (RR): Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD.

Comments Due Date

(a) We must receive comments by July 30, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to RR model RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19; and RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61 556B2–61, 560–61, 560A2–61; RB211 Trent 768–60, 772–60, 772B–60; and RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines that have a high-pressure (HP) compressor stage 1 to 4 rotor disc with a part number (P/N) listed in Table 1 of this AD. These engines are installed on, but not limited to, Boeing 747, 767, and 777 series airplanes and Airbus A330 and A340 series airplanes.

TABLE 1—AFFECTED HP COMPRESSOR STAGE 1 TO 4 ROTOR DISC P/NS BY ENGINE MODEL

Engine model	HP compressor stage 1 to 4 rotor disc P/N
(1) RB211–524G2–T–19, –524G3–T–19, -524H–T–36, and –524H2–T–19.	FK20195, FK25502, or FW23711.
(2) RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61.	FK30524.
(3) RB211 Trent 768–60, 772–60, and 772B–60.	FK22745, FK24031, FK26185, FK23313, FK25502, FK32129, FW20195, FW20196, FW20197, FW20638, or FW23711.
(4) RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892-17, 892B–17, and 895–17.	FK24009, FK26167, FK32580, FW11590, or FW61622.

Reason

(d) This AD results from reports that:

"During manufacture of a number of HP Compressor Stage 1 and 2 discs with axial dovetail slots, anomalies at the disc post corners have been found. Fatigue crack initiation and subsequent crack propagation at the disc post may result in release of two blades and the disc post. This may potentially be beyond the containment capabilities of the engine casings. Thus, these anomalies present at the disc posts constitute a potentially unsafe condition."

We are issuing this AD to detect cracks in the high-pressure compressor (HPC) Stage 1 and 2 disc posts, which could result in failure of the disc post and HPC blades, release of uncontained engine debris, and damage to the airplane.

Actions and Compliance

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

(1) Perform a fluorescent penetrant inspection of the HP compressor stage 1 to 4 rotor discs at the first shop visit after accumulating 1000 cycles since new on the stage 1 to 4 rotor disks or at the next shop visit after the effective date of this AD which ever occurs later. Use paragraph 3.E.(1) through 3.E.(10)(i) of the Accomplishment Instructions of Rolls-Royce Alert Service Bulletin (ASB) RB.211–72–AF964, Revision 1, dated June 6, 2008 to do the inspections.

(2) Thereafter at every engine shop visit, perform the inspection specified by paragraph (e)(1) of this AD.

Definitions

(f) For the purpose of this AD, an "engine shop visit" is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

Other FAA AD Provisions

(g) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009–0073R1, dated April 8, 2009, and RR ASB RB.211–72–AF964, Revision 1, dated June 6, 2008, for related information. Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011 44 1332 242424, fax: 011 44 1332 249936; e-mail: *tech.help@rolls-royce.com,* for a copy of this service information.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on June 7, 2010.

Peter A. White,

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

[FR Doc. 2010–14318 Filed 6–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 49

[REG–112841–10]

RIN 1545–BJ40

Indoor Tanning Services; Cosmetic Services; Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the indoor tanning services excise tax imposed by the Patient Protection and Affordable Care Act. These regulations affect users and providers of indoor tanning services. The text of the temporary regulations also serves as the text of the proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by September 13, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–112841–10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–112841–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (REG–112841–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Taylor Cortright, (202) 622–3130; concerning submissions of comments and requests for a public hearing, Regina Johnson, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned control number 1545–2177. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 13, 2010. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in proposed § 49.5000B–1(d)(2). This information is required to be maintained in order for providers of indoor tanning services to accurately calculate the tax on indoor tanning services when those services are offered with other goods and services. The likely recordkeepers are providers of indoor tanning services.

Estimated total average annual recordkeeping burden: 10,000 hours.

Estimated average annual burden hours per recordkeeper: 30 minutes.

Estimated number of recordkeepers: 20,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49) under section 5000B of the Internal Revenue Code (Code). Section 5000B of the Code was enacted by section 10907 of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) to impose an excise tax on indoor tanning services. The text of temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations are designed to accommodate the recordkeeping methods currently used by small entities that provide indoor tanning services. The regulations merely implement the tax imposed by section 5000B of the Code, and section 6001 of the Code already requires taxpayers to keep books and records sufficient to show whether or not they are liable for tax. The information necessary to prepare these records is readily available to providers, and this recordkeeping will take little additional time to complete. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments

that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. As described in the preamble to the temporary regulations, comments are also requested regarding whether the presumption relating to section 5000B(c)(2) (that the amount paid by the payor to the provider includes the tax if the tax is not separately stated) is consistent with the manner in which providers maintain books and records and specifically whether such a rule is useful for purposes of minimizing recordkeeping burdens of the providers.

All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Taylor Cortright, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 49 are proposed to be amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

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

Par. 2. Section 40.0–1 is amended by revising paragraph (d) to read as follows:

§ 40.0–1 Introduction.

* * * * *

(d) [The text of this proposed § 40.0–1(d) is the same as the text of § 40.0–1T(d) published elsewhere in this issue of the **Federal Register**].

(e) [The text of this proposed § 40.0–1(e) is the same as the text of § 40.0–1T(e) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 40.6302(c)–1 is amended by adding paragraph (g) to read as follows:

§ 40.6302(c)–1 Use of government depositaries.

* * * * *

(g) [The text of this proposed § 40.6302(c)–1(g) is the same as the text of § 40.6302(c)–1T(g) published elsewhere in this issue of the **Federal Register**].

PART 49—FACILITIES AND SERVICES EXCISE TAX

Par. 4. The authority citation for part 49 continues to read in part as follows:

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

Par. 5. Section 49.0–3 is added to read as follows:

§ 49.0–3 Introduction; cosmetic services.

[The text of this proposed § 49.0–3 is the same as the text of § 49.0–3T published elsewhere in this issue of the **Federal Register**].

Par. 6. Subpart G is added to read as follows:

Subpart G—Cosmetic Services

§ 49.5000B–1 Indoor tanning services.

[The text of this proposed § 49.5000B–1 is the same as the text of § 49.5000B–1T(a) through (h) published elsewhere in this issue of the **Federal Register**].

Steven Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–14396 Filed 6–11–10; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0358]

RIN 1625–AA00

Safety Zone; Tracey/Thompson Wedding, Lake Erie, Catawba Island, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on Lake Erie, Catawba Island, Ohio. This temporary safety zone is intended to restrict vessels from portions of Lake Erie during the Tracey/Thompson Wedding Fireworks. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before July 15, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0358 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail MST3 Peter Uselton, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418–6043, e-mail *Peter.C.Uselton@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0358), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or

hand delivery, but please use only one of these means. A comment submitted online via *http://www.regulations.gov* will be considered received by the Coast Guard when the comment is successfully transmitted; a comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0358" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0358" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact MST3 Peter Uselton, Response Department, Marine Safety Unit Toledo at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and the public from hazards associated with a fireworks display. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone encompassing all waters of Lake Erie within a 300-yard radius of the fireworks launch site located at position 41°34′20″ N, 082°51′18″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Tracey/Thompson Wedding Fireworks Display. The fireworks display will occur between 09:30 p.m. and 10 p.m., August 13, 2010.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

The Coast Guard expects the temporary final rule will be effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest due to the need to protect the public from the dangers associated with the fireworks display.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this proposed regulation restricts access to the safety zone, the effect of the rule will not be significant because: the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects minimal adverse impact to mariners from the zone's activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the above portion of Lake Erie near Catawba Island, OH between 9:30 p.m. and 10 p.m. on August 13, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for approximately 30 minutes during the fireworks display. In the

event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect. Additionally, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the expected time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MST3 Peter Uselton, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6043, e-mail *Peter.C.Uselton@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a temporary safety zone. Based on our preliminary determination, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Because this event establishes a safety zone, paragraph (34)(g) of the Instruction applies.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–0358 to read as follows:

§ 165.T09–0358 Safety Zone; Tracey/Thompson Wedding, Lake Erie, Catawba Island, OH

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Erie within a 300-yard radius of the fireworks launch site located at position 41°34′20″ N, 082°51′18″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective Period.* This regulation is effective from 9:30 p.m. through 10 p.m. on August 13, 2010. The safety zone will be enforced from 9:30 p.m. to 10 p.m. on August 13, 2010.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: May 24, 2010.

E.J. Marohn,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2010–14295 Filed 6–14–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[EPA–HQ–OPP–2005–0327; FRL–8830–8]

RIN 2070–AJ74

Pesticide Management and Disposal; Standards for Pesticide Containers and Containment; Proposed Change to Labeling Compliance Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the pesticide container and containment regulations to provide a 1–year extension of the 40 CFR 156.159 labeling compliance date from August 16, 2010 to August 16, 2011. This change is being proposed to address concerns raised by stakeholders and as a result of further Agency consideration.

DATES: Comments must be received on or before July 15, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0327, 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–2005–0327. 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: Nancy Fitz, Field and External Affairs Division (FEAD) (7506P), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7385; fax number: (703) 308–2962; e-mail address: *fitz.nancy@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 a pesticide formulator. Potentially affected entities may include, but are not limited to:

• Pesticide formulators (NAICS code 32532), e.g., establishments that formulate and prepare insecticides, fungicides, herbicides or other

pesticides from technical chemicals or concentrates produced by pesticide manufacturing establishments.

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 CBI to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI 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.

II. Background

On August 16, 2006, EPA promulgated a final rule titled "Pesticide Management and Disposal; Standards for Pesticide Containers and Containment" (71 FR 47330) (container and containment rule), establishing 40 CFR part 165 and amending 40 CFR part 156. The container and containment rule established regulations for the safe storage and disposal of pesticides to reduce the likelihood of unreasonable adverse effects on human health and the environment. The container and containment regulations include requirements for pesticide container design; procedures, standards, and label language to facilitate removal of pesticides from containers prior to their being used, recycled, or discarded; and requirements for containment of stationary pesticide containers and procedures for container refilling operations. The 2006 rule required that all pesticide products distributed or sold by a registrant as of August 16, 2009, bear labels that comply with the rule's label language requirements (40 CFR 156.159). On October 29, 2008, EPA promulgated a final rule that made various amendments to the container and containment rule, including extending the original labeling compliance date from August 16, 2009 to August 16, 2010.

Specifically, 40 CFR part 156, subpart H, titled "Container Labeling," requires the following information or statements on certain pesticide product labels:

- A statement identifying the container as nonrefillable or refillable.
- On nonrefillable containers, statements providing basic instructions for managing the container and a batch code.
- Cleaning instructions for some nonrefillable containers.
- Cleaning instructions for refillable containers at the end of their useful lives.

In addition, the container and containment rule modified several existing requirements in 40 CFR 156.10, including allowing for blank spaces on the labels of some refillable containers for the net contents and EPA establishment number, and adding a reference to the container and containment regulations in 40 CFR part 156, subpart H.

The 2008 rule that amended the container and containment rule by extending the original labeling compliance date to August 16, 2010, also changed the phrase "sold or distributed" to "released for shipment" as associated with all of the compliance dates, and made several other changes to the label requirements and various minor editorial changes.

III. What is the Agency's Authority for Taking this Action?

These proposed regulations are issued pursuant to the authority given the Administrator of EPA in sections 2 through 34 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y. Sections 19(e) and (f) of FIFRA, 7 U.S.C. 136a(e) and (f), grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides. FIFRA section 19(f) requires EPA to promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal. FIFRA section 25(a), 7 U.S.C. 136w(a), authorizes EPA to issue regulations to carry out provisions of FIFRA.

IV. What Action is the Agency Taking?

EPA is proposing to amend the container and containment regulations to provide a 1–year extension of the 40 CFR 156.159 labeling compliance date from August 16, 2010 to August 16, 2011. This change is being proposed to address concerns raised by stakeholders and as a result of further Agency consideration.

Accomplishing the label amendments required in 40 CFR part 156 subpart H is a multistep process. Registrants must identify the changes appropriate for their particular products and apply to EPA for an amended registration. EPA must review the proposed changes and determine whether they are consistent with the regulations, and advise the registrant of the Agency's findings. If the EPA approves the changes, the registrant must then seek approval of the various state pesticide regulatory agencies. Upon approval of the state agencies, the registrant must have the new labels printed and applied to its products.

In March 2010, EPA was contacted by stakeholders with concerns about being able to have all labels changed by the label compliance date of August 16, 2010. Some registrants have asserted that they will not have sufficient time to change all labels for pesticides that are released for shipment after August 16, 2010 despite efforts by registrants, EPA's Office of Pesticide Programs

(OPP) and state agencies. The time constraints are due to several factors, including:

- More antimicrobial product labels than expected require alternate rinsing instructions, rather than the standard text in the regulations. Therefore, these amendments cannot be made by notification, and require more time consuming reviews by EPA.
- EPA's position on the appropriate container-related statements (particularly rinsing and treatment of rinsate) for certain pesticides has changed over time as a result of experience with product-by-product label reviews. This has resulted in reconsideration of some decisions, and has caused some confusion in the regulated community.
- The length of time for states to review and approve labels is understood to be increasing due to the furlough days for staff in some states and staffing reductions due to budget shortfalls.

EPA has concluded that there is insufficient time to change all labels by August 16, 2010. Since registrants can decide which registered products they wish to market at any given time, the Agency does not have a precise count of the total number of label changes that ultimately will be submitted to EPA for review. However, based upon a review of recent Agency actions and discussions with registrants, EPA estimates that the majority of label changes already have been submitted and approved. On the other hand, EPA estimates that there are at least 1,000 labels and potentially several thousand remaining pesticide product labels that EPA still needs to review. Even if all of those applications were submitted immediately, there would not be enough time for the label changes to be approved by EPA and the states, printed, and applied to all products that will be released for shipment after August 16, 2010.

Because EPA actions contributed to the large number of outstanding label changes, EPA is proposing to extend the compliance date in §156.159 by 1 year, so that pesticide products released for shipment by a registrant after August 16, 2011 would have to bear a label that complies with the container requirements. EPA believes that one additional year will provide enough time for EPA and the states to review the label changes and for registrants to incorporate the changes into their labels, provided that all applications are submitted soon. This is based on an evaluation of the resources and the time it would take for EPA to undertake a concerted effort to complete the review of these remaining labels and discussions with State regulatory agencies who estimated a range of 3 to 6 months for them to review and approve the label revisions. EPA believes that a longer extension is unjustified because the rule was published 4 years ago so registrants have had a reasonable amount of time to prepare and submit their label modification requests and because EPA has already extended the deadline by 1 year.

Because this proposed 1–year extension could not become final and effective before the current compliance date of August 16, 2010, EPA is also issuing in today's **Federal Register** a final rule providing for a 4–month extension of the §156.159 compliance date. EPA believes that 4 months will be sufficient to allow this proposed rule to become final and effective, and will avoid the temporary removal of a significant number of pesticides from the market while the rulemaking process for this 1–year extension is completed.

While this rulemaking process moves forward, pesticide registrants should continue to submit applications for label changes for their products prior to the current deadline of August 16, 2010. EPA will give priority to applications submitted prior to August 16, 2010, with the goal of processing them to allow sufficient time for the registrant to obtain state approvals of the new labeling by the revised compliance date. Applications submitted after August 16, 2010 will be processed on a non-priority basis only after all applications submitted prior to that date have been processed. Registrants should carefully consider this and the timing of their submission to ensure that they have sufficient time to obtain state approvals by the revised compliance date.

V. FIFRA Mandated Reviews

In accordance with FIFRA section 25(a) and (d), the Agency submitted a draft of this proposed rule to the Committee on Agriculture in the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry in the United States Senate, the Secretary of Agriculture, and the FIFRA Scientific Advisory Panel (SAP). The SAP and the Secretary of Agriculture waived review of this proposed rule.

VI. Statutory and Executive Order Reviews

This action only proposes to amend an existing regulation to extend the current compliance date, it does not otherwise propose to amend or impose any other requirements. As such, this action is not subject to review by the Office of Management and Budget (OMB) as a "significant regulatory action" under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does it impose or change any information collection burden that requires additional review by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection activities contained in the regulations are already approved under OMB control number 2070–0133 (EPA ICR No. 1632). 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 40 CFR are listed in 40 CFR part 9.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. The proposed extension of the compliance date is not expected to have any adverse economic impacts on affected entities, regardless of their size. In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency. EPA solicits comments specifically about potential small business impacts.

State, local, and tribal governments are rarely pesticide applicants or registrants, so this proposed rule is not expected to affect these governments. Accordingly, pursuant to Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538), EPA has determined that this action is not subject to the requirements in sections 202 and 205 because it does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any one year. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. For the same reasons, EPA has determined that this proposed rule does not have "federalism implications" as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this proposed rule. Nor does it have "tribal implications" as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 22951, November 9, 2000). EPA is not aware of any tribal governments which are pesticide registrants. Thus, Executive Order 13175 does not apply to this action.

Since this action is not economically significant under Executive Order 12866, it is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, which is not the case in this proposed rule.

This action does not involve technical standards that would require the consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272).

This action does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, this action does not involve special consideration of environmental justice related issues as specified in Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 156

Environmental protection, Labeling, Pesticides and pests.

Dated: June 9, 2010.

Lisa P. Jackson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 156—[AMENDED]

1. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 136 through 136y.

2. Revise § 156.159 to read as follows:

§ 156.159 Compliance date.

Any pesticide product released for shipment by a registrant after August 16, 2011 must bear a label that complies with §§ 156.10(d)(7), 156.10(f), 156.10(i)(2)(ix), 156.140, 156.144, 156.146 and 156.156.

[FR Doc. 2010–14401 Filed 6–14–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2006–0409; FRL–9161–6]

Ocean Dumping; Correction of Typographical Error in 2006 Federal Register Final Rule for Designation of Ocean Dredged Material Disposal Site at Coos Bay, OR, Site F; Restoration of Coordinates for Ocean Dredged Material Disposal Site at Coos Bay, OR, Site H

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to correct a typographical error in the Final Rule for the Ocean Dumping; De-designation of Ocean Dredged Material Disposal Site and Designation of New Site near Coos Bay, Oregon.

DATES: Send written comments by July 15, 2010.

ADDRESSES: Send written comments to Jessica Winkler, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–088), Environmental Review and Sediment Management Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–7369, e-mail: *winkler.jessica@epa.gov.* You may also submit comments electronically; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jessica Winkler, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA–088), Environmental Review and Sediment Management Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–7369, e-mail: *winkler.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, the EPA is correcting the currently codified coordinates for Site F at 40 CFR 228.15(n)(3) with the coordinates EPA inadvertently, through a typographical error, named 40 CFR 228.15(n)(4) at 71 FR 27396 (May 11, 2006). The EPA is also restoring the coordinates for Site H at 40 CFR 228.15(n)(4) which were overwritten through the EPA's typographical error. The EPA did not make a proposal prior to the direct final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this action in the preamble to the direct final rule. Unless we get written comments which oppose this action during the comment period, the direct final rule will become effective on the date established in the preamble to the direct final rule, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the "Rules and Regulations" section of this **Federal Register**.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401, 1411, 1412.

Dated: June 3, 2010.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2010–14241 Filed 6–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1999–0013; FRL–9162–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Notice of Intent for Partial Deletion of the Many Diversified Interests, Inc. Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the Many Diversified Interests, Inc. (MDI) Superfund Site located in Houston, Texas, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Texas, through the Texas Commission on Environmental Quality, have determined that all appropriate response actions at these identified parcels under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the MDI Superfund Site. Operable Unit 2, Operable Unit 3, and the ground water underlying the rest of Operable Unit 1 will remain on the NPL and are not being considered for deletion as part of this action.

DATES: Comments must be received by July 15, 2010.

ADDRESSES: *Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1999–0013, by one of the following methods:*

- *http://www.regulations.gov:* Follow internet on-line instructions for submitting comments.
- *E-mail:* Rafael Casanova, *casanova.rafael@epa.gov.*
- *Fax:* 214–665–6660.
- *Mail:* Rafael A. Casanova; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; Contact: Rafael A. Casanova (214) 665–7437. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1999–0013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

1. U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; Hours of operation: Monday thru Friday, 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m. Contact: Rafael A. Casanova (214) 665–7437.

2. Blanche Kelso Bruce Music Magnet Elementary School; 510 Jensen; Houston, Texas 77020; Hours of operation: Monday thru Friday, 9 a.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rafael A. Casanova, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733; telephone number: (214) 665–7437; *e-mail: casanova.rafael@epa.gov.*

SUPPLEMENTARY INFORMATION:

In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion for the soils of Operable Unit 1 and the underlying ground water of the approximately 8-acre western portion of Operable Unit 1 of the MDI Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comments. We have explained our reason for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: June 4, 2010.

Lawerence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–14233 Filed 6–14–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

[ET Docket No. 10–98; FCC 10–76]

Amateur Radio Use of the Allocation at 5 MHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission proposes to amend rules relating to the Amateur Radio Service. Specifically, the Commission proposes to modify the rules pertaining to the use of five channels in the 5330.6–5406.4 kHz band (the 60 meter band) to replace one designated channel with one that is less encumbered, to authorize three additional emission designators, and to increase the maximum authorized power in this band.

DATES: Comments must be filed on or before July 15, 2010, and reply comments must be filed on or before July 30, 2010.

ADDRESSES: You may submit comments, identified by ET Docket No. 10–98, 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.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- *Mail:* [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- *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** of this document.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, e-mail: *Tom.Mooring@fcc.gov,* TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket No. 10–98, FCC 10–76, adopted May 4, 2010 and released May 7, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.*

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

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/or* the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

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

Summary of Notice of Proposed Rulemaking

1. In the *Notice of Proposed Rule Making* (NPRM), the Commission proposes to amend parts 2 and 97 of the Commission's Rules relating to the Amateur Radio Service. Specifically, the Commission proposes to modify the rules pertaining to the use of five channels in the 5330.6–5406.4 kHz band (the 60 meter band) to replace one designated channel with one that is less encumbered, to authorize three additional emission designators, and to increase the maximum authorized power in this band. These proposals are in response to a petition for rulemaking filed by the American Radio Relay League (ARRL). Additionally, and on its own motion, the Commission proposes to make editorial revisions to the relevant portions of the Table of Frequency Allocations (Allocation Table) in parts 2 and 97.

2. On October 20, 2006, ARRL filed a petition for rulemaking (ARRL Petition) seeking certain modifications to the rules governing amateur radio use of the 60 meter band. In its petition, ARRL requests that the Commission make three modifications to the existing rules governing amateur radio use of the 60 meter band in order to increase the flexibility in the use of the band and to facilitate emergency communications provided by the Amateur Radio Service. First, ARRL requests that one of the available channels, 5368 kHz, be replaced with 5358.5 kHz. Second, it requests that three additional emission designators (150HA1A, 60H0J2B, and 2K80J2D) be authorized in the 60 meter band. Third, it requests that the maximum effective radiated power on channels in the 60 meter band be increased from 50 to 100 watts (W) peak envelope power (PEP).

3. The existing amateur radio use of the 60 meter band represents a balancing of important interests—the desire to provide amateur operators with frequencies that could be used to complete disaster communications links when other bands are not available, and the need to protect important primary Federal operations in the 60 meter band. The ARRL petition seeks to modify the existing spectrum sharing scenario in a manner that appears to be consistent with the interests of both Federal and amateur users in the band, and the Commission tentatively concludes that the changes proposed by ARRL should be adopted.

4. ARRL states that its request to replace the 5368 kHz channel with 5358.5 kHz is based on reports from amateur operators of frequent interference from a digital signal on the existing authorized channel. Based on this information, the Commission tentatively agrees that the proposed modification would eliminate interference and enhance amateur radio operations and that it should be implemented. The Commission notes that most non-Federal licensees in the 60 meter band are licensed across the larger band 5005–5450 kHz and that many are also licensed across other bands as well. Therefore, the Commission believes that its proposal to exchange one amateur channel for another in the 60 meter band will have

a *de minimis* impact on these licensees, while benefiting amateur radio users who have a limited number of channels in the band on which they may operate. The Commission also believes that this exchange will reduce the potential for interference from amateur operations to the primary Federal stations operating in the 5330.6–5406.4 kHz band.

5. ARRL indicates that its survey of amateur radio users in the band found that there is significant demand for modulation techniques that would allow telegraphy and data transmissions in addition to the one that is currently permitted for voice transmissions (single sideband suppressed carrier upper sideband, emission type 2K80J3E). Specifically, ARRL states that Morse code telegraphy by means of on-off keying (emission designator 150HA1A) continues to be used by amateur stations because of its reliability in difficult propagation conditions. ARRL also states that the other requested emission designators—60H0J2B (which is generally known as PSK31) and 2K80J2D (which is generally known as PACTOR–III)—are popular narrowband data modes. The Commission proposes to add these three emission designators, which would allow four permissible emission types to be used in the 60 meter band. It proposes to permit any additional modulation techniques that it adopts to be used on all assigned frequencies within the 60 meter band.

6. ARRL states that the Commission could require amateur operators to limit the length of transmissions in the two data emission modes in order to better position amateur operators to avoid causing harmful interference to primary operations, and suggests adopting a rule that incorporates a general requirement to limit the duration of data transmissions. The Commission seeks comment on whether a rule addressing transmission limits would help ensure that in the currently infrequent instances in which Federal agencies exercise their primary use of the 60 meter band frequencies, those amateur licensees who have been operating on a secondary basis will be better positioned to avoid causing prohibited harmful interference. To the extent that commenters support a specific time limit, the Commission asks whether a transmission length of three minutes would be sufficient. If not, it asks what limits should be adopted. In addition, the Commission seeks comment on whether amateur stations should be permitted to transmit emission types in addition to the four discussed in the 60 meter band section without increasing the likelihood of interference to primary users. To the extent that commenters identify such emission designators, they should discuss their use and benefits and, in particular, how the use of those emission designators can be balanced with the Commission's continued interest in protecting primary stations in the 60 meter band.

7. In support of its proposal to increase the power level, ARRL states that typical transmitter output power in modern amateur radio transceivers is 100 W PEP, and that the present 50 W PEP transmitter output power limit compromises communication reliability in the 60 meter band. ARRL claims that there are, at certain times of the year, high static levels in this frequency range. It argues that a slightly higher transmitter power output would bolster reliability, especially in connection with emergency communications. ARRL also suggests that amateur operators be required to use Voice-Operated Transmit (VOX) in the phone emission mode. ARRL contends that adopting this requirement, in conjunction with an increased transmitter output power limit, would permit a Federal user to interrupt an amateur station's transmission quickly and easily without waiting for an unpredictable end of the transmission. The Commission seeks comment on these proposals and whether it should adopt them. The Commission specifically seeks comment on whether a VOX mode of operation might increase the potential for interference because of its susceptibility to keying a radio to transmit under high surrounding noise environments such as might be found in an emergency operations center.

8. In the Commission's proposed rules to implement the changes discussed in this proceeding, in some cases it has incorporated editorial revisions intended to make the rules easier to read and to ensure that control operators have the necessary information to easily determine their proper operating requirements on the 60 meter band frequencies. Also, at the request of the National Telecommunications and Information Administration (NTIA), the Commission solicits comment on whether amateur operators that provide emergency communications using the 60 meter band should be encouraged to add a sound card generated Automatic Link Establishment (ALE) capability to their stations.

Ordering Clauses

9. Pursuant to §§ 1, 4, 301, 302(a), and 303(b), (c) and (f) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302a(a), and 303(b), (c) and (f), the *notice of proposed rulemaking* is hereby *adopted.*

10. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *notice of proposed rulemaking,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Certification

11. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." [2] The RFA generally defines the term " small entity" as having the same meaning as the terms "small business," " small organization," and "small governmental jurisdiction." [3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] 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).[5]

12. In the NPRM, the Commission proposed to amend the amateur service rules in order to replace one of the channels in the 60 meter band with a less encumbered channel, to provide for additional emssion designators, and to increase the maximum authorized power.

13. Because "small entities," as defined in the RFA, are not persons eligible for licensing in the amateur service, the proposed changes to part 97 does not apply to "small entities." Rather, they apply exclusively to individuals who are the control operators of amateur radio stations.

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[1] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 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**."

[5] 15 U.S.C. 632.

14. As of January 22, 2009, the Commission had issued 100 call signs to 46 licensees in the Conventional Industrial/Business Pool Radio Service (IG) in the five 2.8 kHz channels at issue in this proceeding. These call signs authorize the use of the entire 5005–5450 kHz band and other frequency bands. Because these licensees can tune across the 5005–5450 kHz band and other frequency bands, the Commission believes that replacing one 2.8 kHz channel with another nearby channel for secondary amateur service use would have a *de minimis* effect on incumbent non-Federal IG licensees.[6] Moreover, the Commission believes that, at most, only 17 of the IG licensees met the definition of a small entity. Therefore, it certifies that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities.

15. If commenters believe that the proposals discussed in the NPRM require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the NPRM, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA.[7]

List of Subjects 47 CFR Parts 2 and 97

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 97 to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising footnote US381 to read as follows.

§ 2.106 Table of Frequency Allocations.

* * * * *

United States (US) Footnotes

* * * * *

US381 In the band 5330.6–5406.4 kHz (60 m band), the assigned (center) frequencies 5332, 5348, 5358.5, 5373, and 5405 kHz are allocated to the amateur service on a secondary basis. Amateur service use of the 60 m band frequencies is restricted to a maximum effective radiated power of 100 W PEP and to the following emission modes and designators: phone (2K80J3E), data (2K80J2D and 60H0J2B), and CW (150HA1A). Amateur operators using data emissions must exercise care to limit the length of transmissions so as to avoid causing harmful interference to Federal stations.

* * * * *

PART 97—AMATEUR RADIO SERVICE

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

Authority: 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

4. Section 97.303 is amended by revising paragraph (h) to read as follows.

§ 97.303 Frequency sharing requirements.

* * * * *

(h) *60 m band:* (1) In the 5330.6–5406.4 kHz band (60 m band), amateur stations shall only transmit on the five center frequencies listed in the table below. In order to meet this requirement, amateur stations transmitting phone emissions and PACTOR–III data emissions may set the carrier frequency 1.4 kHz below the center frequency as specified in the table below. For amateur stations transmitting CW emissions and PSK31 data emissions, the carrier frequency shall be set to the center frequency. Amateur operators shall ensure that their station's transmission occupies not more than 2.8 kHz centered on each of these frequencies.

60 M BAND FREQUENCIES (KHZ)

Center	Carrier
5332.0	5330.6
5348.0	5346.6
5358.5	5357.1
5373.0	5371.6
5405.0	5403.6

(2) Amateur stations transmitting on the 60 m band must not cause harmful interference to, and must accept interference from, stations authorized by:

(i) The United States (NTIA and FCC) and other nations in the fixed service; and

(ii) Other nations in the mobile except aeronautical mobile service.

* * * * *

5. Section 97.305 is amended by revising the entries for wavelength band HF in the table following paragraph (c) to read as follows:

§ 97.305 Authorized emission types.

* * * * *

(c) * * *

Wavelength band	Frequencies	Emission types authorized	Standards see § 97.307(f), paragraph:
* * * * * * *			
HF:			
80 m	Entire band	RTTY, data	(3), (9).
75 m	Entire band	Phone, image	(1), (2).
60 m	All frequencies	Phone, data	(14).
40 m	7.000–7.100 MHz	RTTY, data	(3), (9).
* * * * * * *			

[6] These licensees are authorized under 90.266 of the Commission's Rules. Section 90.266(e) requires that "equipment shall be capable of transmitting and receiving on any frequency between 2 and 25 MHz and capable of immediate change among the frequencies, provided, however, that this requirement does not apply to equipment manufactured prior to August 15, 1983." Section 90.266(f) limits licensees to a maximum necessary bandwidth of 2.8 kHz. 47 CFR 90.266(e) and (f).

[7] *See* 5 U.S.C. 605(b).

6. Section 97.307 is amended by adding new paragraph (f)(14) to read as follows.

§ 97.307 Emission standards.

* * * * *

(f) * * *

(14) *In the 60 m band:*

(i) A station may transmit only phone, data, and CW emissions using the emission designators and any additional restrictions that are specified in the table below (except that the use of a narrower necessary bandwidth is permitted):

60 M BAND EMISSION REQUIREMENTS

Emission type	Emission designator	Restricted to
Phone	2K80J3E	Upper sideband only.
Data	2K80J2D	Data using PACTOR–III technique.
Do	60H0J2B	Data using PSK31 technique.
CW	150HA1A	

(ii) The following requirements also apply:

(A) When transmitting phone emissions, the suppressed carrier frequency must be set as specified in 97.303(h).

(B) The control operator of a station transmitting data emissions must exercise care to limit the length of transmission so as to avoid causing harmful interference to United States Government stations.

7. Section 97.313 is amended by adding paragraph (i) to read as follows.

§ 97.313 Transmitter power standards.

* * * * *

(i) No station may transmit with an effective radiated power (ERP) exceeding 100 W PEP on the 60 m band. For the purpose of computing ERP, the transmitter PEP will be multiplied by the antenna gain relative to a dipole or the equivalent calculation in decibels. A half-wave dipole antenna will be presumed to have a gain of 1. Licensees using other antennas must maintain in their station records either the antenna manufacturer's data on the antenna gain or calculations of the antenna gain.

[FR Doc. 2010–14384 Filed 6–14–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 203, 212, and 252

[DFARS Case 2009–D015]

RIN 0750–AG63

Defense Federal Acquisition Regulation Supplement; Organizational Conflicts of Interest in Major Defense Acquisition Programs

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

ACTION: Proposed rule with request for comments; extension of comment period.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 207 of the Weapons System Acquisition Reform Act of 2009. The comment period is being extended an additional 30 days to provide additional time for interested parties to review the proposed DFARS changes.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 21, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D015, using any of the following methods:

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

E-mail: dfars@osd.mil. Include DFARS Case 2009–D015 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a proposed rule in the **Federal Register** on April 22, 2010 (75 FR 20954), with a request for comment by June 21, 2010. DoD is extending the comment period for 30 additional days to provide an additional time for interested parties to review the proposed DFARS changes.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–14392 Filed 6–14–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

48 CFR Parts 919, 922, 923, 924, 925, 926, and 952

RIN 1991–AB87

Acquisition Regulation: Socioeconomic Programs

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) Socioeconomic Programs to make changes to conform to the FAR, remove out-of-date coverage, and to update references. Today's proposed rule does not alter substantive rights or obligations under current law.

DATES: Written comments on the proposed rulemaking must be received on or before close of business July 15, 2010.

ADDRESSES: This proposed rule is available online at *www.regulation.gov* and you may submit comments, identified by DEAR: Subchapter D and RIN 1991–AB87, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail to: DEARrulemaking@hq.doe.gov.* Include DEAR: Subchapter D and RIN 1991–AB87 in the subject line of the message.
- *Mail to:* U.S. Department of Energy, Office of Procurement and Assistance Management, MA–611, 1000 Independence Avenue, SW.,

Washington, DC 20585. Comments by e-mail are encouraged.

FOR FURTHER INFORMATION CONTACT: Barbara Binney at (202) 287–1340 or by e-mail *barbara.binney@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13211
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Approval by the Office of the Secretary of Energy

I. Background

The objective of this action is to update the existing Department of Energy Acquisition Regulation (DEAR) Subchapter D which has sections that need to be updated to conform to the Federal Acquisition Regulation (FAR). None of these changes are substantive or of a nature to cause any significant expense for DOE or its contractors. Changes are proposed to DEAR parts 919, 922, 923, 925, 926, and 952. A new part 924 is added to the DEAR. There are no DEAR parts 920 or 921. DEAR parts 919 and 926 will have another proposed rule to cover additional changes.

II. Section-by-Section Analysis

DOE proposes to amend the DEAR as follows:

1. Section 919.201 is amended by removing "DOE" in the first sentence of paragraph (c) and adding in its place "Department of Energy (DOE)".

2. A new section 919.502 is added and the title of section 919.502–2 is revised to "Total small business set-asides" to conform to the FAR.

3. Section 919.503 is amended by revising the heading to "Setting aside a class of acquisitions for small business" and by removing "SBA" and adding in its place "Small Business Administration (SBA)" in the first sentence.

4. Section 919.7 is amended by revising the title heading to read "The Small Business Subcontracting Program" to conform to the FAR.

5. Sections 919.7007, 919.7009, 919.7010, and 919.7011 are amended by revising the punctuation in the introductory text to remove the "." and adding in its place "—".

6. Subpart 922.6 is removed and reserved. This subpart implemented detailed instructions on protests of eligibility determinations (FAR 22.608) that were deleted from the FAR on December 20, 1996, 61 FR 67410.

7. Subpart 923.4 is removed in its entirety, including section 923.405, and reserved. The FAR has the current procedures, therefore a DOE supplement is unnecessary.

8. Subpart 923.5 is amended by adding a new section 923.500 Scope of subpart. This section clarifies that for contracts performed at DOE sites, in lieu of FAR Subpart 23.5, contracting activities shall use 923.570, Workplace Substance Abuse Programs at DOE Sites.

9. Section 923.570–1 is amended by renumbering paragraph (a) and removing paragraph (b) in its entirety. By adding the new section 923.500, paragraph (b) at 923.570–1 is not needed.

10. Section 923.570–3 is amended by correcting the clause reference in paragraph (a) to 970.5223–4, Workplace Substance Abuse Programs at DOE Sites.

11. Subpart 923.7 is removed in its entirety, including section 923.703, and reserved. DOE Directive 430.2B implements the Executive Order 13149 on environmental issues.

12. Section 923.7003 is amended by adding a new paragraph (h) to add a prescription on when to use the existing clauses at 952.223–75, Preservation of Individual Occupational Radiation Exposure Records, in contracts containing 952.223–71, Integration of Environment, Safety, and Health into Work Planning and Execution, or 952.223–72, Radiation Protection and Nuclear Criticality.

13. Part 924 is a new part being added titled Part 924—Protection of Privacy and Freedom of Information. This new part provides the cross reference to DOE's regulations at 10 CFR part 1008, which implement the procedures prescribed at FAR 24.103.

14. Section 925.103(b)(2)(ii) is added to prescribe the DOE procedures for proposed additions to the list of nonavailable items at FAR 25.104 list.

15. Section 925.202 is renamed "Exceptions" to conform with the FAR.

16. Section 925.202(b) is redesignated "925.202(a)(2)" and "FAR 25.202(a)(3)" in the first sentence is changed to read "48 CFR 25.202(a)(2), if the cost of the materials is not expected to exceed $100,000" to conform with the FAR and make the paragraph more concise.

17. Subpart 925.9 is redesignated to read "925.10" and the title is amended to read "Additional Foreign Acquisition Regulations" to conform to the FAR.

18. Section 925.901 is redesignated to read "925.1001 Waiver of right to examination of records."

19. Section 925.901(c) is redesignated to read "925.1001(b) Determination and findings." Additionally, the first sentence is revised to read "A determination and finding required at 48 CFR 25.1001(b) shall be forwarded to either the Director, Office of Contract Management, Office of Procurement and Assistance Management, or for the National Nuclear Security Administration (NNSA), to the Director, Office of Acquisition and Supply Management, for coordination of the Secretary's approval."

20. Section 926.7001 is amended by removing "Department of Energy" and adding in its place "Department of Energy (DOE)" in the first sentence in paragraph (a), changing the punctuation in paragraph (c) and revising paragraph (e) to read "48 CFR subpart 15.6 and subpart 915.6" to conform with the FAR.

21. Sections 926.7005, 926.7006, and 926.7102 are amended by revising the punctuation.

22. Clauses 952.223–76 and 952.223–77 are amended to update the references to DOE Orders and Manuals.

23. Clauses 952.226–70 and 952.226–72 are amended by revising the title of the subcontracting plan to reflect the correct name, Small Business Subcontracting Plan.

24. Clauses 952.226–70, 952.226–71, 952.226–72, 952.226–73 are amended to revise the punctuation.

25. Throughout, sections were amended as follows: Removing "FAR" or "DEAR" and adding "48 CFR"; removing "(FAR)", "DEAR", or "48 CFR"; revising the punctuation; and capitalizing Offeror, Contractor, Contractor's and Contracting Officer.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996),

imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or, alternatively, if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice or proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule updates references in the DEAR that apply to public contracts and does not impose any additional requirements on small businesses. Today's proposed rule does not alter any substantive rights or obligations. Consequently, today's proposed rule will not have a significant cost or administrative impact on contractors, including small entities. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This proposed rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number 1910–4100.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined the proposed rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking proposes changes that do not alter any substantive rights or obligations. This proposed rule does not impose any mandates.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to Office of Information and Regulatory Affairs of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Approval by the Office of the Secretary of Energy

Issuance of this proposed rule has been approved by the Office of the Secretary.

List of Subjects in 48 CFR Parts 919, 922, 923, 924, 925, 926, and 952

Government procurement.

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

Patrick M. Ferraro,

Acting Director, Office of Procurement and Assistance Management, Department of Energy.

Joseph F. Waddell,

Acting Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

For the reasons set out in the preamble, the Department of Energy is proposing to amend Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

1. The authority citation for parts 919 and 926 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PART 919—SMALL BUSINESS PROGRAMS

§ 919.201 [Amended]

2. Section 919.201 is amended by removing "DOE" and adding in its place "Department of Energy (DOE)" in the first sentence in paragraph (c).

2a. New section 919.502 is added to part 919 to read as follows:

§ 919.502 Setting aside acquisitions.

3. Section 919.502–2 heading is revised to read:

§ 919.502–2 Total small business set-asides.

* * * * *

4. Section 919.503 is amended by revising the heading as set forth below and by removing "SBA" and adding in its place "Small Business Administration (SBA)" in the first sentence.

§ 919.503 Setting aside a class of acquisitions for small business.

* * * * *

Subpart 919.7—The Small Business Subcontracting Program

5. Subpart 919.7 heading is revised to read as set forth above.

§ 919.7007 [Amended]

6. Section 919.7007 is amended by removing the ":" in paragraph (a) introductory text and adding in its place "—".

§ 919.7009 [Amended]

7. Section 919.7009 is amended by removing the "." in the introductory text and adding in its place "—".

§ 919.7010 [Amended]

8. Section 919.7010 is amended by removing the ":" in the introductory text and adding in its place "—".

§ 919.7011 [Amended]

9. Section 919.7011 is amended by removing the ":" in paragraphs (a) introductory text and (a)(1) and adding in its place "—".

10. The authority citation for parts 922, 923, and 925 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 922.6 [Removed and Reserved]

11. Subpart 922.6 is removed and reserved.

PART 923—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 923.4 [Removed and Reserved]

12. Subpart 923.4 is removed and reserved.

13. Add a new section 923.500 to subpart 923.5 to read as follows:

§ 923.500 Scope of subpart.

For contracts performed at DOE sites, in lieu of 48 CFR subpart 23.5, contracting activities shall use 923.570, Workplace Substance Abuse Programs at DOE Sites.

14. Section 923.570–1 is revised to read as follows:

§ 923.570–1 Applicability.

The policies, criteria, and procedure specified in 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, apply to contracts for work performed at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, where such work—

(a) Has a value of $25,000 or more; and

(b) Has been determined by DOE to involve—

(1) Access to or handling of classified information or special nuclear materials;

(2) High risk of danger to life, the environment, public health and safety or national security; or

(3) The transportation of hazardous materials to or from a DOE site.

15. Section 923.570–3 is amended by removing "970.5223" in paragraph (a) and adding in its place "970.5223–4".

Subpart 923.7 [Removed and Reserved]

16. Subpart 923.7 is removed and reserved.

17. Section 923.7003 is amended by adding a new paragraph (h) to read as follows:

§ 923.7003 Contract clauses.

* * * * *

(h) The contracting officer shall insert the clause at 952.223–75, Preservation of Individual Occupational Radiation Exposure Records, in contracts containing 952.223–71, Integration of Environment, Safety, and Health into Work Planning and Execution, or 952.223–72, Radiation Protection and Nuclear Criticality.

18. Add a new part 924 to Subchapter D to read as follows:

PART 924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 924.1—Protection of Individual Privacy

Sec.
924.103 Procedures.

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

Subpart 924.1—Protection of Individual Privacy

§ 924.103 Procedures.

(b)(2) The Department of Energy rules and regulations on Privacy Act are implemented under 10 CFR part 1008.

PART 925—FOREIGN ACQUISITION

19. Section 925.103 is amended by adding a new paragraph (b)(2)(ii) to read as follows:

§ 925.103 Exceptions.

* * * * *

(b) (2) (ii) Proposals to add an article to the list of nonavailable articles at 48 CFR 25.104, with appropriate justifications, shall be submitted for approval by the Senior Procurement Executive and submission to the appropriate council.

20. Section 925.202 is revised to read as follows:

§ 925.202 Exceptions.

(a)(2) Contracting officers may make the determination required by 48 CFR 25.202(a)(2), if the cost of the materials is not expected to exceed $100,000.

Subpart 925.9 [Removed and Reserved]

21. Subpart 925.9 is removed and reserved.

22. Add a new subpart 925.10 consisting of 925.1001 to part 925 to read as follows:

Subpart 925.10—Additional Foreign Acquisition Regulations

§ 925.1001 Waiver of right to examination of records.

(b) *Determination and findings.* A determination and finding required by 48 CFR 25.1001(b) shall be forwarded to either the Director, Office of Contract Management, Office of Procurement and Assistance Management, or for the National Nuclear Security Administration (NNSA), to the Director, Office of Acquisition and Supply Management, for coordination of the Secretary's approval.

PART 926—OTHER SOCIOECONOMIC PROGRAMS

§ 926.7001 [Amended]

23. Section 926.7001 is amended by:

a. Removing "Department of Energy" and adding in its place "Department of Energy (DOE)" in the first sentence in paragraph (a);

b. Removing the ":" in paragraph (c) introductory text and adding in its place "—"; and

c. Removing "(FAR) 48 CFR 15.6 and (DEAR) 48 CFR 915.6." in paragraph (e) and adding in its place "48 CFR subpart 15.6 and subpart 915.6."

§ 926.7005 [Amended]

24. Section 926.7005 is amended by removing the ":" in paragraph (b)(1) introductory text and adding in its place "—".

§ 926.7006 [Amended]

25. Section 926.7006 is amended by removing the ":" in paragraph (a) introductory text and adding in its place "—".

§ 926.7102 [Amended]

26. Section 926.7102 is amended by removing the "," and adding in its place ";" at the end of paragraphs (1) and (2).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

27. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

28. Section 952.223–76 clause is amended by revising the date of the clause and revising paragraphs (d)(1)(i), (d)(2)(i) and (d)(3)(i) to read as follows:

§ 952.223–76 Conditional payment of fee or profit—safeguarding restricted data and other classified information and protection of worker safety and health.

* * * * *

CONDITIONAL PAYMENT OF FEE OR PROFIT—SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH (XXX 20XX)

* * * * *

(d) * * *

(1) * * *

(i) Type A accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

* * * * *

(2) * * *

(i) Type B accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

* * * * *

(3) * * *

(i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (e.g., Federal) oversight and/or reported per DOE Manual 231.1–2, Occurrence Reporting and Processing of Operations Information, or it successor, requirements, or internal oversight of DOE Order 470.2B, Independent Oversight and Performance Assurance Program, or it successor, requirements.

* * * * *

29. Section 952.223–77 is amended by revising the date of the clause and revising paragraphs (c)(1)(i), (c)(2)(i) and (c)(3)(i) to read as follows:

§ 952.223–77 Conditional payment of fee or profit—protection of worker safety and health.

* * * * *

CONDITIONAL PAYMENT OF FEE OR PROFIT—PROTECTION OF WORKER SAFETY AND HEALTH (XXX 20XX)

* * * * *

(c) * * *

(1) * * *

(i) Type A accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

* * * * *

(2) * * *

(i) Type B accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

* * * * *

(3) * * *

(i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (e.g., Federal) oversight and/or reported per DOE Manual 231.1–2, Occurrence Reporting and Processing of Operations Information, or it successor, requirements, or internal oversight of DOE Order 470.2B, Independent Oversight and Performance Assurance Program, or it successor, requirements.

* * * * *

§ 952.226–70 [Amended]

30. Section 952.226–70 is amended by:

a. Removing the ":" in paragraphs (a) introductory text and (a)(1) and adding in its place "—"; and

b. Removing "Small, Small Disadvantaged and Women-Owned Subcontracting Plan" in paragraphs (c) and (d) and adding in its place "Small Business Subcontracting Plan".

§ 952.226–71 [Amended]

31. Section 952.226–71 is amended by removing the ":" in paragraphs (a) introductory text and (a)(1) and adding in its place "—".

§ 952.226–72 [Amended]

32. Section 952.226–72 is amended by:

a. Removing the ":" in paragraphs (a) introductory text and (a)(1) and adding in its place "—";

b. Removing the ":" in paragraph (b) and adding in its place "—";

c. Adding "and" in paragraph (b)(2) after the ";"; and

d. Removing "Small, Small Disadvantaged and Women-Owned Subcontracting Plan" in paragraph (c)(2) and adding in its place "Small Business Subcontracting Plan".

§ 952.226–73 [Amended]

33. Section 952.226–73 is amended by:

a. Removing the ":" in paragraph (a)(1) and adding in its place "—"; and

b. Removing the "," in paragraph (a)(1)(i) and adding in its place ";".

§ 952.226–74 [Amended]

34. Section 952.226–74 is amended by removing "48 CFR (DEAR)" before "926.7104" in the introductory sentence.

§ 919.501, 919.705–6, 919.805–2, 922.103–5, 925.103, 952.219–70, 952.225–70, 952.226–70, 952.226–72, 952.226–73, and 952.226–74 [Amended]

35. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
919.501(g)	"FAR 19.501(g),"	"48 CFR 19.501,".
919.705–6	"FAR"	"48 CFR".
919.805–2	"FAR"	"48 CFR chapter 1".
919.805–2	"13 CFR 124.311(e)(1)"	"13 CFR 124".
922.103–5 in 3 places	"FAR"	"48 CFR".
923.570–3(a)	"FAR"	"48 CFR".
925.103(a)	"FAR"	"48 CFR".
952.219–70 in the provision second sentence	"contractor's"	"Contractor's".
952.225–70(b)	"contractor"	"Contractor".
952.226–70(c)	"offeror"	"Offeror".
952.226–72(b)	"contractor"	"Contractor".
952.226–72(c)(1)	"contractor"	"Contractor".
952.226–72(c)(1)	"contracting officer"	"Contracting Officer".
952.226–72(c)(2)	"contractor's"	"Contractor's".
952.226–73(a) introductory text, and (b) in 2 places	"offeror"	"Offeror".
952.226–73(b)	"contracting officer"	"Contracting Officer".
952.226–74(b) at its second occurrence	"contractor"	"Contractor".

§ 919.7008, 919.7010, 919.7011, 919.7012, 922.800, 926.7006, 926.7007, 926.7104 [Amended]

36. In the table below, for each section indicated in the left column, remove the word indicated in the right column from where it appears in the section:

Section	Remove
919.7008	"48 CFR".
919.7010(c) and (k)	"48 CFR".
919.7011(b)	"48 CFR".
919.7012(a)	"48 CFR".
922.800	"(FAR)".
926.7006(c)	"(FAR)".
926.7007(d)	"48 CFR".
926.7007(e)	"(FAR)".
926.7104	48 CFR (DEAR)".

[FR Doc. 2010–14194 Filed 6–14–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. FTA–2010–0009]

RIN 2132–AB02

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Public meetings on ANPRM.

SUMMARY: This document announces the dates, times, and locations of outreach sessions concerning the Advance Notice of Proposed Rulemaking (ANPRM) for FTA's New Starts and Small Starts programs. Presentations delivered at these meetings will describe the provisions of the ANPRM issued by the Federal Transit Administration (FTA). Further outreach sessions, if scheduled, will be announced in a subsequent **Federal Register** notice.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: Elizabeth Day, Office of Planning and Environment, (202) 366–5159; for questions of a legal nature, Christopher Van Wyk, Office of Chief Counsel, (202) 366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: FTA announced the time and location of its first two outreach meetings with the ANPRM published on June 3, 2010 (75 FR 31383), noting that additional meetings would be announced in subsequent **Federal Register** notices. The meetings listed below are additional outreach sessions that will provide a forum for FTA staff to make oral presentations on the ANPRM and for participants to ask questions. Additionally, the sessions are intended to encourage interested parties and stakeholders to submit their comments directly to the official docket per the instructions found in the June 3, 2010 ANPRM. Further outreach sessions, if scheduled, will be announced in a subsequent **Federal Register** notice.

I. Meetings

Information on the public outreach session meeting dates and addresses follows:

1. Tuesday, June 29, 2010, 9 a.m.–1 p.m., CST, 165 East Ontario Street, Chicago, IL 60611 (Courtyard Marriott Magnificent Mile Hotel, Ontario Ballroom).

2. Wednesday, June 30, 2010, 9 a.m.–1 p.m., PST, 299 Second Street, San Francisco, CA 94105 (Courtyard Marriott San Francisco Downtown Hotel, Rincon Hill Ballroom).

3. Monday, July 12, 2010, 9 a.m.–1 p.m., CST, 300 Reunion Blvd, Dallas, TX 75207 (Hyatt Regency Dallas Hotel, Reunion Ballroom F).

4. Thursday, July 15, 2010, 9 a.m.–1 p.m., EST, 525 New Jersey Ave, NW., Washington, DC 20001 (Washington Court Hotel, Atrium Ballroom).

II. Comment Format

Meeting attendees will have an opportunity to pose questions to the speakers and to the group as a whole. It is the responsibility of individuals who wish for their comments to become part of the official public record to submit their comments directly to the official docket for the rulemaking. Instructions for doing so can be found in the June 3rd ANPRM.

III. Registration

Registration is not required in order to attend one of these public meetings. But

in order to ensure adequate space and handouts, participants are encouraged to register for the outreach sessions at the Web sites that follow each city name: Chicago (*http://www.regonline.com/NewStartsANPRMOutreachChicago*); San Francisco (*http://www.regonline.com/NewStartsANPRMOutreachSanFrancisco*); Dallas (*http://www.regonline.com/NewStartsANPRMOutreachDallas*); Washington, DC (*http://www.regonline.com/NewStartsANPRMOutreachWashingtonDC*).

IV. Special Accommodations

All locations are ADA-accessible. Individuals attending a meeting who are hearing or visually impaired and have special requirements, or requiring special assistance, may obtain this by calling Elizabeth Day at (202) 366–5159.

Issued in Washington, DC, June 8, 2010.

Scott A. Biehl,

Deputy Chief Counsel.

[FR Doc. 2010–14169 Filed 6–14–10; 8:45 am]

BILLING CODE 4910–57–P

Notices

Federal Register
Vol. 75, No. 114
Tuesday, June 15, 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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Availability of the Final Report of the Dietary Guidelines Advisory Committee, Solicitation of Written Comments on the Report, and Invitation for Oral Testimony at a Public Meeting

AGENCIES: U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services (FNCS) and Research, Education and Economics (REE); and U.S. Department of Health and Human Services (HHS), Office of Public Health and Science (OPHS).

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) (a) announce the availability of the final Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010 (Report); (b) solicit written comments on the Report; and (c) provide notice of a public meeting to solicit oral comments on the Report.

DATES: This Notice is provided to the public on June 15, 2010. (1) The final Report of the Dietary Guidelines Advisory Committee (the Committee) will be available on June 15, 2010; (2) Written comments on the Committee's report can be submitted and must be received on or before 5 p.m. E.D.T. on July 15, 2010; (c) The public meeting to solicit oral comments on the Report will be held on July 8, 2010 starting at 9 a.m. E.D.T.

ADDRESSES: (a) The final Report of the Committee is available electronically on the Dietary Guidelines Web site at *http://www.DietaryGuidelines.gov.* A hard copy is available for public viewing from 8:30 a.m. to 4:30 p.m. E.D.T., at the Reference Desk of the National Agricultural Library, USDA/ARS, 10301 Baltimore Avenue, Beltsville, MD 20705, Monday through Friday (except Federal holidays). The Reference Desk telephone number is 301–504–5755; however, no advance appointment is necessary; (b) Written comments are encouraged to be submitted electronically at *http://www.DietaryGuidelines.gov.* A "submit comments" button is available at the bottom of the Web page to click on. Lengthy comments (that exceed 2,000 characters) or support materials can be uploaded as a PDF attachment. Multiple attachments must be "zip-filed". If electronic comment submission is not possible, comments can be mailed to the following address: Carole Davis, Co-Executive Secretary and Designated Federal Officer (DFO) of the Dietary Guidelines Advisory Committee, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302, (703) 305–7600 (telephone), (703) 305–3300 (fax); (c) The public meeting where oral comments will be presented will be held at the U.S. Department of Agriculture, Jefferson Auditorium, 1400 Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: USDA Co-Executive Secretaries: Carole Davis, DFO to the Dietary Guidelines Advisory Committee (telephone 703–305–7600), Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302; or Shanthy Bowman (telephone 301–504–0619), Agricultural Research Service (ARS), Beltsville Human Nutrition Research Center, 10300 Baltimore Avenue, Building 005, Room 125, BARC–WEST, Beltsville, Maryland 20705. HHS Co-Executive Secretaries: Kathryn McMurry (telephone 240–453–8280) or Holly McPeak (telephone 240–453–8280), Office of Disease Prevention and Health Promotion, Office of Public Health and Science, 1101 Wootton Parkway, Suite LL100, Rockville, Maryland 20852. Additional information is available on the Internet at *http://www.DietaryGuidelines.gov.*

SUPPLEMENTARY INFORMATION:

The Dietary Guidelines Advisory Committee Report: The thirteen-member Dietary Guidelines Advisory Committee was appointed by USDA and HHS in October 2008 to assist both Departments in providing sound and current dietary guidance to consumers. Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III) directs the Secretaries of USDA and HHS to publish the *Dietary Guidelines for Americans* at least every five years. During its first meeting on October 30–31, 2008, the Committee decided that the science had changed since the 2005 (sixth) edition of the Dietary Guidelines for Americans and that a revision to the current Dietary Guidelines was necessary. The Committee has finalized its recommendations and submitted its Report to the Secretaries of USDA and HHS. This Report will serve as the basis for the seventh edition of the Dietary Guidelines for Americans, which USDA and HHS expect to publish later this year (2010).

Purpose of the Meeting: After a thorough review of the most current scientific and applied literature and open Committee deliberations, the Committee has provided its recommendations in the form of an advisory report to the Secretaries of both Departments. By this notice, USDA and HHS are inviting comments on the Committee's final Report. Instructions for written comments are provided above. This meeting will provide opportunity for oral comments by the public.

Public Participation: By this notice, USDA and HHS are inviting submission of requests from the public to present three minutes of oral testimony. The public meeting is planned from 9 a.m. E.D.T. to no later than 5 p.m. E.D.T. on July 8, 2010 in the Jefferson Auditorium within the USDA South Building, located at the corner of Independence Ave. and 14th Street, SW., Washington, DC. Because of the need for security screening, pre-registration is required. All visitors must bring a photo I.D. Registration to present oral testimony will be confirmed (via e-mail) on a first-come, first-served basis, as time on the presentation agenda permits. The confirmation e-mail will also include information regarding security procedures for entering the South Building, directions to the Jefferson Auditorium, and metro, parking, and hotel information. Please call Crystal Tyler at 202–314–4701 should you require a sign language interpreter or require other special accommodations. Requests to provide oral testimony can be made by going to *http://*

www.DietaryGuidelines.gov and clicking on the link for Meeting Registration or by calling the scheduler through the meeting planner, Crystal Tyler, at 202–314–4701 by 5 p.m. E.D.T., June 30, 2010. Requests to present oral testimony must include a written outline of the intended testimony not to exceed one page in length. Presenters are required to disclose their affiliations and any sources of funding.

Dated: June 1, 2010.

Robert C. Post,

Acting Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: Jun 4, 2010.

Edward B. Knipling,

Administrator, Agricultural Research Service, U.S. Department of Agriculture.

Dated: June 3, 2010.

Penelope Slade-Sawyer,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. 2010–14324 Filed 6–14–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Virtual Incident Procurement (VIPR) System Existing Vendor Survey

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Virtual Incident Procurement (VIPR) System Existing Vendor User Survey.

DATES: Comments must be received by e-mail on or before August 16, 2010 to be assured for consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be e-mailed to *VIPR@fs.fed.us* with "VIPR Vendor Survey Comments" entered into the subject line of the e-mail or mailed to Forest Service, USDA, Washington Office Acquisition Management Systems; 2150 Centre Ave., Bldg. A, Suite 317; Fort Collins, CO 80526. The public may inspect comments via the Internet at: *http://www.fs.fed.us/business/incident/vipr/comments.php.*

FOR FURTHER INFORMATION CONTACT: Larry Bowser, Washington Office Acquisition Management Systems Branch Chief at 970–295–5800. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 800–877–8339, between 8 a.m. and 8 p.m, e.s.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Virtual Incident Procurement (VIPR) Existing Vendor User Survey.

OMB Number: 0596–New.

Type of Request: New.

Abstract: Virtual Incident Procurement (VIPR) is an acquisition system designed to solicit, award, and manage preseason incident agreements and contracts for equipment and services at the Forest Service. Opinions and comments from existing VIPR vendor users are needed to evaluate the acquisition system leading to program improvements and to potential system functionality upgrades. For this reason, the Forest Service desires to question vendor users utilizing an online, electronic survey.

The information will be collected and analyzed by the Forest Service Acquisition Management System Branch. The Forest Service will inquire and collect surveys from existing VIPR vendor users on their individual experiences with the acquisition system, customer service support, and other supporting tools. The information will be used to assist program management enhancements, identify potential system upgrades, and improve overall customer service and other support tools. Results from the information collection may be shared with other Forest Service divisions, with agencies outside of the Forest Service, and with the public.

The authorization to survey vendors for customer service improvements comes from Executive Order 12862, issued September 11, 1993, which directs Federal agencies to change the way they do business, to reform their management practices, and to provide service to the public that matches or exceeds the best service available in the private sector. The survey will provide the Forest Service with the necessary information to meet the terms of the Executive order.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Existing VIPR vendors.

Estimated Annual Number of Respondents: 3,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,000 Hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 9, 2010.

Thelma J. Strong,

Acting Associate Deputy Director, Business Operations.

[FR Doc. 2010–14332 Filed 6–14–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of a New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447); Chequamegon-Nicolet National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Chequamegon-Nicolet National Forest is proposing to begin charging a $5.00 daily user fee or accept the $20 annual user vehicle sticker at the Wanoka Trailhead based upon other Forest Service multiple use trailhead facilities across the Forest. The Wanoka Trailhead on the Chequamegon-Nicolet National Forest will provide a much needed trailhead facility for the public to utilize to enjoy the motorized and non-motorized trails and routes north and south of US Highway 2. This site will also assist in helping to increase the amount of visitation to the local communities of Ashland, Drummond, Barnes, Cable, Delta, and Iron River. The funds collected at the Wanoka Trailhead will be used for the year round operation and maintenance of this site.

People are invited to comment on this proposal.

DATES: The Wanoka Trailhead was posted for a one year comment period pertaining to the implementation of use fees on March 18, 2009. All comments must be received no later than July 15, 2010 so they can be compiled, analyzed and shared with the Region 9 Recreation Resource Advisory Committee.

ADDRESSES: Forest Supervisor, Chequamegon-Nicolet National Forest, 500 Hanson Lake Road, Rhinelander, WI 54501.

FOR FURTHER INFORMATION CONTACT: Teresa Maday, Assistant Ranger for Recreation and Lands, (715) 373–2667.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: June 8, 2010.

Anthony Erba,

Chequamegon-Nicolet National, Acting Forest Supervisor.

[FR Doc. 2010–14372 Filed 6–14–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of a New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: USDA Forest Service, Chequamegon-Nicolet National Forest USDA.

ACTION: Notice.

SUMMARY: The Chequamegon-Nicolet National Forest is proposing to begin charging a $5.00 daily user fee or accept the $20 annual user vehicle sticker at the Beck Road Trailhead based upon other Forest Service multiple use trailhead facilities across the Forest. The newly constructed Beck Road Trailhead on the Chequamegon-Nicolet National Forest will provide a much needed trailhead facility for the public to utilize to enjoy the motorized and non-motorized trails and routes south of U.S. Highway 2. This site will also assist in helping to increase the amount of visitation to the local communities of Drummond, Barnes, Cable, Delta, and Iron River. The funds collected at the Beck Road Trailhead will be used for the year round operation and maintenance of this site. People are invited to comment on this proposal.

DATES: *Effective Date:* The Beck Road Trailhead was posted for a one year comment period pertaining to the implementation of use fees on March 18, 2009. All comments must be received no later than July 15, 2010 so they can be compiled, analyzed and shared with the Region 9 Recreation Resource Advisory Committee.

ADDRESSES: Forest Supervisor, Chequamegon-Nicolet National Forest, 500 Hanson Lake Road, Rhinelander, WI 54501.

FOR FURTHER INFORMATION CONTACT: Teresa Maday, Assistant Ranger for Recreation and Lands, (715) 373–2667.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: June 8, 2010.

Anthony Erba,

Chequamegon-Nicolet National, Acting Forest Supervisor.

[FR Doc. 2010–14376 Filed 6–14–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #366, Anaerobic Digester. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1691; Fax number (804) 287–1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: *http://www.va.nrcs.usda.gov/technical/draftstandards.html.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: June 7, 2010.

John A. Bricker,

State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 2010–14345 Filed 6–14–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Animal Mortality Facility (Code 316), Critical Area Planting (Code 342), Composting Facility (Code 317), Grazing Land Mechanical Treatment (Code 548), Hedgerow Planting (422), Irrigation Canal or Lateral (Code 320), Irrigation Land Leveling (Code 464), Irrigation System, Surface, and Subsurface (Code 443), Riparian

Herbaceous Cover (Code 390), Rock Barrier (Code 555), Roofs and Covers (Code 367), Runoff Management System (Code 570), Shallow Water Development and Management (Code 646), Streambank and Shoreline Protection (Code 580), Upland Wildlife Habitat Management (Code 645), and Wetland Wildlife Habitat Management (Code 644). NRCS State Conservationists who choose to adopt these practices for use within their State will incorporate them into section IV of their respective electronic Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

DATES: *Effective Date:* This is effective June 15, 2010.

Comment Date: Submit comments on or before July 15, 2010. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period and after consideration of all comments.

ADDRESSES: Comments should be submitted using any of the following methods:

- *Mail:* Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6136 South Building, Washington, DC 20250.
- *E-mail: wayne.bogovich@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6136 South Building, Washington, DC 20250.

Electronic copies of these standards can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/*. Requests for paper versions or inquiries may be directed to Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6136 South Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The amount of the proposed changes varies considerably for each of the Conservation Practice Standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version as shown at: *http://www.nrcs.usda.gov/technical/Standards/nhcp.html.* To aid in this comparison, following are highlights of the proposed revisions to each standard:

Animal Mortality Facility (Code 316)—Design criteria was changed based on the revision of Practice Code 367—Roofs and Covers. Disposal Pits (masonry, treated timber, and pre-cast concrete structures constructed in ground with bottom of the pit exposed to the soil) has been omitted from the standard since the majority of State regulations no longer allows these types of structures, nor is it considered environmentally friendly.

Critical Area Planting (Code 342)—The practice was revised to include a purpose to stabilize stream and channel banks and shorelines and provided additional criteria to establish cover on the stream banks and shorelines. In addition, seeding and planting considerations were added to address pollinators and wildlife.

Composting Facility (Code 317)—An additional purpose for organic matter was added based on comments received from specialty groups. Design criteria for composting facility roofs was changed based on the revision of Practice Code 367—Roofs and Covers.

Grazing Land Mechanical Treatment (Code 548)—The Criteria changed referring to and adding prescribed grazing following treatment. Considerations were expanded and references were added.

Hedgerow Planting (422)—The purpose was broadened for aquatic organisms and expanded to add habitat for terrestrial species, specifically pollinators. Criteria were added for pollinator habitat. References were also added.

Irrigation Canal or Lateral (Code 320)—The Purpose was revised and references were added.

Irrigation Land Leveling (Code 464)—The Purpose was revised and the Considerations were expanded.

Irrigation System, Surface and Subsurface (Code 443)—Changes included: removed the No. unit; incorporated criteria and considerations for Multi-Outlet Pipelines, thus eliminating the need for NRCS Conservation Practice Standard "Above Ground, Multi Outlet Pipeline" (431); expanded Considerations; and added References.

Riparian Herbaceous Cover (Code 390)—No substantive changes.

Rock Barrier (Code 555)—Wording changes made to make the practice more broadly applicable to "agricultural land" rather limiting it to land suitable for cultivation. The Considerations were re-written to provide context for the stated Consideration. Additional Considerations were added. The Plans and Specifications section was expanded to clearly state the minimum requirements for the content of plans and specifications.

Roofs and Covers (Code 367)—Changes to the standard include: changing the name from Waste Facility Cover to Roofs and Covers, and adding additional purpose and criteria for reducing greenhouse gas emissions and odor reduction. Additional criteria for Biogas control, utilization, and Safety has been incorporated into the standard. New criteria for design of roofs and covers have been incorporated into this standard and referenced in Animal Mortality Facility (Code 316) and Composting Facility (Code 317) for use consistency.

Stormwater Runoff Control (Code 570)—The title was changed from Runoff Management System. The definition was changed to reflect the new title and the broader scope of the practice. The purpose was re-written to include erosion and sedimentation, water quality, and water quantity.

Shallow Water Development and Management (Code 646)—No substantive changes.

Streambank and Shoreline Protection (Code 580)—The reference to 322 was removed and replaced with a reference to 342.

Upland Wildlife Habitat Management (Code 645)—No substantive changes.

Wetland Wildlife Habitat Management (Code 644)—No substantive changes.

Above Ground, Multi Outlet Pipeline (Code 431)—Rescission of this practice will be effective October 1, 2010. This practice has been incorporated into the Criteria and Considerations of Irrigation System, Surface and Subsurface (Code 443).

Atmospheric Resource Management (Code 370)—Rescission of this practice will be effective October 1, 2010. There are several practice standards that will be in place that will replace Code 370, including Air Filtration and Scrubbing (Code 371), Combustion System Improvement (Code 372), and Dust Control on Unpaved Roads and Surfaces (Code 373). There are also several interim standards that may be used.

Channel Bank Vegetation (Code 322)—Rescission of this practice will be

effective October 1, 2010. The changes in both Critical Area Planting (Code 342) and Streambank and Shoreline Protection (Code 580) will formally delete the need for Channel Bank Vegetation (Code 322).

Dated: Signed this 9th day of June, 2010, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. 2010–14343 Filed 6–14–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Recreation Fee Sites; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: National Forests in North Carolina, USDA Forest Service.

ACTION: Notice of three proposed new recreation fee sites.

SUMMARY: Moss Knob Shooting Range, Nantahala National Forest, provides a range of target opportunities near Franklin, NC. Open year-round, this facility features six covered shooting stations. A permanent vault toilet, trash containers and an information board are on-site amenities. The Forest Service proposes to charge $3 per person per day for shooters aged 16 and over. (Shooters under the age of 16 may shoot at no fee when accompanied by an adult.) An annual pass will be available for $25 per person, and will allow use of two other shooting ranges in the Nantahala National Forest.

Wine Springs Horse Camp, Nantahala National Forest, is an equestrian campground. This campground features five single camp sites furnished with picnic tables, fire rings, lantern poles, a horse tethering area, a permanent vault toilet, and trailhead information board. Equestrians can access more than 15 miles of designated horse trails from this campground. The Forest Service proposes to charge $8 per night for a single site.

Wolf Ford Campground is located within the Cradle of Forestry National Historic Site in Pisgah National Forest. New upgrades at this campground feature 14 single camp sites. Individual camp sites are defined, graveled, and furnished with picnic tables, fire rings and lantern poles. A portable toilet was installed in spring 2010 and a permanent vault toilet will be installed in late summer. The Forest Service proposes to charge $8 for a single site.

The fees listed are only proposed and will be determined upon further analysis and public comments. All funds received from these fees will be used for continued operation and maintenance of each facility and allow additional amenities to be added to enhance the recreational experience. Comparable fees for similar facilities are currently charged, or proposed, elsewhere in National Forests in North Carolina.

DATES: Comments will be accepted through July 30, 2010. Implementation of fees is proposed to take place in calendar year 2011.

FOR FURTHER INFORMATION CONTACT:

Moss Knob Shooting Range and Wine Springs Horse Camp: Crystal Powell, Recreation Program Manager, 828–524–6441, Nantahala Ranger District, Nantahala National Forest, 90 Sloan Road, Franklin, NC 28734.

Wolf Ford Campground: Jeff Owenby, Recreation Program Manager, 828–877–3265, Pisgah Ranger District, Pisgah National Forest, 1001 Pisgah Highway, Pisgah Forest, NC 28768.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established.

Dated: May 28, 2010.

Candice Wyman,

Acting Public Affairs Officer, National Forests in North Carolina.

[FR Doc. 2010–13475 Filed 6–14–10; 8:45 am]

BILLING CODE M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act that a planning meeting of the New Hampshire Advisory Committee will convene at 10:30 a.m. on Tuesday, June 29, 2010 at Pierce Law School, 2 White Street, Faculty Lounge, Concord, NH 03301. The purpose of the meeting is to discuss the Committee's work on gender disparities in New Hampshire prisons.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by July 29, 2010. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. They may be faxed to 202–376–7748, or e-mailed to *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at 202–376–7756.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, June 9, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–14309 Filed 6–14–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Beauty and Cosmetics Trade Mission to India

AGENCY: International Trade Administration, Department of Commerce

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing a Beauty and Cosmetics Trade Mission to India (New Delhi, Mumbai and Bangalore), November 15–19, 2010. Led by a Department of Commerce official, the mission will assist U.S. beauty and cosmetics companies to identify prospective representatives, distributors, partners, and end-users in the vibrant Indian market. The cosmetics/beauty industry is one of the booming retail sectors in India with very strong potential for new-to-market (NTM) U.S. companies. U.S products are perceived to be very high quality in India and are in high demand. Mission participants will have a first-hand

opportunity to assess market potential in India and to meet key decision makers. Trade mission participants will have customized meeting schedules to meet with potential partners, professional end-users, major retailers and key government and regulatory officials.

Commercial Setting

The emergence of a young urban elite population with increasing disposable income in cities, including an increase in the number of working women increase looking for lifestyle-oriented and luxury products is the main driver of demand for imported cosmetics products. Indian consumers tend to look towards international brands as lifestyle enhancement products.

The total size of the Indian retail beauty and cosmetics market is currently estimated at $950 million. The overall beauty and wellness market, which includes beauty services, is $2.68 billion. The cosmetics market in India is growing at 15–20% annually, twice as fast as that of the United States and European market. Premium global brands are gaining sales as Indian consumers gain exposure to the global media and move from functional items to advanced and specialized cosmetic products. With the beauty service industry growing rapidly in India, the spa segment in India is also attracting a lot of attention. The spa industry over the last five years has shown tremendous growth, not only in the number of spas, but also in the diversity of spas and products available. The spa and body treatment segment is estimated to be approximately $772 million over the next five to eight years.

Now is the time for U.S. beauty and cosmetics firms to enter the Indian market. European competitors have already been very aggressive. U.S. products viewed as high quality but awareness levels are low for smaller U.S. brands. Even with a good growth rate, penetration of cosmetic and toiletries is very low in India. With a 15–20% growth rate in this sector, this translates into tremendous potential for U.S. companies.

Recruitment efforts for the trade mission will focus on the dynamic growth opportunity areas such as color cosmetics, fragrances (fragrance is the most popular import purchase), specialized skin care and hair care products, professional salon products, nail care products, and spa equipment and products.

Additionally, the trade mission will allow the participating U.S. companies to learn about potential regulatory changes that would require all foreign cosmetics companies to register their products before being allowed to sell (**Note:** Indian companies are already required to register; so far foreign companies have been exempted from this requirement). If this proposed change to the Indian Drugs and Cosmetics Act of 1940 passes, foreign companies importing products would receive certificates with three years' validity, whereas companies manufacturing in India would have certificates valid for five years. Moreover, the trade mission participants will learn about India's labeling requirements. While not especially onerous, the labeling requirements must be adhered to in order for U.S. companies to sell in India.

Mission Goals

The goals of the Beauty and Cosmetics Trade Mission to India are to: (1) Introduce U.S. mission participants to the vibrant Indian market, especially in the three large metropolitan cities of Mumbai, New Delhi, and Bangalore, to assess business opportunities; (2) establish valuable contacts with prospective agents, distributors and retailers; and (3) meet with Government regulators to understand the policy and regulatory framework and to explain American industry experience and best practices.

Mission Scenario

Participants will visit three of the India's key metropolitan centers. The mission will have access to major countrywide markets, as well as Indian government officials and U.S. Embassy staff for regulatory and business climate briefings.

New Delhi—the capital city of India where participants can meet with government officials to learn about policies and regulations, particularly current labeling requirements and potential registration issues, which would impact all U.S. beauty/cosmetics companies.

Mumbai—the business and financial capital of India were there will be meetings with appropriate customs and government officials, industry associations, networking reception and site visits.

Bangalore—a booming city with an organized retail market and the first destination of many global consumer brands, especially luxury labels.

During the trade mission participants will receive: (A) Briefings on beauty and cosmetic markets in India; (B) one-on-one meetings tailored to each firm's interests; (C) introductions to potential agents/distributors, facility administrators, and purchasing managers through group events; (D) site visits if applicable; and (E) meetings with local business representatives and government officials, as appropriate.

PROPOSED MISSION TIMETABLE

Day of week	Date	Activity
Sunday	November 14, New Delhi.	Arrive in New Delhi. Informal no-host dinner and greeting by U.S. Commercial Service staff.
Monday	Nov. 15, New Delhi	Mission meetings officially start. Morning—Embassy Briefing; Afternoon—One-on-one meetings; Networking reception hosted by the Minister Consular for Commercial Affairs.
Tuesday	Nov. 16, New Delhi/ Mumbai.	On regulations—Meetings with GOI/consultant; One-on-one meetings; Networking lunch; Site visit to a Spa/Retail outlet; Late evening depart for Mumbai.
Wednesday	Nov. 17, Mumbai	Breakfast briefing; One-on-one meeting; Network lunch hosted by Chamber of Commerce/ Industry Association; One-on-one meetings; Networking reception hosted by the Consul General.
Thursday	Nov. 18, Mumbai/Bangalore.	Mall/Retail tour/Trade fair visit. Evening depart for Bangalore.
Friday	Nov. 19, Bangalore	One-on-one meetings followed by Networking lunch. Afternoon—Site visit to a Mall/Retail Tour/Spa; or, U.S. Cosmetics Trade Day in association with a major local retailer (TBD). Trade Mission Officially Ends.

The final schedule and potential site visits will depend on the availability of local government and business officials, specific goals of mission participants, and air travel schedules.

Participation Requirements

All persons interested in participating in the beauty and cosmetics trade mission to India 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 10 and a maximum of 20 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in India as well as U.S. companies seeking to enter the region for the first time are encouraged to apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $4,600 for large firms and $3,900 for a small or medium-sized enterprise (SME [1]), which includes one principal representative. The fee for each additional firm representative (large firm or SME) is $750. Expenses for lodging, some meals, incidentals, and travel 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 U.S. 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:

• Consistency of the applicant's goals and objectives with the stated scope of the trade mission.

• The suitability of the company's products or services to the Indian cosmetics and beauty market.

• Applicant's potential for business in India, including likelihood of exports resulting from 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, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS India will work in conjunction with the U.S. Export Assistance Centers, which will serve as a key facilitator in establishing strong commercial ties to the U.S. companies in the targeted sectors nationwide.

Recruitment for the mission will begin immediately and conclude no later than Friday September 10, 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 September 10, 2010. Applications received after the deadline will be considered only if space and scheduling constraints permit.

Contacts

U. S.—Ontario, CA U.S. Export Assistance Center

Tony Michalski, Senior International Trade Specialist, Ontario, CA, Phone: 909–466–4137, E-mail: *tony.michalski@mail.doc.gov.*

U.S. Commercial Service in India

Aliasgar.Motiwala, Commercial Specialist, Mumbai, Tel: (91–22) 2265 2511, E-mail: *Aliasgar.Motiwala@mail.doc.gov.*

Manjushree Phookan, Commercial Specialist, Bangalore, Tel: (91–80) 2220 6404, E–Mail: *Manjushree.Phookan@mail.doc.gov.*

Srimoti Mukherji, Commercial Specialist, New Delhi, Tel: (91–11) 2347 2226, E–Mail: *Srimoti.Mukherji@mail.doc.gov.*

Natalia Susak,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–14288 Filed 6–14–10; 8:45 am]

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 (*see http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information *see http://www.export.gov/newsletter/march2008/initiatives.html*).

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2010]

Foreign-Trade Zone 77—Memphis, TN, Application for Subzone, Delta Faucet Company (Faucets); Jackson, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis, grantee of FTZ 77, requesting special-purpose subzone status for the faucet manufacturing facility of Delta Faucet Company (Delta), located in Jackson, Tennessee. 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 June 7, 2010.

The Delta facility (668 employees/90 acres) is located at 3441 Ridgecrest Road Ext., Jackson (Madison County), Tennessee. The facility is used to manufacture, warehouse and distribute faucets and related products for the U.S. market and export. At full capacity the plant can manufacture up to nine million units annually. The manufacturing activity under FTZ procedures would include machining, assembly, joining, finishing, and testing. Components to be purchased from abroad (representing between 36–40% of the value of the finished faucets) would include: Parts of faucets, hoses, plastic sanitary ware, plastic bags, stoppers, lids, plastic builders' ware, handles/knobs, tubes/pipes of rubber, o-rings, seals, grommets, gaskets, labels, ceramic parts, fasteners, washers, springs, copper tubes and fittings, showerheads, aerators, spray assemblies, articles of zinc, wrenches and tools, and valves (duty rate range: free–9.0%). The application indicates that Delta would also assemble retail display cabinets with the following

inputs: parts of display cabinets, faucets, and parts of faucets (duty rate range: free–4.0%) for domestic distribution and export. Foreign-origin finished products to be distributed from the facility include: mirrors, decorative glass vases, retail slatwalls, faucets and related parts, and wall lighting.

FTZ procedures could exempt Delta from customs duty payments on the foreign components used in export production. The company would be exempt from duty payments on foreign-origin finished products that would be exported from the subzone. On domestic shipments, Delta would be able to elect the duty rates that apply to finished faucets (4.0%) and retail display cabinets (duty free) for the foreign inputs noted above. Subzone status would further allow Delta to realize logistical benefits through the use of weekly customs entry procedures. Customs duties could possibly be deferred or reduced on foreign status production equipment. Delta would also be exempt from duty payments on any foreign-origin inputs that become scrap or waste during manufacturing. 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 August 16, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 30, 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 Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: June 7, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–14389 Filed 6–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 100413183–0188–01]

Manufacturing Extension Partnership (MEP) Availability of Funds for Projects To Develop Client Engagement or Business Models and Deployment Strategies That Integrate Two or More of the MEP Strategic Growth Areas

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The objective of National Institute of Standards and Technology's Manufacturing Extension Partnership (NIST MEP) program is to enhance productivity, technological performance, and strengthen the global competitiveness of small- and medium-sized U.S. based manufacturing firms. NIST MEP invites proposals from eligible organizations for projects to develop client engagement or business models and deployment strategies that integrate two or more of the MEP Strategic Growth Areas. The projects should further demonstrate in its proposed client engagement or business model, the benefit of this integration and how the approach can expand service capability and capacity of the MEP system. The five MEP Strategic Growth Areas are: supply chain, sustainability, technology acceleration, workforce and continuous improvement. Proposals should include a project plan, a client engagement or business model and deployment strategy for the project, and an approach for leveraging existing tools, resources and partnerships.

DATES: All applications must be received or postmarked no later than 5 p.m. Eastern Time on July 15, 2010. Late proposals will not be reviewed. NIST MEP will hold a free webinar information session for organizations considering applying to this opportunity on June 22, 2010 at 2 p.m. Eastern Daylight Saving Time.

ADDRESSES: Hard copy submissions should be sent to: National Institute of Standards and Technology, Manufacturing Extension Partnership, c/o Diane Henderson, 100 Bureau Drive, Stop 4800, Gaithersburg, MD 20899–4800. Electronic submissions should be uploaded to *http://www.Grants.gov.*

Information Sessions: NIST MEP will hold an information session for organizations considering applying to this opportunity. The information session will be in the form of a webinar to be held on the date stated in the date section of this **Federal Register** Notice (7 days following the posting of the announcement). Registration information will be posted on the NIST MEP public Web site *http://www.nist.gov/mep.*

FOR FURTHER INFORMATION CONTACT: A paper copy of the **Federal Register** Notice (FRN) may be obtained by calling (301) 975–6328. Administrative, budget, cost-sharing, and eligibility questions should be addressed to Diane Henderson at Tel: (301) 975–5105; E-mail: *diane.henderson@nist.gov;* Fax: (301) 963–6556. Project evaluation criteria and other programmatic questions should be addressed to Alex Folk at Tel: (301) 975–8089; E-mail: *alex.folk@nist.gov;* Fax: (301) 963–6556. Grants Administration questions should be addressed to: Grants and Agreements Management Division; National Institute of Standards and Technology; 100 Bureau Drive, Stop 1650; Gaithersburg, MD 20899–1650; Tel: (301) 975–6328. For assistance with using Grants.gov contact *support@grants.gov* or call 800–518–4726. All questions and responses will be posted on the MEP Web site, *http://www.nist.gov/mep.*

SUPPLEMENTARY INFORMATION:

Electronic access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) announcement available at *http://www.grants.gov* for complete information about this program, including all program requirements and instructions for applying by paper or electronically.

Authority: 15 U.S.C. 272(b)(1) and (c)(3), and 278*l*, as implemented in 15 CFR Section 292.2.

Catalog of Federal Domestic Assistance Name and Number: Manufacturing Extension Partnership—11.611.

Information Session: NIST MEP will hold a free information session for organizations considering applying to this opportunity. The information session will be in the form of a free webinar to be held on the date specified in the **DATES** section above at 2 p.m. Eastern Daylight Saving Time. Organizations wishing to participate in the webinar must register at the NIST

MEP public Web site *http://www.nist.gov/mep.*

Program Description: The objective of NIST MEP program is to increase productivity, enhance technological performance, and strengthen the global competitiveness of small- and medium-sized U.S. based manufacturing firms. The National Institute of Standards and Technology invites proposals from eligible organizations for projects to develop client engagement or business models and deployment strategies that integrate two or more of the MEP Strategic Growth Areas. The project should further demonstrate in its proposed client engagement or business model, the benefit of this integration and how the approach can expand service capability and capacity of the MEP system. The five MEP Strategic Growth Areas are: supply chain, sustainability, technology acceleration, workforce and continuous improvement. Proposals should include a plan, a client engagement or business model and deployment strategy for the project, and an approach for leveraging existing tools, resources and partnerships. More information on the MEP Strategic Growth Areas are found in NIST's MEP Next Generation Strategy, which can be found at *http://www.nist.gov/mep.*

Project specific performance measurement and management approaches, including key milestones, are crucial to the evaluation of these projects. NIST is seeking projects that present novel and new approaches to delivering and communicating performance measurement and evaluation. For example, those projects that incorporate the following factors will be considered competitive: internal performance measurement for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance. This could include approaches to gathering outcome information, comparisons of outcomes achieved by project clients or other approaches to performance measurement and evaluation.

The MEP program places high importance on ensuring that projects be well aligned with the work of MEP service providers in order to maximize the potential and impact of existing resources. Additional background information on MEP service providers is provided at *http://www.nist.gov/mep.*

NIST does not prescribe any particular management or operational structure of the project, but projects should be based upon approaches or structures used by technical assistance provider that have demonstrated success. Projects should include plans for integration into the MEP system and linkages to appropriate resources.

This program does not intend for awardees to perform research and development including new tool development.

Funding Availability: MEP anticipates awarding up to $12,000,000 in fiscal year 2010 through multiple solicitations. The total amount funded under this solicitation will vary depending on the proposals received by MEP. The total amount awarded will not exceed $12,000,000. Projects initiated under this solicitation may be carried out over a period of up to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. Continuation of an award or extensions of the period of performance is at the total discretion of the DOC. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress and the availability of funds. Projects are expected to start within 30 days of award notice.

Cost Share Requirements: A non-Federal cost share contribution from the applicant is required. At a minimum, the applicant must provide 50% of the cost share toward the allowable expenses for the performance period. Cost share requirements must be met on an annual basis.

The applicant's share of the eligible expenses may include cash and third party in-kind contributions. However, at least 50% of the applicant's total cost share (cash plus in-kind) must be in cash. Applicants are encouraged to propose more than the minimum cost share. The source and detailed rationale of the cost share, both cash and in-kind, must be documented in the budget submitted with the proposal and will be considered as part of the evaluation review described below.

Eligibility: All nonprofit organizations including universities, community colleges, State governments, State technology programs and independent nonprofit organizations including existing MEP manufacturing extension centers are eligible. Organizations may submit multiple proposals under this solicitation for unique projects. A partnership with an existing MEP manufacturing extension center or centers is strongly encouraged.

Application Requirements: Applications must be submitted in accordance with the requirements set forth in the corresponding FFO announcement.

Evaluation Criteria: All qualified proposals will be evaluated based on the applicant's ability to align and integrate the proposal's deliverables to NIST MEP's Next Generation Strategy: Continuous Improvement, Technology Acceleration, Supplier Development, Sustainability and Workforce. The NIST MEP Next Generation Strategy can be found at *http://www.nist.gov/mep.*

Proposals will be evaluated and rated on the basis of the following criteria listed in descending order of importance:

(1) *Demonstration that the proposed project will meet the training needs of technical assistance providers and manufacturers in the target population.* The target population must be clearly defined and the proposal must demonstrate that it understands the population's training needs within the proposed project area. The proposal should show that the efforts being proposed meet the needs identified. Factors that may be considered include: A clear definition of the target population, size and demographic distribution; demonstrated understanding of the target population's training needs; and appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

(2) *Development/deployment methodology and use of appropriate technology and information sources.* The proposal must describe the technical plan for the development or deployment of the training, including the project activities to be used in the training development/deployment and the sources of technology and/or information which will be used to create or deploy the training activity. Sources may include those internal to the proposer or from other organizations. Factors that may be considered include: Adequacy of the proposed technical plan; strength of core competency in the proposed area of activity; and demonstrated access to relevant technical or information sources external to the organization.

(3) *Delivery and implementation mechanisms.* The proposal must set forth clearly defined, effective mechanisms for delivery and/or implementation of proposed services to the target population. The proposal also must demonstrate that training activities will be integrated into and will be of service to the NIST Manufacturing Extension Centers. Factors that may be considered include: Ease of access to the training activity especially for MEP extension centers; methodology for

disseminating or promoting involvement in the training especially within the MEP system; and demonstrated interest in the training activity especially by MEP extension centers.

(4) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations which are developing or have expertise with similar training. If no such organizations exist, the proposal should show that this is the case. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant to the proposed project; adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities; and that the proposed activity does not duplicate existing services or resources.

(5) *Program evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed training activity and for ensuring continuous improvement of the training. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance.

(6) *Management and organizational experience and plans.* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; qualifications of the project team and its leadership to conduct the proposed activity; soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; and appropriateness of the organizational approach for carrying out the proposed activity.

(7) *Financial plan.* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the cooperative agreement has expired. Factors that may be considered include: Reasonableness of the budget, both in income and expenses; strength of commitment and amount of the proposer's cost share, if any; effectiveness of management plans for control of budget; appropriateness of matching contributions; and plan for maintaining the program after the cooperative agreement has expired.

Proposal Review and Selection Process

The proposal evaluation and selection process will consist of three principal phases: Proposal qualifications; proposal review and selection of finalists; and award determination per 15 CFR 292.5 as follows:

a. Proposal Qualification

All proposals will be reviewed by NIST to ensure compliance with application requirements. Proposals that satisfy these requirements will be designated as complete proposals; all others will be disqualified.

b. Proposal Review and Selection of Finalists

NIST will appoint an evaluation panel to review and evaluate all complete proposals in accordance with the evaluation criteria set forth in this notice and the accompanying FFO announcement. The evaluation panel will consist of NIST employees and in some cases other Federal employees or non-Federal experts who sign non-disclosure agreements. If non-Federal experts are used, all reviewers will provide individual scores and no consensus advice will be given by the panel. A site visit may be required to make a full evaluation of a proposal. From the qualified proposals, a group of finalists will be numerically ranked and recommended for award based on this review.

NIST may enter into negotiations with the finalists concerning any aspect of their proposal.

c. Award Determination

The Director of the NIST, or her/his designee (Director of the NIST MEP Program), shall select awardees based on the scores provided by the evaluation panel, geographic distribution, and the availability of funds. All three factors will be considered in making an award. Upon the final award decision, NIST will notify applicants of the results of the grant competition.

The Director of the NIST MEP Program shall make funding recommendations to NIST Grants Officer based on the rank order of applicants and the selection factors described above. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. As a result of the selection process, NIST may fund all, some, or parts of the eligible applications submitted, or none at all. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696), are applicable to this notice. Please refer to *http://www.gpoaccess.gov/fr/.*

Dun and Bradstreet Data Universal Numbering System: On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit Employer/Taxpayer Identification Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS number MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS number are consistent with the information on the CCR and ASAP.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. MEP program-specific application requirements have been approved by OMB under Control Number 0693–0056.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be

subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Funding Availability and Limitation of Liability: The funding periods and funding amounts referenced in this notice and request for proposals are subject to the availability of funds, as well as to Department of Commerce and NIST priorities at the time of award. The Department of Commerce and NIST will not be held responsible for proposal preparation costs. Publication of this notice does not obligate the Department of Commerce or NIST to award any specific grant or cooperative agreement or to obligate all or any part of available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: June 10, 2010.

David M. Robinson,

Chief Financial Officer.

[FR Doc. 2010–14394 Filed 6–14–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 1006080242–0242–01]

Manufacturing Extension Partnership (MEP) Availability of Funds for Projects To Develop and Demonstrate Integrated Tools, Training, and Methodologies for Growth Transformation and To Share With the MEP Program and Information Session for Potential Applicants

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites proposals from qualified organizations for projects that address new and emerging competitive needs of manufacturers in areas consistent with the NIST MEP Program's five Strategic Growth Areas (Supply Chain, Sustainability, Technology Acceleration, Workforce and Continuous Improvement). Funded projects will improve the competitiveness of industries in the applicant's region, and contribute to the long-term economic stability of the region. Please see the NIST MEP Web site, *http://www.nist.gov/mep* for details on these strategies. Funded projects will use innovative or collaborative approaches to develop and demonstrate integrated tools, training and methodologies for growth transformation that meet the Strategic Growth Area needs and to share those approaches with the MEP National System. NIST MEP will hold a webinar information session for organizations considering applying to this opportunity.

DATES: All applications must be received or postmarked no later than 5:00 p.m. Eastern Daylight Saving Time on July 15, 2010. Late proposals will not be reviewed. NIST MEP will hold a free webinar information session for organizations considering applying to this opportunity on June 22, 2010 at 2 p.m. Eastern Daylight Saving Time.

Information Sessions: NIST MEP will hold an information session for organizations considering applying to this opportunity. The information session will be in the form of a webinar to be held on the date stated in the **DATES** section of this **Federal Register** Notice (7 days following the posting of the announcement). Registration information will be posted on the NIST MEP public Web site *http://www.nist.gov/mep.*

ADDRESSES: Hard copy submissions should be sent to: National Institute of Standards and Technology, Manufacturing Extension Partnership, c/o Diane Henderson, 100 Bureau Drive, Stop 4800, Gaithersburg, MD 20899–4800. Electronic submissions should be uploaded to *http://www.Grants.gov.*

FOR FURTHER INFORMATION CONTACT: A paper copy of the Federal Register Notice (FRN) may be obtained by calling (301) 975–6328. Administrative, budget, cost-sharing, and eligibility questions should be addressed to Diane Henderson at Tel: (301) 975–5105; E-mail: *diane.henderson@nist.gov;* Fax: (301) 963–6556. Project evaluation criteria and other programmatic questions should be addressed to Alex Folk at Tel: (301) 975–8089; E-mail: *alex.folk@nist.gov;* Fax: (301) 963–6556. Grants Administration questions should be addressed to: Grants and Agreements Management Division, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1650, Gaithersburg, MD 20899–1650; Tel: (301) 975–6328. For assistance with using Grants.gov contact *support@grants.gov* or call 800–518–4726. All questions and responses will be posted on the MEP Web site, *http://www.nist.gov/mep.*

SUPPLEMENTARY INFORMATION:

Electronic access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) announcement available at *http://www.grants.gov* for complete information about this program, including all program requirements and instructions for applying by paper or electronically. The FFO may be found by searching under the Catalog of Federal Domestic Assistance Name and Number provided below.

Authority: 15 U.S.C. 278(k)(f).

(Catalog of Federal Domestic Assistance Name and Number: Manufacturing Extension Partnership—11.611)

Information Session: NIST MEP will hold a free information session for organizations considering applying to this opportunity. The information session will be in the form of a free webinar to be held on the date specified in the **DATES** section above at 2 p.m. Eastern Daylight Saving Time. Organizations wishing to participate in the webinar must register at the NIST MEP public Web site *http://www.nist.gov/mep.*

Program Description: The objective of NIST MEP program is to increase productivity, enhance technological performance, and strengthen the global

competitiveness of small- and medium-sized U.S. based manufacturing firms. In accordance with 15 U.S.C. 278k(f), the NIST Director, in consultation with the Director of the MEP Centers Program, the MEP Advisory Board, and small and medium-sized manufacturers, has identified five Strategic Growth Areas that address new or emerging manufacturing problems, which are addressed in this competition. The five Strategic Growth Areas upon which the competition will focus are: Supply Chain, Sustainability, Technology Acceleration, Workforce and Continuous Improvement. NIST invites proposals from qualified organizations for funding projects that address the five Strategic Growth Areas. Please see the NIST MEP Web site, *http://www.nist.gov/mep* for details on these Strategic Growth Areas. Funded projects will improve the competitiveness of industries in the applicant's region, and contribute to the long-term economic stability of the region. Competitive projects will use innovative or collaborative approaches to develop and demonstrate integrated tools, training and methodologies for growth transformation that meet the Strategic Growth Area needs and to share those approaches with the MEP National System.

All organizations meeting eligibility requirements provided herein are invited to submit proposals.

It is important that these awards be well aligned with the MEP national system of extension service providers in order to maximize the potential and impact of existing resources available to manufacturers through the MEP Program. Further information regarding this MEP Program is provided in the information packet, which can be obtained at *http://www.grants.gov,* with additional background information provided at *http://www.nist.gov/mep.*

The proposal should include plans for integration into the MEP national system and linkages to appropriate national resources.

Funding Availability: The total amount awarded under this solicitation will not exceed $3,500,000.

Projects initiated under this category may be carried out over a period of up to three years. If NIST selects a proposal for a multi-year award, funding will generally be provided for only the first year of the program. Continuation of an award or extensions of the period of performance is at the total discretion of the NIST. If NIST selects an application for funding, NIST has no obligation to provide any additional future funding in connection with that award. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress and the availability of funds. Projects are expected to start within 30 days of award notice.

Cost Share Requirements: Recipients of awards under this solicitation are not required to provide cost share.

Eligibility: Eligible applicants include existing MEP extension centers or consortia of centers. A consortium of MEP centers is strongly encouraged to adequately demonstrate the leveraging of resources and competencies tied to the strategic areas.

Application Requirements: Applications must be submitted in accordance with the requirements set forth in the corresponding FFO announcement.

Evaluation Criteria: All qualified proposals will be evaluated based on the following seven criteria, which are assigned equal weighting.

(1) *Demonstration that the proposed project outputs and objectives are aligned with and will meet the technical assistance needs of technical assistance providers and manufacturers.* The proposal must clearly articulate the needs to be addressed and solutions to be demonstrated within the proposed scope. The proposal should show that the efforts being proposed meet the needs identified and clearly defined deliverables.

Factors that may be considered include: a clear articulation of the tools, training and methodologies to be developed; an articulation of the five MEP Strategic Growth Areas (Supply Chain, Sustainability, Technology Acceleration, Workforce and Continuous Improvement); and demonstration of what and how the proposed integration of the areas will be achieved.

(2) *Development methodology and leverage of existing resources.* The proposal must describe the technical plan for the development of the tool(s) or resource(s), including a clearly articulated project plan for development, training and demonstration of the products or deliverables. Sources of expertise to be used should be clearly delineated and may include sources internal to the proposer or from other organizations. Factors that may be considered include: adequacy of the proposed technical plan; strength of core competency in the proposed area of activity; and demonstrated access to relevant subject matter expertise external to the organization.

(3) *Degree of integration with the manufacturing extension partnership.* The proposal must demonstrate that the tool or resource will be integrated into and will be of service to the NIST Manufacturing Extension Centers. Factors that may be considered include: ability to access the tool or resource especially by MEP extension centers; adequacy of methodology for disseminating or promoting use of the tool or technique especially within the MEP system; and demonstrated interest in using the tool or technique especially by MEP extension centers. A plan that reflects not only the development activities but the specific actions needed to educate, train and deploy within the MEP system is critical.

(4) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations including other MEP extension centers which are developing or have expertise on similar tools, techniques, practices, or analyses. If no such organizations exist, the proposal should show that this is the case. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication. Factors that may be considered include: demonstrated understanding of existing organizations and resources relevant to the proposed project; adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities; and demonstration that the proposed activity does not duplicate existing services or resources.

(5) *Program evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed tool(s), or technique(s) or methodologies and for ensuring continuous improvement of each. Factors that may be considered include: Thoroughness of evaluation plans, (including internal evaluation for management control); use of adequate case studies for the use of external evaluation for assessing outcomes of the activity; adoption by MEP centers of products developed; and adequate "customer satisfaction" measures of performance.

(6) *Management experience and plans.* Applicants should specify plans for proper project staffing, and management of the project. Factors that may be considered include: appropriateness and authority of the organization to conduct the proposed activities; qualifications of the project team and the project team's leadership to conduct the proposed activity; and appropriateness of the organizational approach for carrying out the proposed project.

(7) *Financial plan.* Applicants should show the relevance and cost effectiveness of the financial plan for

meeting the objectives of the project; and the firmness and level of the applicant's total financial capacity for the project. Factors that may be considered include: Reasonableness of the budget; strength of commitment; effectiveness of management plans for control of budget; and demonstration of past successful experience on similar projects.

Selection Factors

The Selecting Official, who is the Director of the NIST MEP Program, anticipates recommending proposals for funding in rank order of scores based on the criteria listed above unless a proposal is justified to be awarded out of rank order based on one or more of the following selection factors:

1. Availability of Federal funds.
2. Appropriate consideration for coverage of all five MEP Strategic Growth Areas.
3. Whether this project duplicates other projects funded by Department of Commerce or other Federal agencies.

Proposal Review and Selection Process

a. Proposal Qualification

All proposals will be reviewed by NIST to assure that they are complete and responsive.

All complete and responsive proposals will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

b. Proposal Review and Selection of Finalists

NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation criteria set forth in this part. The evaluation panel will consist of NIST employees, and in some cases, other federal employees or non-federal experts who sign non-disclosure agreements. If the review panel is composed of non-federal employees, the reviewers will provide individual scores, and no consensus advice will be given. A site visit may be required to fully evaluate a proposal. If NIST determines that site visits are necessary, the site visits would take place after the review panel conducts its initial review. The Evaluation Panel and Chair will conduct site visits for all proposals that meet a minimum threshold score to be determined by NIST. All proposals will be numerically ranked and then submitted to the Selecting Official, the Director of the NIST MEP Program for selection based on the ranking, site visit comments if conducted, and the selection factors listed above.

NIST may enter into negotiations with the finalists concerning any aspect of their proposal.

c. Award Determination

The Selecting Official shall select awardees based on total evaluation scores/rank and the selection factors provided above and make funding recommendations to the NIST Grants Officer. Upon the final award decision, a notification will be made to each of the proposing organizations.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. As a result of the selection process, NIST may fund all, some, or parts of the eligible applications submitted, or none at all. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696), are applicable to this notice. Please refer to *http://www.gpoaccess.gov/fr/.*

Dun and Bradstreet Data Universal Numbering System: On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit Employer/Taxpayer Identification Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS number MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS number are consistent with the information on the CCR and ASAP.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. MEP program-specific application requirements have been approved by OMB under Control Number 0693–0056.

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

Funding Availability and Limitation of Liability: The funding periods and funding amounts referenced in this notice and request for proposals are subject to the availability of funds, as well as to Department of Commerce and NIST priorities at the time of award. The Department of Commerce and NIST will not be held responsible for proposal preparation costs. Publication of this notice does not obligate the Department of Commerce or NIST to award any specific grant or cooperative agreement or to obligate all or any part of available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: June 10, 2010.

David M. Robinson,

Chief Financial Officer.

[FR Doc. 2010–14393 Filed 6–14–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–813]

Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: At the request of interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Malaysia. The review covers one manufacturer/exporter. The period of review is August 1, 2008, through July 31, 2009. We have preliminarily determined that sales have been made at prices below normal value by Euro Plastics Malaysia Sdn. Bhd. We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument a statement of the issue and a brief summary of the argument.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0180 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, we published in the **Federal Register** the antidumping duty order on PRCBs from Malaysia. *See Antidumping Duty Order: Polyethylene Retail Carrier Bags From Malaysia,* 69 FR 48203 (August 9, 2004). On August 3, 2009, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on PRCBs from Malaysia. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 38397 (August 3, 2009). Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners), and Euro Plastics Malaysia Sdn. Bhd. and its affiliated trading company, Eplastics Procurement Center Sdn. Bhd. (collectively, Euro Plastics), requested an administrative review of the antidumping duty order on PRCBs from Malaysia with respect to Euro Plastics. On September 22, 2009, in accordance with 19 CFR 351.221(c)(1)(i), we initiated the administrative review of the antidumping duty order on PRCBs from Malaysia for the period of review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 48224 (September 22, 2009).

Although Euro Plastics withdrew its request for the Department to conduct the administrative review on October 30, 2009, the request by the petitioners for the Department to conduct an administrative review of Euro Plastics remains in effect.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, we have exercised our discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. On May 7, 2010, we extended the due date for the preliminary results of this administrative review to June 9, 2010. *See Polyethylene Retail Carrier Bags From Malaysia: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 25207 (May 7, 2010).

Period of Review

The period of review is August 1, 2008, through July 31, 2009.

Scope of the Order

The merchandise subject to the antidumping duty order is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches (15.24 cm) but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trashcan liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Use of Adverse Facts Available

For the reasons discussed below, we determine that the use of adverse facts available is appropriate for the preliminary results with respect to Euro Plastics.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use facts otherwise available in reaching the applicable determination.

On September 28, 2009, we sent our questionnaire to Euro Plastics. On October 30, 2009, Euro Plastics withdrew the request for the Department to conduct the 2008–2009 administrative review because, as explained in the submission, Euro

Plastics had been placed into receivership and no longer existed as operating entities. Euro Plastics stated that, because the records and information were in the custody of the receiver, Euro Plastics could not provide the information necessary to participate in this review.

On April 27, 2010, we transmitted a supplemental questionnaire to Euro Plastics via FedEx. We requested that Euro Plastics clarify its operating status further, identify its receiver, and provide a company official's certification statement for the October 30, 2009, submission. The due date for the response to our supplemental questionnaire was May 5, 2010. The April 27, 2010, supplemental questionnaire stated that, if Euro Plastics was unable to respond by the deadline, it must formally request an extension of time in writing and provide an explanation for the request. Notwithstanding our efforts to assist FedEx in the delivery of this questionnaire (*see* June 9, 2010, Memorandum to the File entitled "Delivery of Supplemental Questionnaire"), Euro Plastics received the questionnaire on May 6, 2010. The Department never received a response or a request for an extension of time from Euro Plastics.

Because Euro Plastics did not respond to either the Department's original or supplemental questionnaire, we are unable to calculate a dumping margin for Euro Plastics. Accordingly, pursuant to sections 776(a)(2)(A) and (B) of the Act, we must rely entirely on facts available.

B. Application of Adverse Inferences for Facts Available

In selecting among the facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103–316, Vol. 1, 103d Cong. (1994), reprinted in 1994 U.S.C.C.A.N. 4040 (SAA), establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. The SAA also instructs the Department to consider, in employing adverse inferences, "the extent to which a party may benefit from its own lack of cooperation." *Id.* Moreover, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27340 (May 19, 1997).

We find that, by failing completely to respond to our questionnaire, Euro Plastics withheld requested information and thus failed to cooperate to the best of its ability. While the Department may consider a company's inability to respond to questionnaires due to the liquidation of its assets, the Department must be satisfied that the record adequately demonstrates the company's inability to obtain the requested data. Thus, the Department has also found that a party has failed to act to the best of its ability where a party continues to produce subject merchandise but fails to provide requisite information to the Department. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Germany,* 63 FR 8953 (February 23, 1998). Because Euro Plastics failed to provide further information on its operating status, receiver, and accessibility of its books and records, the Department finds that Euro Plastics failed to act to the best of its ability and, thus, an adverse inference is warranted in selecting from facts otherwise available. By doing so, we ensure that this company will not obtain a more favorable rate by failing to cooperate than had it cooperated fully.

C. Selection of Information Used as Facts Available

Where the Department applies an adverse facts-available rate because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See* also 19 CFR 351.308(c) and the SAA at 870.

For the preliminary results, we have selected 101.74 percent as the adverse facts-available dumping margin for Euro Plastics. The adverse facts-available rate of 101.74 percent was the highest product-specific margin presented by the petitioners in the less-than-fair-value investigation of PRCBs from Malaysia. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Malaysia,* 69 FR 3557 (January 26, 2004). *See also Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia,* 69 FR 34128 (June 18, 2004) (*Final Determination*). We corroborated the information that we used to calculate the 101.74 percent in the less-than-fair-value investigation. *See Final Determination,* 69 FR at 34129. We have selected this rate because we do not have any additional information about this company in this review. Moreover, we believe this rate is sufficiently high to ensure that Euro Plastics does not obtain a more favorable result by failing to cooperate.

D. Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information as facts available, it must corroborate, to the extent practicable, that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics, and customs data as well as information obtained from interested parties during the particular proceeding. *Id.*

To corroborate secondary information, to the extent practicable, the Department normally examines the reliability and relevance of the information to be used. *See, e.g., Ball Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Rescind Reviews in Part,* 73 FR 25654, 25657 (May 7, 2008), unchanged in *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008). Unlike other types of information such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for antidumping duty margins are administrative determinations.

Thus, with respect to an administrative review, if the Department chooses to use as facts available a petition rate which was corroborated in the less-than-fair-value investigation and no information has been presented in the current review that calls into the question of reliability of this information, the information is reliable. *See, e.g., Certain Tissue Paper from the People's Republic of China: Preliminary Results and Preliminary Rescission, In*

Part, of Antidumping Duty Administrative Review, 72 FR 17477, 17480–81 (April 9, 2007), unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review,* 72 FR 58642, 58644–45 (October 16, 2007). Because our adverse facts-available rate of 101.74 percent in this review was corroborated in the *Final Determination* and no information in the current review calls into the question of reliability of this rate, we find that the adverse facts-available rate of 101.74 percent is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited or judicially invalidated. *See D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (CAFC 1997).

In this review, there are no circumstances present to indicate that the selected margin is not appropriate as adverse facts available. Moreover, there is no information on the record of this review that demonstrates that 101.74 percent is not an appropriate adverse facts-available rate for Euro Plastics. We examined the transaction-specific margins we determined for Euro Plastics in the administrative review of the antidumping duty order on PRCBs from Malaysia covering the period August 1, 2007, through July 31, 2008, and found a number of transaction-specific margins in our calculations which were higher than the adverse facts-available rate of 101.74 percent. *See* the June 9, 2010, Memorandum to the File entitled "Polyethylene Retail Carrier Bags From Malaysia: Placement on Record" for details which contain Euro Plastics's business-proprietary information. With the information at our disposal for the corroboration of this adverse facts-available rate, we find that the rate of 101.74 percent is corroborated to the greatest extent practicable in accordance with section 776(c) of the Act.

Because we are making an adverse inference with regard to Euro Plastics based on the most recent information at our disposal, we preliminarily find that the rate of 101.74 percent is a reasonable indication of the margins that Euro Plastics would have received concerning its U.S. transactions had it responded to our request for information. We preliminarily find that use of the rate of 101.74 percent as adverse facts available is sufficiently high to ensure that Euro Plastics does not benefit from failing to cooperate in our review by refusing to respond to our questionnaire.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the weighted-average dumping margin for PRCBs from Malaysia produced and/or exported by Euro Plastics during the period August 1, 2008, through July 31, 2009, is 101.74 percent.

Disclosure and Public Comment

We will disclose the memoranda cited above and the draft liquidation instructions to parties to this review within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See 1*9 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed.

Issues raised in the hearing will be limited to those raised in the case briefs. *See* 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(d)(1) and 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. *See* 19 CFR 351.309(c)(2).

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs, not later than 120 days after the date of publication of this notice. *See* section 751(a)(3)(A) of the Act.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are relying on total adverse facts available to establish the dumping margin for Euro Plastics, we intend to instruct CBP to apply a dumping margin of 101.74 percent to PRCBs from Malaysia that were produced and/or exported by Euro Plastics and entered, or withdrawn from warehouse, for consumption during the period of review.

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

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PRCBs from Malaysia entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for Euro Plastics will be the rate established in the final results of this review; (2) for other previously reviewed or investigated companies, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 84.94 percent, the all-others rate established in the *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia,* 69 FR 34128 (June 18, 2004). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of

their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: June 9, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14382 Filed 6–14–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–834]

Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from Quimica Amtex S.A. de C.V. (Amtex), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Mexico. The review covers exports of the subject merchandise to the United States produced and exported by Amtex; the period of review (POR) is July 1, 2008, through June 30, 2009.

We preliminarily find that Amtex has made sales at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on differences between the export price (EP) or constructed export price (CEP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues, (2) a brief summary of the arguments, and (3) a table of authorities.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CMC from Mexico on July 11, 2005. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden,* 70 FR 39734 (July 11, 2005). On July 1, 2009, the Department published the notice of opportunity to request an administrative review of CMC from Mexico for the period of July 1, 2008, through June 30, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 31406 (July 1, 2009). On July 22, 2009, respondent Amtex requested an administrative review. On August 25, 2009, the Department published in the *Federal Register* a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 42873 (August 25, 2009).

On September 3, 2009, the Department issued its standard antidumping duty questionnaire to Amtex. Amtex submitted its response to section A of the Department's questionnaire on October 9, 2009 (Amtex Section A Response). Amtex submitted its response to sections B and C of the Department's questionnaire on October 29, 2009 (Amtex Sections B and C Response).

Period of Review

The POR is July 1, 2008, through June 30, 2009.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Date of Sale

The Department's regulations state that it will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). However, if the Department is satisfied that "a different date * * * better reflects the date on which the exporter or producer establishes the material terms of sale," the Department may choose a different date. *Id.* Amtex has reported the definitive invoice (as differentiated from *pro forma* invoice) as the invoice date. *See* Amtex Section A Response at A20–A21.

With regard to the invoice date, Amtex bills some of its sales via "delayed invoices" in both the home and U.S. markets. *Id.* In these instances, delivery is made to the customer and a *pro forma* invoice is issued, but the subject merchandise remains in storage and continues to be the property of Amtex until withdrawn for consumption by the customer (usually at the end of a regular, monthly billing cycle), at which time a definitive invoice is issued. *Id.* In Amtex's normal books and records, it is this definitive invoice date (not the *pro forma* invoice date) that is recorded as the date of sale. *Id.* Therefore, the Department preliminarily determines that the definitive invoice date is the date of sale provided that the definite invoice is issued on or before the shipment date; and that the shipment date is the date of sale where the invoice is issued after the shipment date. *See* Purified Carboxymethylcellulose from Mexico: Preliminary Results Analysis Memorandum for Quimica Amtex, S.A. de C.V., dated June 8, 2010 (Analysis Memorandum), for further discussion of date of sale. A public version of this memorandum is on file in the Department's Central Records Unit (CRU) located in Room 1117 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Fair Value Comparisons

To determine whether sales of CMC in the United States were made at less than NV, we compared U.S. price to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Tariff Act), we calculated monthly weighted-average NVs and compared these to individual U.S. transactions. Because we determined Amtex made both EP and CEP sales during the POR, we used both EP and CEP as the basis for U.S. price in our comparisons.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by Amtex covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on five characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of priority): (1) Grade; (2) viscosity; (3) degree of substitution; (4) particle size; and (5) solution gel characteristics. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the Department's September 3, 2009, questionnaire. Because there were contemporaneous sales of identical or similar merchandise in the home market suitable for comparison to all U.S. sales, we did not compare any U.S. sales to constructed value (CV). *See* the CV section below.

Export Price (EP)

Section 772(a) of the Tariff Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Tariff Act. In accordance with section 772(a) of the Tariff Act, we used EP for a number of Amtex's U.S. sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated.

We based EP on the packed, delivered duty paid, cost and freight (C&F) or free on board (FOB) prices to unaffiliated customers in the United States. Amtex reported no price or billing adjustments, and no discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, which included, where appropriate, foreign inland freight from the mill to the U.S. border, inland freight from the border to the customer or warehouse, and U.S. brokerage and handling. We made adjustment for direct expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Tariff Act.

Constructed Export Price (CEP)

In accordance with section 772(b) of the Tariff Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d) of the Tariff Act. In accordance with section 772(b) of the Tariff Act, we used CEP for a number of Amtex's U.S. sales because Amtex sold merchandise to its affiliate in the United States, Amtex Chemicals LLC (Amtex Chemicals or ACUS), which, in turn, sold subject merchandise to unaffiliated U.S. customers. *See, e.g.,* Amtex's Section A Response at A2, A11–A12, and Exhibit A–4. We preliminarily find these U.S. sales are properly classified as CEP sales because they occurred in the United States and were made through Amtex's U.S. affiliate, Amtex Chemicals, to unaffiliated U.S. customers.

We based CEP on the packed, delivered duty paid or FOB warehouse prices to unaffiliated purchasers in the United States. Amtex reported no price or billing adjustments, and no discounts or rebates. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, which included, where appropriate, foreign inland freight to the border, foreign brokerage and handling, customs duties, U.S. brokerage, U.S. inland freight, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs), inventory carrying costs, and indirect selling expenses. We made an adjustment for CEP profit as set forth in the Analysis Memorandum. *See* Analysis Memorandum at 11.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Tariff Act. Because Amtex's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. *See* section 773(a)(1)(B) of the Tariff Act. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. Amtex reported no billing adjustments, discounts or rebates in the home market. We made deductions for movement expenses including, where appropriate, foreign inland freight and insurance, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.,* DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

C. Constructed Value (CV)

In accordance with section 773(a)(4) of the Tariff Act, we base NV on CV if we are unable to find a contemporaneous comparison market match of identical or similar merchandise for the U.S. sale. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, selling, general and administrative (SG&A) expenses, financial expenses, profit, and U.S. packing costs. We found contemporaneous market matches for all

the U.S. sales. Therefore, for these preliminary results, it was not necessary to base NV on CV. For a more detailed explanation of our CV analysis, which relies upon business proprietary information, please *see* Analysis Memorandum at 10–13.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. *See* section 19 CFR 351.412(c)(1)(ii).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See, e.g., Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 17406, 17410 (April 6, 2005), results unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil,* 70 FR 58683 (October 7, 2005); *see also Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada,* 67 FR 8781 (February 26, 2002) and accompanying Issues and Decisions Memorandum at Comment 8. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d)(3) of the Tariff Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–15 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 65 FR 30068 (May 10, 2000) and accompanying Issues and Decisions Memorandum at Comment 6.

Amtex reported it sold CMC to end-users and distributors in the home market and to end-users and distributors in the United States. For the home market, Amtex identified two channels of distribution: end users (channel 1) and distributors (channel 2). *See* Amtex's Section A Response at A13. Amtex claimed a single level of trade in the home market, stating that it performs essentially the same selling functions to either category of customer. *See* Amtex's Section A Response at A17–A18.

We obtained information from Amtex regarding the marketing stages involved in making its reported home market and U.S. sales. Amtex provided a table listing all selling activities it performs, and comparing the levels of trade among each channel of distribution in each market. *See* Amtex's Section A Response at Exhibit A–7. We reviewed Amtex's claims concerning the intensity to which all selling functions were performed for each home market channel of distribution and customer category. For virtually all selling functions, the selling activities of Amtex were identical in both channels, including sales forecasting, personnel training, sales promotion, direct sales personnel, technical assistance, warranty service, after-sales service and arranging delivery. *Id.* Amtex described the level of activity as independent of channel of distribution. *See* Amtex's Section A Response at A16.

While we find some differences in the selling functions performed between the home market end-user and distributor channels of distribution, such differences are minor in that they are not the principal selling functions but rather specific to a few customers and rarely performed. *See* Amtex's Section A Response at Exhibit A–7. Based on our analysis of all of Amtex's home market selling functions, we agree with Amtex's characterization of all its home market sales as being made at the same level of trade, the NV LOT.

In the U.S. market, Amtex reported a single level of trade for both EP and CEP sales through two channels of distribution (*i.e.,* end-users and distributors). *See* Amtex Section C Response at C16. We examined the record with respect to Amtex's EP sales and find that for all EP sales, Amtex performed such selling functions as sales forecasting, sales promotion, direct sales personnel, technical assistance, warranties, after-sales services and arranging delivery. *See* Amtex's Section A Response at Exhibit A–7. In terms of the number and intensity of selling functions performed on EP sales, these were indistinguishable between sales from Amtex to end users and to distributors. *Id.* Accordingly, we agree with Amtex and preliminarily determine that all EP sales were made at the same LOT.

We compared Amtex's EP level of trade to the single NV level of trade found in the home market. However, while we find differences in the levels of intensity performed for some of these functions between the home market NV level of trade and the EP level of trade, such differences are minor (specific to a few customers and rarely performed) and do not establish distinct levels of trade between the home market and the U.S. market. Based on our analysis of all of Amtex's home market and EP selling functions, we find these sales were made at the same level of trade.

For CEP sales, Amtex claims that the number and intensity of selling functions performed by Amtex in making its sales to Amtex Chemicals are lower than the number and intensity of selling functions Amtex performed for its EP sales, and further claims that CEP sales are at a less advanced stage than home market sales. *See* Amtex's Section A Response at A17 and Exhibit A–7. Amtex specifically states that Amtex "made no sales in the home market or other markets at the same level of trade as its CEP sales for the U.S." *See* Amtex's Section A Response at A17. However, we find that the CEP LOT is more advanced than the NV LOT. Amtex's Section C Response indicates that Amtex's CEP sales are at a more advanced marketing stage than are its home market sales. *See* Amtex Sections B and C Response at C49–50 and Exhibit B12.1. Amtex reports that many of the principal functions in both markets are carried out by a single employee in the Mexico office. Based on the allocation of that employee's time between CEP sales and other sales, it is evident that the intensity of activity for the principal functions is greater for CEP sales than other sales. *Id.; see also* Exhibit A–1. Accordingly, we preliminarily determine that the CEP LOT (that is, sales from Amtex to its U.S. affiliate) involves a much more advanced stage of

distribution than the NV LOT. *See* Analysis Memorandum at 4–7.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales prices, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the CEP LOT. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, because the CEP LOT involves a much more advanced stage of distribution than the NV LOT, it is not possible to make a CEP offset to NV in accordance with section 773(a)(7)(B) of the Tariff Act.

Currency Conversions

Amtex reported certain home market and U.S. sales prices and adjustments in both U.S. dollars and Mexican pesos. Therefore, we made peso-U.S. dollar currency conversions, where appropriate, based on the exchange rates in effect on the date of the sale, as certified by the Federal Reserve Board, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted-average dumping margin exists for the period July 1, 2008 through June 30, 2009:

Producer/exporter	Weighted-average margin (percentage)
Quimica Amtex, S.A. de C.V	1.42

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d)(1). Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting written comments must provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. Amtex has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. In accordance with 19 CFR 356.8(a), the Department intends to issue appropriate assessment instructions directly to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results that the company did not know were destined for the United States. In such instances we will instruct CBP to liquidate unreviewed entries at the "all others" rate if there is no rate for the intermediate company or companies involved in the transaction.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of CMC from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Amtex will be the rate established in the final results of review, unless that rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), in which case the cash deposit rate will be zero; (2) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate of 12.61 percent from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden,* 70 FR 39734 (July 11, 2005).

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(b)(4).

Dated: June 8, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14386 Filed 6–14–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Light–Walled Rectangular Pipe and Tube from Turkey; Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from Toscelik Profil ve Sac Endustrisi A.S., and Tosyali Dis Ticaret A.S., ("collectively, Toscelik") the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on light–walled rectangular pipe and tube from Turkey. Atlas Tube, Inc. and Searing Industries, Inc. are petitioners in this case. The review covers exports of the subject merchandise to the United States produced and exported by Toscelik. The period of review ("POR") is January 30, 2008, through April 30, 2009.

We preliminarily find that Toscelik did not make sales at less than normal value ("NV") during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") not to assess antidumping duties on entries made by Toscelik and to set the cash deposit rate for Toscelik to zero.

EFFECTIVE DATE: June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on light–walled rectangular ripe and tube from Turkey on May 30, 2008. *See Notice of Antidumping Duty Order: Light–Walled Rectangular Pipe and Tube from Turkey*, 73 FR 31065 (May 30, 2008). On May 1, 2009, the Department published the notice of opportunity to request an administrative review of light–walled rectangular pipe and tube from Turkey for the period January 30, 2008, through April 30, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 20278 (May 1, 2009).

On May 29, 2009, Toscelik requested an administrative review for this period. On June 24, 2009, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009). On June 25, 2009, Toscelik made an entry of appearance in the proceeding.

On July 21, 2009, Toscelik sent a letter to the Department requesting that the reporting period for home market sales be limited to the period May 1, 2008 to April 30, 2009. This is consistent with our past practice in other cases in which respondents request limited reporting period because they made sales of subject merchandise in only a small part of the POR. *See, e.g., Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006) (unchanged in Final Results, 71 FR 40694) and *Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406 (April 6, 2005) (unchanged in Final Results, 70 FR 58683). On July 31, 2009, the Department sent Toscelik a letter indicating our consent to limiting the reporting period for home market sales to the period of May 1, 2008 through June 30, 2009, based on the timing of its U.S. sales during the POR. Toscelik had requested that we limit the reporting period to May 1, 2008 through April 30, 2009, however we did not shorten the end of the reporting period because in our margin calculations, U.S. sales made in March and April 2009, could potentially match to home market sales made in May or June, 2009. On August 4, 2009, Atlas Tube, Inc. and Searing Industries, Inc. ("Petitioners") made an entry of appearance in this proceeding.

On July 20, 2009, the Department issued its antidumping questionnaire to Toscelik. Toscelik submitted its response to section A of the Department's antidumping questionnaire on August 3, 2008 ("Toscelik's Section A Response"). Toscelik submitted its response to sections B and C of the antidumping questionnaire on August 17, 2009 ("Toscelik's Sections B and C Response").

On September 29, 2009, the Department issued a supplemental questionnaire to Toscelik regarding Toscelik's Section A Response and Toscelik's Sections B and C Response. Toscelik submitted its response to the Department's supplemental questionnaire on October 22, 2009 ("Toscelik's October 22, 2009 Response").

On December 17, 2009, the Department issued a second supplemental questionnaire to Toscelik regarding its prior questionnaire responses. Toscelik submitted its response to the Department's second supplemental questionnaire on January 25, 2010 ("Toscelik's January 25, 2010 Response"). On February 24, 2010, the Department issued a third supplemental questionnaire to Toscelik. Toscelik submitted its response to the Department's third supplemental questionnaire on March 8, 2010 ("Toscelik's March 8, 2010 Response"). On May 13, 2010, the Department issued a third supplemental questionnaire to Toscelik regarding its prior questionnaire responses. Toscelik submitted its response to the Department's third supplemental questionnaire on May 18, 2010 ("Toscelik's May 18, 2010 Response").

Scope of the Order

The merchandise subject to this order is certain welded carbon quality light–walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon–quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon–quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon–quality is intended to identify carbon–quality products within the scope. The welded carbon–quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the order is dispositive.

Verification

We conducted verification of Toscelik from April 12, 2010, through April 15,

2010. *See* the Memorandum from Tyler Weinhold and Mark Flessner to the File, "Light–Walled Rectangular Pipe and Tube from Turkey; Verification of Information submitted by Toscelik Profil ve Sac Endustrisi A.S. and Tosyali Dis Ticaret A.S. (collectively, "Toscelik")," ("Verification Report").

Fair Value Comparisons

To determine whether sales of light–walled rectangular pipe and tube from Turkey in the United States were made at less than NV, we compared U.S. price to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended ("the Act"), we calculated monthly weighted–average NVs and compared these to individual U.S. transactions. Because we determined Toscelik made only EP sales during the POR, we used EP as the basis for U.S. price in all of our comparisons. We used the invoice date, as recorded in Toscelik's normal books and records, as the date of sale for Toscelik's EP and home market sales. *See* 19 CFR 351.401(i). For a more detailed discussion of these calculations, *see* Memorandum from Tyler Weinhold to the File, "Analysis of Data Submitted by Toscelik Profil ve Sac Endustrisi A.S. and Tosyali Dis Ticaret A.S. (collectively, "Toscelik") in the Preliminary Results of the 2008–2009 Administrative Review of Light–Walled Rectangular Pipe and Tube from Turkey," dated June 7, 2010 "Preliminary Analysis Memorandum").

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Toscelik covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. As mentioned above, we allowed Toscelik to limit the reporting period for home market sales to the period of May 1, 2008 through June 30, 2009. We relied on six characteristics to match U.S. sales of subject merchandise to home market sales of the foreign like product (listed in order of priority): 1) steel input type; 2) metallic coating; 3) painted/non–painted; 4) perimeter; 5) wall thickness; and 6) shape. *See* the antidumping questionnaire at Appendix 5. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the antidumping questionnaire. Because there were sales of identical or similar merchandise in the home market suitable for comparison to each U.S. sale, we did not compare any U.S. sales to constructed value ("CV").

We relied on the prices and adjustments as reported by Toscelik based on Toscelik's proprietary weights. *See* Verification Report for more details.

Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c). In accordance with section 772(a) of the Act, we used EP for all of Toscelik's U.S. sales. We preliminarily find that these sales are properly classified as EP sales because these sales were made before the date of importation and were made directly to unaffiliated U.S. customers, and because our CEP methodology was not otherwise warranted.

We based EP on the prices to unaffiliated customers in the United States. We made adjustments for price or billing adjustments and discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, international freight, marine insurance, and U.S. brokerage and handling. Additionally, we made adjustments for direct selling expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Toscelik's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Because Toscelik's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

No interested party has alleged sales in the home market were made at prices below the cost of production. Therefore, we are not conducting a sales–below-cost investigation in this review. For this reason, and because we did not anticipate that we would have to use constructed value as the basis for normal value for any of Toscelik's U.S. sales of subject merchandise, we have not required Toscelik to respond to section D of the Department's questionnaire (costs of production and constructed value).

Quarterly Costs of Production

Toscelik reported variable cost of manufacture and total cost of manufacture on the basis of quarterly costs, and requested that it be allowed to continue to report variable cost of manufacture and total cost of manufacture on this basis because of changes in the purchase prices of one of its major input materials, steel coil (steel sheet/strip in coils). See Toscelik's Sections B and C Response at pages 37 to 38, and at Exhibit 8.

The Department's normal practice is to calculate an annual weighted–average cost for the entire POR. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted–average cost for the entire period). However, the Department recognizes that possible distortions may result if our normal annual average cost method is used during a period of significant cost changes. Therefore, the Department will deviate from its normal methodology of calculating an annual weighted average cost under certain circumstances.

In determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department evaluates the case–specific record evidence using two primary factors: (1) the change in the cost of manufacturing recognized by the

respondent during the POR must be deemed significant; and, (2) the record evidence must indicate that sales prices during the shorter averaging periods could be reasonably linked with the cost of production ("COP") or CV during the same shorter averaging periods. *See Stainless Steel Plate in Coils From Belgium: Final Results of Administrative Review*, 73 FR 75398, 75399 "December 11, 2008) ("*SSPC from Belgium*") and *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Administrative Review*, 75 FR 6627 (February 10, 2010) ("*S4 from Mexico*").

In this case, we have determined that the record evidence satisfies these criteria for the pipe and tube products. The record indicates Toscelik experienced significant changes in the cost of manufacturing ("COM") during the POR and that the change in COM is primarily attributable to the price volatility for coils, which are major inputs consumed in the production of the merchandise under consideration. *See* Preliminary Analysis Memorandum. The data show the percentage difference between the high and low quarterly COM clearly exceeded 25 percent during the POR. *Id*. Our analysis of the data provided by Toscelik reveals that during the POR sales and costs were generally trending in a consistent manner, and also that Toscelik turns over its inventory relatively quickly. *Id*. These facts indicate that Toscelik's costs and sales prices were reasonably correlated during the POR.

Therefore, the Department has used variable costs of manufacture and total costs of manufacture based on Toscelik's quarterly costs of production in these preliminary results of review. Specifically, the Department has conducted the "below cost" and "cost recovery" tests using an annual weighted average cost of manufacturing that incorporates an indexing method that addresses the distortive effect of the price volatility for costs. For a detailed analysis, *see* Preliminary Analysis Memorandum.

C. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. We made adjustments for billing adjustments, early payment discounts, and rebates, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost (i.e., DIFMER), where those differences were attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. We also made adjustments for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. We made COS adjustments for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

D. Constructed Value

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find a contemporaneous comparison market match of identical or similar merchandise for the U.S. sale. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, SG&A expenses, profit, and U.S. packing costs. However, as explained above, for these preliminary results, we did not base NV on CV in any instances.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade ("LOT") as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

Toscelik reported that it sold light–walled rectangular pipe and tube at only one level of trade in the home market and in the U.S. market. *See* Toscelik's Sections B and C Response at pages 23 and 61. Toscelik identified one channel of distribution for sales in the home market, "ex works" (channel 1) and one channel of distribution in the U.S. market, "direct to the importer" (channel 1). *See* Toscelik's Section A Response at page 12 and 13, and Toscelik's Sections B and C Response at pages 15 and 54. Toscelik also reported that all sales in the home market were sold to customers within the same customer category, "distributors," and that all sales in the U.S. were sold to the same customer category, "importer." *See* Toscelik's Sections B and C Response at pages 15 and 53.

Based on our analysis of the record evidence provided by Toscelik, we preliminarily determine that a single LOT exists in the home market. Therefore, we have no basis upon which to calculate a level of trade adjustment. For these reasons, we preliminarily find that a LOT adjustment is not appropriate for Toscelik.

Moreover, we find that only minor differences exist between the sole home market channel of distribution and the sole U.S. channel of distribution, that of Toscelik's EP sales. We obtained information from Toscelik regarding the marketing stages involved in making its reported home market and U.S. sales. Toscelik described all selling activities performed, and provided a table comparing the selling functions performed among each channel of distribution for both markets. *See* Toscelik's Section A response at Exhibit 7. We reviewed the nature of the selling functions and the intensity to which all selling functions were performed between Toscelik's EP and home market channels of distribution and customer categories.

While we found differences in the levels of intensity performed between the home market and U.S. market channels of distribution for one of these functions, the "warranty service" function, the difference is minor. Toscelik reported that it performed these functions in the home market at a level of "<1" on a scale of 1 to 10, and not at all in the U.S. market. *See* Toscelik's Section A Response at Exhibit 7. Therefore, we find only minor differences exist between the sole home market channel of distribution and the sole U.S. channel of distribution, that of Toscelik's EP sales.

The Department has determined that we will find sales to be at the same LOT when the selling functions performed for each customer class are sufficiently similar. *See* 19 CFR 351.412 (c)(2). We

find Toscelik performed virtually the same level of customer support services on its EP sales as it did on its home market sales and that the minor differences that do exist do not establish distinct and separate levels of trade.

The record evidence supports a finding that in both markets and in both channels of distribution Toscelik performs essentially the same level of services. Therefore, based on our analysis of the selling functions performed on EP sales in the United States, and its sales in the home market, we determine that the EP and the starting price of home market sales represent the same stage in the marketing process, and are thus at the same LOT.

Currency Conversions

In accordance with section 773A(a) of the Act, we made Turkish lira–U.S. dollar currency conversions, where appropriate, based on the exchange rates in effect on the dates of the U.S. sales, as collected by Dow Jones Reuters Business Interactive LLC (trading as Factiva) and as published on the Import Administration's web site (http://ia.ita.doc.gov/exchange/index.html).

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted–average dumping margin exists for the period January 30, 2008, through April 30, 2009:

Manufacturer / Exporter	Weighted Average Margin (percentage)
Toscelik	0.00%

Disclosure and Public Hearing

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. An interested party may request a hearing within thirty days of publication. *See* section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to section 351.310(d) of the Department's regulations. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Comments

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to section 351.212(b) of the Department's regulations, the Department will calculate an assessment rate on all appropriate entries. Toscelik has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with section 351.212(b)(1) of the Department's regulations, we will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue appropriate assessment instructions directly to CBP fifteen days after publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un–reviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. *Id.*

Cash Deposit Requirements

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of light–walled rectangular pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: 1) the cash deposit rate for Toscelik will be the rate established in the final results of review; 2) if the exporter is not a firm covered in this review or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all–others rate of 27.04 percent ad valorem from the LTFV investigation. See Notice of Antidumping Duty Order: Light–Walled Rectangular Pipe and Tube From Turkey, 73 FR 31065 (May 30, 2008). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2008 - 2009 Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the "Department") is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. The period of review is May 1, 2008, through April 30, 2009. This review covers imports of certain polyester staple fiber from one manufacturer/exporter. The Department preliminarily finds that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in the Department's final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties. Interested parties are invited to comment on these preliminary results. The Department will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Seth Isenberg, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1503 and (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2000, the Department published an antidumping duty order on certain polyester staple fiber ("PSF") from the Republic of Korea ("Korea"). *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000) (the "Order"). On May 1, 2009, the Department published a notice of "Opportunity to Request Administrative Review" of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 20278 (May 1, 2009). On May 29, 2009, Huvis Corporation ("Huvis") requested an administrative review. On May 29, 2009, DAK Americas LLC and Invista, S.a.r.L. (collectively, "the petitioners") requested an administrative review of Huvis and Saehan Industries, Inc. ("Saehan"). On June 24, 2009, the Department published a notice initiating the administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009).

On July 14, 2009, the petitioners withdrew their request for an administrative review of Saehan and its successor company, Woongjin Chemical Co., Ltd ("Woongjin"). Because the petitioners' request was timely withdrawn and no other parties requested a review of Saehan and Woongjin, pursuant to 19 CFR 351.213(d), the Department partially rescinded this review with respect to these companies. *See Certain Polyester Staple Fiber from the Republic of Korea: Partial Rescission of Ninth Antidumping Duty Administrative Review*, 74 FR 41866 (August 19, 2009).

On August 7, 2009, the Department issued the antidumping questionnaire in this review. The Department received responses from Huvis in September 2009.

On December 16, 2009, the Department published in the **Federal Register** an extension of the time limit for the completion of the preliminary results of this review until no later than May 31, 2010, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.213(h)(2).[1] *See Certain Polyester Staple Fiber from the Republic of Korea: Extension of Time Limit for the Preliminary Results of the 2008–2009 Antidumping Duty Administrative Review*, 74 FR 66616 (December 16, 2009).

In December 2009, and January, February, and April 2010, the Department issued supplemental questionnaires to Huvis. The Department received responses to these supplemental questionnaires in January through May 2010.

Scope of the Order

PSF covered by the scope of the Order is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the Order may be coated, usually with a silicon, or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.25 is specifically excluded from the Order. Also, specifically excluded from the Order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from the Order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the Order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the merchandise covered by the scope of the Order is dispositive.

Period of Review

The period of review ("POR") is May 1, 2008 through April 30, 2009.

Fair Value Comparisons

To determine whether Huvis's sales of PSF to the United States were made at less than normal value ("NV"), the Department compared export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice below.

Pursuant to sections 773(a)(1)(B)(i) and 777A(d)(2) of the Act, the Department compared the EP of individual U.S. transactions to the weighted–average NV of the foreign–like product in the appropriate corresponding calendar month where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

[1] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. The revised deadline for the preliminary results of the 2008 - 2009 antidumping duty administrative review is therefore June 7, 2010. The final results of this review continue to be due 120 days after the publication of the preliminary results.

Product Comparisons

In accordance with section 771(16)(A) of the Act, the Department considered all products produced and sold by Huvis in the home market covered by the description in the "Scope of the Order" section, above, to be foreign–like products for purposes of determining appropriate product comparisons to U.S. sales. For further details regarding the Department's selection of a comparison market, *see* the "Normal Value" section below.

The Department compared Huvis's U.S. sales to the monthly weighted–average prices of contemporaneous sales made in Huvis's home market. Where there were no contemporaneous sales of identical merchandise in Huvis's home market, the Department compared sales made within the window period, which extends from three months prior to the POR until two months after the POR. *See* 19 CFR 351.414(e)(2). As directed by section 771(16)(B) of the Act, where there were no sales of identical merchandise in Huvis's home market made in the ordinary course of trade to compare to its U.S. sales, the Department compared U.S. sales to sales of the most similar foreign–like product made in the ordinary course of trade. In making product comparisons, the Department matched foreign–like products based on the physical characteristics reported by Huvis in the following order: fiber loft, specialty fibers, fiber type, product grade, cross section, product finish, and product denier.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long–standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

For its U.S. sales, Huvis reported date of shipment as its date of sale because it permits U.S. customers to make order changes up to the date of shipment and because the merchandise is always shipped on or before the date of invoice. The material terms of sale are established on the date of shipment. Therefore, for Huvis's U.S. sales, the Department determines that it is appropriate to use date of shipment as date of sale. The Department's determination is consistent with its determination in the most recently completed administrative review of the Order in which Huvis was examined. *See Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281 (June 9, 2009); unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007–2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009) ("*Final Results of 2007/2008 Administrative Review*").

For its home market sales, Huvis reported invoice date as its date of sale because Huvis permits home market customers to make order changes up to that time. Huvis's invoices to its home market customers establish the material terms of sale. Therefore, for Huvis's home market sales, the Department determines that it is appropriate to use date of invoice as date of sale. The Department's determination is consistent with its determination in the most recently completed administrative review of the Order in which Huvis was examined. *See id*.

Export Price

For sales to the United States, the Department calculated EP in accordance with section 772(a) of the Act because the merchandise was sold by the exporter or manufacturer outside the United States directly to the first unaffiliated purchaser in the United States prior to importation, and because constructed export price methodology was not otherwise warranted based on the record. Huvis reported sales to the United States based upon three different types of sales terms: free–on board ("FOB"); ex–dock duty paid and cost, insurance, and freight ("EDDP - CIF"); and ex–dock duty paid free–on board ("EDDP - FOB"). The Department calculated EP based on these reported prices to unaffiliated purchasers in the United States. Where appropriate, the Department made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: loading fees, inland freight from the plant to port of exportation, foreign brokerage and handling, international freight, marine insurance, and U.S. customs duty (including U.S. brokerage and handling).

The Department increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. Huvis provided documentation demonstrating that it received duty drawback under Korea's individual–rate system. In prior investigations and administrative reviews, the Department has examined Korea's individual–rate system and found that the government controls in place generally satisfy the Department's requirements for receiving a duty drawback adjustment (*i.e.*, that (1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and (2) there were sufficient imports to account for the rebates received). *See, e.g., Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2. The Department examined the documentation submitted by Huvis in this administrative review and confirmed that Huvis's submissions meet the agency's two–prong test (mentioned above) for receiving a duty drawback adjustment. Accordingly, the Department is applying the reported duty drawback adjustment for Huvis's U.S. sales.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales of PSF in the home market to serve as a viable basis for calculating NV, the Department compared Huvis's home market sales of the foreign–like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because Huvis's reported aggregate volume of home market sales of the foreign–like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, the Department determined that the home market was viable for comparison purposes.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) ("*CTL Plate*"). In order to determine whether Huvis's home market sales were at a different stage in the marketing process than its U.S. sales, the Department reviewed Huvis's distribution system in each market (*i.e.*, the "chain of distribution"),[2] including selling functions,[3] class of customer ("customer category"), and the level of selling expenses for each type of sale. *See CTL Plate*, 62 FR at 61732.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[4] the Department considers the starting prices before any adjustments. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315 (Fed. Cir. 2001) (holding that Congress clearly intended that the Department use the starting price, *i.e.*, the unadjusted price, when making an LOT comparison for EP sales).

When the Department is unable to match U.S. sales to sales of the foreign–like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. *See, e.g., CTL Plate*, 62 FR at 61732. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, the Department makes an LOT adjustment under section 773(a)(7)(A) of the Act.

Huvis reported a single channel of distribution and a single LOT in each market, and has not requested an LOT adjustment. In Huvis's single channel of distribution for U.S. sales, merchandise is shipped directly to the customer on an FOB, EDDP–CIF, or EDDP–FOB basis. For home market sales, merchandise is delivered to the customer's location or sold on an ex–works basis.

The Department examined the information reported by Huvis regarding its marketing process for making the reported home market and U.S. sales, including the type and level of selling activities performed, and customer categories. Specifically, the Department considered the extent to which the sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) within each market and across the markets.

Huvis reported that it made direct sales to distributors and end users in both the home and U.S. markets. Also, for sales to the United States, Huvis reported sales to trading companies. For sales in the home market and to the United States, Huvis's selling activities included negotiating sales terms, receiving and processing orders, arranging for freight and delivery, and preparing shipping documents. For each market, Huvis was available to provide technical advice upon a customer's request. Huvis offered neither inventory maintenance services nor advertising, and it did not handle any warranty claims during the POR for sales in either market.

Because the selling functions were similar in both markets regardless of the customer category, the Department preliminarily finds that a single LOT exists in the home market and in the United States, and that Huvis's home market and U.S. sales were made at this same LOT.

C. Sales to Affiliated Customers

Huvis made sales in the home market to affiliated customers. To test whether these sales were made at arm's length, the Department compared the starting prices of sales to affiliated customers to those of sales to unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Where the price to affiliated parties was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, the Department determined that the sales made to affiliated parties were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). In accordance with this practice, in the Department's margin analysis, only Huvis's sales to affiliated parties made at arm's length were included.

D. Cost of Production Analysis

In the most recently completed administrative review in which Huvis was examined, the Department disregarded some sales by Huvis because they were made at prices below the cost of production ("COP"). *See Final Results of 2007/2008 Administrative Review*. Under section 773(b)(2)(A)(ii) of the Act, previously disregarded below–cost sales provide reasonable grounds for the Department to believe or suspect that Huvis made sales of the subject merchandise in its home market at prices below the COP in the current POR. Whenever the Department has this reason to believe or suspect sales were made below the COP, we are directed by section 773(b) of the Act to determine whether, in fact, there were below–cost sales.

After determining that there are below–cost sales, pursuant to section 773(b)(1) of the Act, the Department may disregard sales that were made at less than the COP from its calculation of NV, if such sales were made in substantial quantities over an extended period of time at prices that would not permit recovery of costs within a reasonable period. The Department will find that a respondent's below–cost sales represent "substantial quantities" when 20 percent or more of the volume of its sales of a foreign–like product are at prices less than the COP; however, where less than 20 percent of the volume of a respondent's sales of a foreign–like product are at prices less than the COP, the Department will not disregard such sales because they are not made in substantial quantities. *See* Section 773(b)(2)(C) of the Act. Further,

[2] *See, e.g., CTL Plate*, 62 FR at 61732. The marketing process in the United States and comparison market begins with goods being sold by the manufacturer and extends to the sale to the final user or customer. The final user or customer could be an individual consumer or an industrial user, but the marketing process for all goods starts with a manufacturer and ends with a user. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of Huvis to properly determine where in the chain of distribution the sale occurs.

[3] Selling functions associated with a particular chain of distribution help us to evaluate LOTs in a particular market. *CTL Plate*, 62 FR at 61732. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[4] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative ("SG"A") expenses, and profit for CV, where possible. *See, e.g., Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 70 FR 32756, 32757 (June 6, 2005), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the Republic of Korea*, 70 FR 73435 (December 12, 2005).

in accordance with section 773(b)(2)(B) of the Act, the Department normally considers sales to have been made within an extended period of time when the sales are made during a period of one year. Finally, if prices which are below the per–unit COP at the time of sale are not above the weighted–average per–unit COP for the POR, the Department will not consider such prices to provide for the recovery of costs within a reasonable period of time. *See* Section 773(b)(2)(D) of the Act.

1. Test of Home Market Prices

On a product–specific basis, the Department compared Huvis's adjusted weighted–average COP figures for the POR to its home market sales of the foreign–like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. Huvis's home market prices were exclusive of any applicable movement charges, indirect selling expenses, and packing expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

The Department found that, for certain sales of Huvis's foreign–like product, more than 20 percent of Huvis's sales were at prices below the COP and, thus, the below–cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, the Department excluded these below–cost sales and used Huvis's remaining above–cost sales of foreign–like product, made in the ordinary course of trade, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

On April 30, 2010, the Department also requested quarterly cost information from Huvis; however, this information was not received in time for the agency to analyze for use in these preliminary results. The Department intends to analyze this information and issue its findings to parties in a post–preliminary analysis.

2. Calculation of COP

The Department calculated Huvis's COP on a product–specific basis, based on the sum of its costs of materials and fabrication for the merchandise under review, plus amounts for SG&A expenses, financial expenses, and the costs of all expenses incidental to placing the foreign–like product packed and in a condition ready for shipment, in accordance with section 773(b)(3) of the Act.

The Department relied on the COP information submitted in Huvis's responses to our cost questionnaires with the following adjustments:

(1) In performing our analysis under section 773(f)(3) of the Act, we adjusted Huvis's reported cost of manufacturing ("COM") to account for its purchases of modified terephthalic acid ("MTA") and qualified terephthalic acid ("QTA") from affiliated parties at non–arm's–length prices. Under section 773(f)(3) of the Act and 19 CFR 351.407(b), the Department will determine the value of a major input from an affiliated person based on the higher of the transfer price, the market price, or the affiliate's COP.

For MTA, the Department determined that Huvis, through its ownership by SK Chemicals Co., Ltd., was affiliated with SK Petrochemicals Co., Ltd. ("SKPC") for part of the POR, May 1, 2008 to December 29, 2008. *See* Huvis's September 4, 2009 section A questionnaire response at A–12. Therefore, we limited the major input analysis of MTA to the portion of the POR in which Huvis and SKPC were affiliated. Based on our analysis, the Department adjusted Huvis's reported transfer price of MTA during the affiliated period by the percentage difference between the reported transfer price and the higher of market price or the affiliate's COP, in accordance with section 773(f)(3) of the Act and 19 CFR 351.407(b).

Huvis could not provide a market price for its input of QTA as requested in the Department's original and supplemental questionnaires. Therefore, in accordance with section 776(a)(1) of the Act, the Department has determined that it is appropriate to rely on facts available to make a determination of the market value for QTA. Consistent with the previous administrative review of the Order, the Department is using SKPC's market price of MTA as a proxy for the market price of QTA because there is no evidence on the record of this review to overturn our prior finding that MTA and QTA are interchangeable and can be successfully used in place of one another using similar quantities. *See Final Results of 2007/2008 Administrative Review*. Based on our analysis of the facts available, consistent with the previous administrative review of the Order, we also increased Huvis's reported transfer price of QTA by the percentage difference between its reported transfer price of QTA and the higher of SKPC's MTA market price or the affiliate's COP for QTA.

(2) Huvis purchases a third input, ethylene glycol ("EG"), from an affiliated party. Under section 773(f)(2) of the Act, the Department may disregard transactions between affiliated parties if the transfer price for an input does not fairly reflect the amount usually reflected for sales of that input. Because the market price of EG exceeded the transfer price, the Department adjusted Huvis's reported transfer price of EG by the percent difference between the reported transfer price and the market price. For additional information concerning the COP adjustments, see Memorandum to the File, "Preliminary Results Calculation Huvis Corporation," dated June 7, 2010.

E. Calculation of Normal Value

The Department calculated NV based on the prices Huvis reported for its home market sales to unaffiliated customers which were made in the ordinary course of business. The Department added U.S. packing costs and deducted home market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act, respectively. The Department also made adjustments to NV, where appropriate, consistent with section 773(a)(6)(B)(ii) of the Act, to account for loading fees and for inland freight from the plant to the customer. In addition, the Department made adjustments to NV to account for differences in circumstances of sale ("COS"), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. The Department made COS adjustments, where appropriate, by deducting direct selling expenses incurred by Huvis on its home market sales (*i.e.*, credit expenses and bank charges) and adding U.S. direct selling expenses (*i.e.*, credit expenses and bank charges). *See* 19 CFR 351.410(c).

Preliminary Results of the Review

We preliminarily determine that the following weighted–average dumping margin exists for the period May 1, 2008, through April 30, 2009:

Exporter/manufacturer	Weighted–average margin percentage
Huvis Corporation	0.94 percent

The Department will disclose the calculations performed within five days of publication of this notice in

accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). However, because we will be issuing a post–preliminary analysis, the briefing schedule may be modified. The Department will notify parties if this becomes necessary. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; and 2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in the parties' briefs, no later than 120 days after publication of these preliminary results.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Huvis submitted evidence demonstrating that it was the importer of record for certain of its POR sales. The Department examined the customs entry documentation submitted by Huvis and tied it to the U.S. sales listing. We noted that Huvis was indeed the importer of record for certain sales. Therefore, for purposes of calculating the importer–specific assessment rates, we have treated Huvis as the importer of record for certain POR shipments. Pursuant to 19 CFR 351.212(b)(1), for all sales where Huvis is the importer of record, Huvis submitted the reported entered value of the U.S. sales and the Department has calculated importer–specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding sales where Huvis was not the importer of record, the Department notes that Huvis did not report the entered value for the U.S. sales in question. Accordingly, the Department has calculated importer–specific per–unit duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer–specific *ad valorem* ratios based on the estimated entered value. For certain U.S. sales, Huvis did not report the importer or entered value. For purposes of calculating importer–specific assessment rates, we considered Huvis's U.S. customer to be the importer of record when the importer was unknown and we calculated entered value as U.S. price net of international movement expenses.

Pursuant to 19 CFR 351.106(c)(2), the Department will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis (i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. *See id.*

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSF from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted–average margin is *de minimis, i.e.*, less than 0.50 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less–than-fair–value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 7.91 percent, the all–others rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

The Department is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1685]

Reorganization and Expansion of Foreign-Trade Zone 174 Under Alternative Site Framework, Tucson, AZ

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, Tucson Regional Economic Opportunities, Inc., grantee of Foreign-Trade Zone 174, submitted an application to the Board (FTZ Docket 43–2009, filed 10/13/2009) for authority to reorganize and expand under the ASF with a service area of Pima County, within and adjacent to the Tucson Customs and Border Protection port of entry, FTZ 174's existing Sites 1 through 6 would be categorized as magnet sites, and the grantee proposes one initial usage-driven site (Site 7);

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 54023–54024, 10/21/09) 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 174 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 1, 3, 4, 5, and 6 if not activated by June 30, 2015, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 7 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by June 30, 2013.

Signed at Washington, DC, this 4th day of June 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2010–14388 Filed 6–14–10; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Renewal of the Global Markets Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Federal Advisory Committee Renewal.

SUMMARY: The Commodity Futures Trading Commission has determined to renew the charter of its Global Markets Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Martin B. White, Committee Management Officer, at 202–418–5129. Written comments should be submitted to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic comments may be submitted to the Commission's Committee Management Officer, Martin White at *mwhite@cftc.gov* until a Designated Federal Officer is appointed.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission ("Commission") has determined to renew its Global Markets Advisory Committee. The Commission has determined that renewing the advisory committee is in the public interest in connection with the duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1–25, as amended. The Global Markets Advisory Committee will operate for two years from the date of renewal unless, before the expiration of that time period, its charter is renewed in accordance with section 14(a)(2) of the Federal Advisory Committee Act, or the Chairman of the Commission, with the concurrence of the other Commissioners, shall direct that the advisory committee terminate on an earlier date.

The purpose of the Global Markets Advisory Committee is to conduct public meetings and to submit reports and recommendations on matters of public concern to the exchanges, firms, market users, and the Commission regarding the regulatory challenges of a global marketplace. The advisory committee will help the Commission determine how it can avoid unnecessary regulatory or operational impediments to global business while still preserving core protections for customers and other market participants. The advisory committee will also make recommendations for appropriate international standards for regulating futures and derivatives markets, as well as intermediaries. Additionally, the advisory committee will assist the Commission in identifying methods to improve both domestic and international regulatory structures while continuing to allow U.S. markets and firms to remain competitive in the global market. These duties will allow the Commission to better promote its mission of protecting market users and the public from abusive practices, and help to foster open, competitive, and financially sound futures and options markets. Meetings of the Global Markets Advisory Committee are open to the public.

The Global Markets Advisory Committee may be renewed by filing a renewal charter with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat concurrently with the publication of the notice of renewal in the **Federal Register**. A copy of the renewal charter also will be posted on the Commission's Web site at *http://www.cftc.gov.*

Issued in Washington, DC, on June 10, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–14421 Filed 6–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0077]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to delete a systems of record notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 15, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://*

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 9, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

DGC 15.

SYSTEM NAME:

Reports of Defense Related-Employment (February 22, 1993; 58 FR 10227).

REASON:

Based on review of DGC 15, Reports of Defense Related-Employment, it has been concluded that this system can be covered by OGE/Govt 1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records.

[FR Doc. 2010–14248 Filed 6–14–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0078]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: Defense Threat Reduction Agency proposes to delete a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 15, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

The Defense Threat Reduction Agency proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 9, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

HDTRA 002.

SYSTEM NAME:

Employee Relations (August 3, 2005; 70 FR 44578).

REASON:

The Defense Threat Reduction Agency has determined that HDTRA 002 is covered under the OPM/GOVT–1, General Personnel Records (June 19, 2006, 71 FR 35356) and OPM/GOVT–3, Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers (April 27, 2000; 65 FR 24732) therefore this notice can be deleted.

[FR Doc. 2010–14249 Filed 6–14–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0081]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 15, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 1, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: June 9, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P49

SYSTEM NAME:

Reasonable Accommodation Program Records.

SYSTEM LOCATION:

Labor and Management Employee Relations Division, Human Resources Directorate, Washington Headquarters Services, 2125 S. Clark Street, Suite 5100, Arlington, VA 22202–3909.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of, and applicants for employment with, Washington Headquarters Services/Human Resources Directorate serviced components requesting a reasonable accommodation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, address and other contact information, disability or medical condition, reasonable accommodation requested, explanation of how a reasonable accommodation would assist the employee in the performance of his/her job, relevant medical documentation and other supporting documents, occupational series and grade, operating division/function, office location and address, office telephone numbers, deciding official's name and title, essential duties of the position, information relating to an individual's capability to satisfactorily perform the duties of the position currently held, estimated cost of accommodation, action by deciding official, and other supporting documents relating to reasonable accommodation.

Applicant's name, contact information, disability or medical condition, reasonable accommodation requested, explanation of how a reasonable accommodation would assist the applicant in the application process and/or in the performance of the duties of the position applied for, relevant medical information and other supporting documents, occupational series and grade, operating division/function, office location and address, office telephone numbers, deciding official's name and title, essential duties of the position for which he/she is applying, information relating to an individual's capability to satisfactorily perform the duties of the position applied for, estimated cost of accommodation, action by deciding official, and other supporting documents relating to reasonable accommodation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 791, Employment of Individuals with Disabilities; 42 U.S.C. chapter 126, Equal Opportunity for Individuals with Disabilities; 29 CFR part 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act; E.O. 13163, Increasing the Opportunities for Individuals with Disabilities to be Employed in the Federal Government; E.O. 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation; DoD Directive 1020.1, Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense.

PURPOSE(S):

To document requests for reasonable accommodation(s) (regardless of type of accommodation) and the outcome of such requests for employees of Washington Headquarters Services/Human Resources Directorate serviced components with known physical and mental impairments and applicants for employment with Washington Headquarters Services/Human Resources Directorate serviced components.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Office of the Secretary of Defense's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files folders and electronic storage media.

RETRIEVABILITY:

Individual's name.

SAFEGUARDS:

Access is limited to staff members working the reasonable accommodation program, agency legal counsel, and Department of Defense healthcare providers. Case records are maintained in locked file cabinets. Automated records are controlled by limiting physical access to terminals and by the use of computer access cards. Work areas are controlled access requiring key cards. Security guards protect buildings. Staff members complete annual Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Destroy three years after employee separation from the agency or all appeals are concluded whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Labor and Management Employee Relations Division, Human Resources Directorate, Washington Headquarters Services, 2125 S. Clark Street, Suite 5100, Arlington, VA 22202–3909.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Labor and Management Employee Relations Division, Human Resources Directorate, Washington Headquarters Services, 2125 S. Clark Street, Suite 5100, Arlington, VA 22202–3909.

Requests must contain individual's name and address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests must contain the name and number of this System of Records Notice, the individual's name and address and be signed.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for

contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, social workers, rehabilitation counselors, and/or health care personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–14253 Filed 6–14–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0079]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Intelligence Agency proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 15, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the DIA Privacy Act Coordinator, DAN 1–C, 200 MacDill Blvd, Washington, DC 20340.

The proposed systems report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 1, 2010, to the House Committee on of Government Reform, the Senate Committee on Homeland Security and Government Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: June 9, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 10–0002

SYSTEM NAME:

Foreign Intelligence and Counterintelligence Operation Records.

SYSTEM LOCATION:

Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in, or of interest to, DoD intelligence, counterintelligence, counterterrorism and counter-narcotic operations or analytical projects as well as individuals involved in foreign intelligence and/or training activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information such as name, Social Security Number (SSN), address, citizenship documentation, biometric data, passport number, vehicle identification number and vehicle/vessel license data. Records relating to the management and coordination of DoD counterintelligence systems and activities. Records relating to analytical, operational, biographic, policy, management, training, administrative matters and operational support related to DoD counterintelligence, force protection, critical infrastructure protection, research and technology protection, threat analysis, counter-narcotics and risk assessments. Records relating to the architecture and operation of DoD counterintelligence information systems. Reports of investigation, collection, statements of individuals, affidavits, correspondence, and other documentation pertaining to investigative or analytical efforts by DoD and other U.S. government agencies to identify or counter foreign intelligence and terrorist threats to the DoD and the United States. The system of records includes ad hoc or temporary databases established to support particular investigations, task forces, or analytical projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947; Executive Order 12333, United States Intelligence Activities; 50 U.S.C. 401, The Foreign Intelligence Surveillance Act of 1978; Directive Type Memo (DTM) 08–032, Establishment of the Defense Counter Intelligence and Human Intelligence Center; DoD Directive 5240.1, United States Intelligence Activities; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To document intelligence, counterintelligence, counterterrorism and counter-narcotic operations relating to the protection of national security, DoD personnel, facilities and equipment, to include information systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974 records contained therein may specifically be disclosed outside the Department of Defense (DoD) as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, local, and tribal agencies for the purpose of law enforcement, counterterrorism, counterintelligence, counter-narcotic activities and homeland security as authorized by U.S. Law or Executive Order, or for the purpose of protecting the territory, people and interests of the United States of America against breaches of security related to DoD controlled information or facilities and against terrorist activities.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), citizenship documentation, biometric

data, passport number, vehicle/vessel license data and records.

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Production Records: Temporary—Cutoff annually; hold 2 years; transfer to the Washington National Records Center (WNRC); destroy when records are 10 years old.

Intelligence Reports: Permanent—Cutoff annually, hold 3 years, transfer to WNRC. Retire to the National Archives when 35–40 years old.

Intelligence Products: Permanent—Cutoff annually, hold 3 years, transfer to WNRC. Retire to the National Archives when 35–40 years old.

Intelligence Collection Records: Temporary—Cutoff annually and destroy.

Intelligence Data Base Records: Temporary—Destroy when no longer needed for current operations.

Paper records are destroyed by shredding, pulping, or burning; electronic records are erased from the data base.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for the Defense Counterintelligence and Human Intelligence Center, 200 MacDill Blvd., Washington, DC 20340–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Act Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Request should contain the individual's full name, current address, telephone number and Social Security Number (SSN).

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DIA Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Request should contain the individual's full name, current address, telephone number and Social Security Number (SSN).

CONTESTING RECORD PROCEDURE:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001 "Defense Intelligence Agency Privacy Program"; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Federal, state, local, and tribal entities, foreign intelligence agencies, educational and research institutions, foreign governments and open source literature.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or which he would otherwise be eligible, as a result of maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This exemption provides limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 319.

[FR Doc. 2010–14254 Filed 6–14–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0080]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Intelligence proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 15, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the DIA Privacy Act Coordinator, DAN 1–C, 200 McDill Blvd, Washington, DC 20340.

The proposed systems reports, as required by 5 U.S.C 552a(r) of the Privacy Act of 1974, as amended, were submitted on June 1, 2010, to the House Committee on of Government Reform, the Senate Committee on Homeland Security and Government Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: June 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 10–0001

SYSTEM NAME:

Equal Opportunity, Diversity and Alternate Dispute Resolution Records.

SYSTEM LOCATION:

Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilians, military and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), case numbers of records relating to the Equal Opportunity (EO) program, Alternate Dispute Resolution (ADR) and Reasonable Accommodation (RA) cases as well as General Counsel litigation records specifically related to EO, ADR, and RA cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DoD Directive 1020.02, Diversity Management and Equal Opportunity; DoD Directive 5145.5, Alternate Dispute Resolution and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To manage the equal opportunity program files, alternate dispute resolution files, and reasonable accommodation case files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By last name, Social Security Number (SSN) and/or case file number.

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Equal Opportunity Records—Temporary, destroy 4 years after resolution of case.

Alternate Dispute Resolution Records—Temporary, destroy 3 years after settlement is implemented or case is discontinued.

Reasonable Accommodation Records—Temporary, destroy 3 years after employee separation from the Agency, or all appeals have been concluded whichever is later.

Electronic records are deleted by the system; paper records are destroyed by shredding, burning or pulping.

SYSTEM MANAGER(S) AND ADDRESS:

DSS 2–C, Defense Intelligence Agency, 200 McDill Blvd, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Act Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Request should contain the individual's full name, current address, telephone number and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the DIA Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd, Washington, DC 20340–5100.

Request should contain the individual's full name, current address, telephone number and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001 "Defense Intelligence Agency Privacy Program"; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

By individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a (j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or which he would otherwise be eligible, as a result of maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This exemption provides limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 319. For more information contact the system manager.

[FR Doc. 2010–14250 Filed 6–14–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7 (a)(I)(i), announcement is made of the intent to grant a partially exclusive, royalty-bearing, revocable license to U.S. Patent No. 5,607,979 entitled "Topical Skin Protectants," issued March 4, 1997 for all fields of use except the field of use involving military personnel from the exposure to chemical warfare agents, to Bracco Diagnostics, Inc., with its principal place of business at 107 College Road East, Princeton, New Jersey 08540.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with

the Command Judge Advocate (*see* **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–14320 Filed 6–14–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0013]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Army proposes to delete a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 15, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The Department of the Army proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 9, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

A0500–3 DCS G–1.

SYSTEM NAME:

Army Disaster Personnel Accountability and Assessment Records (ADPAAS) (August 28, 2008; 73 FR 50784).

REASON:

The Army Disaster Personnel Accountability and Assessment Records (ADPAAS) is now covered under system of records notice DPR 39 DoD, Personnel Accountability and Assessment System (March 24, 2010; 75 FR 14141); therefore the notice can be deleted.

[FR Doc. 2010–14256 Filed 6–14–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0012]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on June 14, 2010, unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 9, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0385–10/40 ASO

SYSTEM NAME:

Army Safety Management Information System (ASMIS) (September 6, 2007; 72 FR 51215).

CHANGES:

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Data from accident prevention studies is retrieved by name, Social Security Number (SSN), age, or gender. Accident and incident case records are retrieved by date of incident, location of incident, or type of equipment involved."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate system manager.

Individual must furnish his/her full name, Social Security Number (SSN), current address and telephone number, when and where the accident occurred,

type of equipment involved in the accident, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate system manager.

Individual must furnish his/her full name, Social Security Number (SSN), current address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

* * * * *

A0385–10/40 ASO

SYSTEM NAME:

Army Safety Management Information System (ASMIS).

SYSTEM LOCATION:

U.S. Army Combat Readiness Center (USACRC), 4905 5th Avenue, Fort Rucker, AL 36362–5363, and the U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM), 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

U.S. Army Corps of Engineers (USACE): Chief, Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314–1000, and all U.S. Army Corps of Engineers Safety and Occupational Health Offices. Official mailing addresses are published as an Appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (includes contractors, volunteer personnel, and members of the public) involved in accidents incident to Army and USACE operations and recreational facilities and DoD personnel who perform risk assessments prior to travel for leave, pass or other purpose (may include civilian and military personnel from the Army, Air Force, Navy, Marine Corps and Coast Guard).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to Army accidents and risk assessments include name of injured individual, name of individual performing risk assessment, Social Security Number (SSN), age, gender, pay grade, job title, start point and destination of travel, travel dates, personal protective equipment usage, alcohol and medication usage, sleep and rest plans, leave or pass address and phone number date of injury, location of accident, activity at time of injury, type of injury, board findings, recommendations, witness statements, wreckage distribution diagrams, maintenance and material data, and other personal and accident related and environmental information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; Pub. L. 91–596, Occupational Safety and Health Act of 1970; DoD Instruction 6055.1, DoD Safety and Occupational Health Program; Army Regulations 385–10, Army Safety Program; Army Regulation 385–40, Accident Reporting and Records; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Information will be used to monitor and facilitate the U.S. Army's and the USACE Safety and Occupational Health Offices' safety programs; to analyze accident experience and exposure information; to analyze and correlate relationships between planned actions and resultant accidents; and to support the Army's accident prevention efforts. Information will also be used to support DoD accident prevention efforts through travel risk assessments conducted by DoD personnel prior to travel for leave, pass or other purpose (may include civilian and military personnel from the Army, Air Force, Navy, Marine Corps and Coast Guard).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor, the Federal Aviation Agency, the National Transportation Safety Board, and to Federal, State, and local agencies, and applicable civilian organizations, such as the National Safety Council, for use in a combined effort of accident prevention.

In some cases, data must also be disclosed to an employee's representative under the provisions of 29 CFR 1960.29.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder and electronic storage media.

RETRIEVABILITY:

Data from accident prevention studies is retrieved by name, Social Security Number (SSN), age, or gender. Accident and incident case records are retrieved by date of incident, location of incident, or type of equipment involved.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Information is accessible only by authorized personnel with appropriate clearance/access in the performance of their duties. Remote terminal accessible only by authorized personnel.

At USACE and USACHPPM the computer stored records are secured behind security doors, accessible only by authorized personnel provided password access.

RETENTION AND DISPOSAL:

Accident and incident case records and aviation accident and incident case records maintain for 5 years then destroy, except for: U.S. Army Safety Center and U.S. Army Corps of Engineers maintain for 30 years in current file area then destroy; Office of

Corps of Engineers records created prior to 1 January 1982 maintain for 30 years then destroy. Environmental restoration reports are maintained for 50 years then destroyed (5 years in current file area then transferred to records holding area). Reports of artillery mis-firings or accidents and harmful chemical, biological and radiological exposures accumulated in combat or combat support elements are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Safety Center, 4905 5th Avenue, Fort Rucker, AL 36362–5363.

Commander, U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

Chief, Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate system manager.

Individual must furnish his/her full name, Social Security Number (SSN), current address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate system manager.

Individual must furnish his/her full name, Social Security Number (SSN), current address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records and reports of accident, injury, fire, morbidity, law enforcement, traffic accident investigations, vehicle accident reports, and marine accident/casualty reports, individual sick clips, and military aviation records/reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–14255 Filed 6–14–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075; Docket 2010–0083; Sequence 15]

Federal Acquisition Regulation; Submission for OMB Review; Government Property; OMB Control No. 9000–0075

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Government Property. A notice was published in the **Federal Register** at 75 FR 17410, on April 6, 2010. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 15, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0075 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0075" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0075". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0075" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0075.

Instructions: Please submit comments only and cite Information Collection 9000–0075, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Branch, GSA (202) 501–4082 or e-mail *jeritta.parnell@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Property, as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-

furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

This clearance covers the following requirements:

(a) FAR 45.606–1 requires a contractor to submit inventory schedules.

(b) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(c) FAR 52.245–1(f)(1)(ii) requires contractors to receive, record, identify and manage Government property.

(d) FAR 52.245–1(f)(1)(iii) requires contractors to create and maintain records of all Government property accountable to the contract.

(e) FAR 52.245–1(f)(1)(iv) requires contractors to periodically perform, record, and report physical inventories during contract performance.

(f) FAR 52.245–1(f)(1)(vi) requires contractors to have a process to create and provide reports.

(g) FAR 52.245–1(f)(1)(viii) requires contractors to promptly disclose and report Government Property in its possession that is excess to contract performance.

(h) FAR 52.245–1(f)(1)(ix) requires contractors to disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(i) FAR 52.245–1(f)(1)(x) requires contractors to perform and report to the Property Administrator contract property closeout.

(j) FAR 52.245–1(f)(2) requires contractors to establish and maintain source data, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(k) FAR 52.245–1(j)(4) requires contractors to submit inventory disposal schedules to the Plant Clearance Officer.

(l) FAR 52.245–9(d) requires a contractor to identify the property for which rental is requested.

B. Annual Reporting Burden

Number of Respondents: 15,100.

Responses per Respondent: 896.71.

Total Responses: 13,540,321.

Average Burden Hours Per Response: .46.

Total Burden Hours: 6,226,350.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, Room 4041, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: June 8, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

[FR Doc. 2010–14319 Filed 6–14–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by June 25, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: June 10, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Emergency.

Title: Student Aid Fiscal Responsibility Act (SAFRA) Payments to Loan Servicers for Job Retention.

Abstract: The Department of Education is requesting emergency clearance of the data collection associated with this clearance by June 25, 2010. An emergency clearance is needed to meet Congressional legislative mandate to award funds to loan servicers prior to the end of the fiscal year. These funds were not appropriated until the Health Care and Education Reconciliation Act was signed on March 30, 2010. Specifically, this data collection is necessary to implement the requirements in section 458(a)(7) of the Higher Education Act of 1965 as amended (HEA), as added by section 2212 (b)(1) of the SAFRA Act. Title II of the Health Care and Education Reconciliation Act of 2010. The SAFRA Act requires the Department to commit $25,000,000 to distribute to eligible servicers by the end of FY 2010 and another $25,000,000 by the end of FY 2011.

This data collection is necessary to assist Federal Family Education Loan

(FFEL) servicers in retaining jobs at their loan servicing facilities located in the United States as of January 1, 2010. The SAFRA Act provides for eligible loan servicers to apply for funds to assist them in maintaining jobs of people working on loan servicing at their U.S. locations. The Department will determine by formula the dollar amount of funds each eligible servicer will receive.

Additional Information: The Department (ED) is requesting that OMB grant an emergency clearance by June 25, 2010 for all documents necessary to meet the Congressional legislative mandate to award funds to loan servicers prior to the end of the fiscal year. SAFRA requires the Secretary to provide payments to student loan servicers in FY 2010 and FY 2011 for retaining jobs at locations in the United States where such servicers were operating under part B of the HEA on January 1, 2010.

This data collection is necessary to assist Federal Family Education Loan (FFEL) servicers in retaining jobs at their loan servicing facilities located in the United States as of January 1, 2010. The SAFRA Act provides for eligible loan servicers to apply for funds to assist them in maintaining jobs of people working on loan servicing at their U.S. locations. The Department will determine by formula the dollar amount of funds each eligible servicer will receive.

Emergency clearance is needed so that eligible servicers can apply for an award under SAFRA, and ED can meet the deadline set by Congress to evaluate the applications and obligate the awards before the end of the 2010 government fiscal year. We have a tight time frame to notify servicers, review their application, determine award amounts and inform servicers of award amounts and receive their updated plan for retaining jobs at their location within the U.S.

Implementation of the SAFRA Act requirements will be conducted in several phases. First, FFEL loan servicers will submit application forms with payroll information for individuals working within a servicing entity on loan origination activity at the location they designate on the date specified in the final requirements, as well as a plan for preserving jobs at that facility. This information provided will be used by the Department to determine award amount. The Department will calculate, by formula, the award each servicer will receive and will then notify the servicer of the award amount. Finally, the servicer will, before any funds are disbursed, submit an updated plan detailing how it will use the awarded funds to preserve jobs at that facility based on the actual award amount. The awarded amount will subsequently be disbursed to the servicer.

Upon receiving emergency clearance of the document the Department will publish the "Interim final requirements" in a separate **Federal Register** notice and start accepting applications from eligible servicers.

Frequency: Annually.

Affected Public: Business or other for-profits; Not-for-profit institutions; Private Sector.

Reporting and Recordkeeping Hour Burden:

Responses: 37.

Burden Hours: 1,739.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4336. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–14417 Filed 6–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 15, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 10, 2010.

Darrin King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Fulbright-Hays Group Projects Abroad Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 10,000.

Abstract: This is an application to participate in the Fulbright-Hays Group Projects Abroad program, which provides grants for overseas projects in training, research and curriculum development in modern foreign languages and area studies for groups of teachers, students and faculty. The authorizing legislation and program-specific regulations are included on

pages 41–48 of the application package attached to the supporting statement.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4286. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–14419 Filed 6–14–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–30–000]

EasTrans, LLC; Notice of Baseline Filing

June 8, 2010.

Take notice that on June 4, 2010, EasTrans, LLC submitted a baseline filing of its Statement of Operating Conditions for services provided under section 311 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 Monday, June 14, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14302 Filed 6–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–28–000]

Moss Bluff Hub, LLC; Notice of Baseline Filing

June 8, 2010.

Take notice that on June 1, 2010, Moss Bluff Hub, LLC submitted a baseline filing of its Statement of General Terms and Standard Operations Conditions for storage and interruptible hub services provided under section 311 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 Monday, June 14, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14305 Filed 6–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–29–000]

Enbridge Pipelines (North Texas) L.P.; Notice of Baseline Filing

June 8, 2010.

Take notice that on June 4, 2010, Enbridge Pipelines (North Texas) L.P. submitted a baseline filing of its Statement of Operating Conditions for services provided under section 311 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 Monday, June 14, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14307 Filed 6–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1389–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Taloga Wind, LLC

June 8, 2010

This is a supplemental notice in the above-referenced proceeding of Taloga Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 28, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14304 Filed 6–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1388–000]

Laredo Ridge Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 8, 2010.

This is a supplemental notice in the above-referenced proceeding of Laredo Ridge Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 28, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14300 Filed 6–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1403–000]

Stephentown Regulation Services LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 8, 2010.

This is a supplemental notice in the above-referenced proceeding of Stephentown Regulation Services LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 28, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14303 Filed 6–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

June 10, 2010.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 17, 2010, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

960TH—MEETING

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD09–10–000	National Action Plan on Demand Response.
	Electric	
E–1	ER09–1048–000, ER06–615–059	California Independent System Operator Corporation.
E–2	ER09–1049–000	Midwest Independent Transmission System Operator, Inc.
E–3	ER09–1050–000, ER09–1192–000	Southwest Power Pool, Inc.
E–4	OMITTED.	
E–5	ER09–1063–000, ER09–1063–001	PJM Interconnection, L.L.C.
E–6	ER09–1142–000	New York Independent System Operator, Inc.
E–7	ER10–1069–000	Southwest Power Pool, Inc.
E–8	OMITTED.	
E–9	RM10–23–000	Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities.

960TH—MEETING—Continued

Item No.	Docket No.	Company
E–10	RM09–25–000	System Personnel Training Reliability Standards.
E–11	OMITTED.	
E–12	ER10–1117–000	Evergreen Wind Power V, LLC and Stetson Wind II, LLC.
E–13	EL10–48–000, EC10–52–000	Ameren Corporation. Illinois Power Company. Central Illinois Light Company. Central Illinois Public Service Company. Ameren Energy Resources Company, LLC. Ameren Energy Resources Generating Company.
E–14	ER09–1717–001	Duke Energy Carolinas, LLC.
E–15	ER04–449–021	New York Independent System Operator, Inc. and New York Transmission Owners.
E–16	OMITTED.	
E–17	ER09–1051–000	ISO New England Inc. and New England Power Pool.
E–18	EL10–52–000	Central Transmission, LLC v. PJM Interconnection, L.L.C.
E–19	OMITTED.	
E–20	EL09–72–001	Pacific Gas and Electric Company.
E–21	EL09–12–000, EL09–12–001	United States Department of Energy—Bonneville Power Administration.
E–22	RM10–24–000	Regional Transmission Organization/Independent System Operator Responsiveness to Customers and Other Stakeholders: Best Practices.
	Miscellaneous	
M–1	RM07–9–003	Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines.
	Gas	
G–1	RM07–10–002	Transparency Provisions of Section 23 of the Natural Gas Act.
G–2	RP09–1086–001	Texican N. La. Transport, LLC v. Southern Natural Gas Company.
	Hydro	
H–1	P–2283–072	FPL Energy Maine Hydro LLC.
H–2	P–2355–013	Exelon Corporation Company, LLC.
H–3	P–2496–219	Eugene Water and Electric Board.
H–4	P–382–085	Southern California Edison Company.
	Certificates	
C–1	OMITTED.	
C–2	CP08–6–004	Midcontinent Express Pipeline, LLC.

Kimberly D. Bose,

Secretary.

A free Webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2010–14448 Filed 6–11–10; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12470–001—Oklahoma]

City of Broken Bow, OK; Broken Bow Re-Regulation Dam; Hydropower Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

June 8, 2010.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Oklahoma State Historic Preservation Officer (hereinafter, Oklahoma SHPO), and the Advisory Council on Historic Preservation (hereinafter, Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, *as amended* (16 U.S.C. section 470 f), to

[1] 18 CFR section 385.2010.

prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Broken Bow Re-Regulation Dam Hydropower Project No. 12470–001 (Oklahoma SHPO File Number 1069–05).

The programmatic agreement when executed by the Commission and the Oklahoma SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Broken Bow Re-Regulation Dam Hydropower Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

City of Broken Bow, Oklahoma, as licensee for Broken Bow Re-Regulation Dam Hydropower Project No. 12470, the Choctaw Nation of Oklahoma, Oklahoma Archeological Survey, U.S. Army Corps of Engineers, U.S. Forest Service, and HISINC, LLC, have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Reid Nelson or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Terry Cole, Tribal Historic Preservation Officer, Choctaw Nation of Oklahoma, P.O. Box 1210, Durant, OK 74702–1210.

Michael Graves, Hall Estil Attorneys at Law, 320 South Boston Ave., Suite 400, Tulsa, OK 74103.

Meeks Etchieson, U.S. Forest Service, Ouachita National Forest, 100 Reserve St., Hot Springs, AR 71901.

Robert L. Brooks or Representative, State Archaeologist, Oklahoma Archeological Survey, 111 E. Chesapeake Street, Norman, OK 73019–5111.

Melvena Heisch or Representative, Deputy SHPO, Oklahoma Historical Society, 2401 N. Laird Avenue, Oklahoma City, OK 73105.

Scott Henderson, U.S. Army Corps of Engineers, Tulsa District, 1645 S. 101st East Avenue, Tulsa, OK 74128.

Willard B. Smith, P.E., CFM, HISINC, LLC, 28508 W. 41st Street South, Mannford, OK 74044.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are identified within the motion, please use a separate page, and label it NON–PUBLIC Information.

An original and 8 copies of any such motion must be filed with Kimberly D. Bose, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. Please put "Broken Bow Re-Regulation Dam Hydropower Project No. 12470–001" on the front cover of any motion. Motions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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.

If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15-day period.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14306 Filed 6–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–447–000]

Sabine Pipe Line LLC; Notice of Request Under Blanket Authorization

June 8, 2010.

Take notice that on June 1, 2010, Sabine Pipe Line LLC (Sabine), 4800 Fournace Place, Bellaire, Texas 77401, filed in Docket No. CP10–447–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon, in place, certain compression facilities, located near Lake Charles, in Calcasieu Parish, Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Sabine proposes to abandon, in place, the Lake Charles Compressor Facilities, which include two natural gas-driven compressor units totaling 2,464 horsepower. Sabine states that for the past several years, the Lake Charles Compressor Facilities have not been necessary to provide transportation services on Sabine's interstate pipeline system, and have been idle and have not operated since 2000. Sabine avers that current customers will not be affected by the proposed abandonment.

Any questions regarding the application should be directed to Jeffrey L. Kirk, Regulatory Specialist, Chevron Pipe Line Company, 4800 Fournace Place, Bellaire, Texas 77401 at (713) 432–6753.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14301 Filed 6–14–10; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

June 9, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 15, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection please contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0937.

Title: Establishment of a Class A Television Service, MM Docket No. 00–10.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Frequency of Response: On occasion and quarterly reporting requirements;

Recordkeeping and third party disclosure requirements.

Number of Respondents and Responses: 500 respondents and 12,250 responses.

Estimated time per response: 0.0003 hours to 52 hours.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

Total annual burden: 234,621 hours.

Total annual costs: $1,995,000.

Privacy Impact Assessment: No impact(s).

Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On November 29, 1999, the Community Broadcasters Protection Act of 1999 (CBPA), Pub. L. No. 106–113, 113 Stat. Appendix I at pp. 1501A–594–1501A–598 (1999), codified at 47 U.S.C. Section 336(f), was enacted. That legislation provided that a low power television (LPTV) licensee should be permitted to convert the secondary status of its station to the new Class A status, provided it can satisfy certain statutorily–established criteria. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full–power television licenses and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low power station. The CBPA sets out certain certification and application procedures for LPTV licensees seeking Class A designation, prescribes the criteria LPTV licensees must meet to be eligible for Class A licenses, and outlines the interference protection Class A applicants must provide to analog, digital, LPTV and TV translator stations.

The CBPA directs that Class A stations must comply with the operating requirements for full–service television broadcast stations. Therefore, beginning on the date of its application for a Class A license and thereafter, a station must be "in compliance" with the Commission's operating rules for full–service television stations, contained in 47 CFR Part 73.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–14373 Filed 6–14–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy

published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: June 1, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10241	Bank of Florida—Southeast	Fort Lauderdale	FL	5/28/2010
10242	Bank of Florida—Southwest	Naples	FL	5/28/2010
10243	Bank of Florida—Tampa	Tampa	FL	5/28/2010
10244	Granite Community Bank, NA	Granite Bay	CA	5/28/2010
10245	Sun West Bank	Las Vegas	NV	5/28/2010

[FR Doc. 2010–14370 Filed 6–14–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 16, 2010.

ADDRESSES: You may submit comments, identified by FR 1374 by any of the following methods:

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

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer 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: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869).

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Intermittent Survey of Businesses.

Agency form number: FR 1374.

OMB control number: 7100–0302.

Frequency: On occasion.

Reporters: Businesses and state and local governments.

Estimated annual reporting hours: 205 hours.

Estimated average hours per response: 15 minutes.

Number of respondents: 250.

General description of report: This information collection is voluntary (12 U.S.C. 225a and 263) and may be given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The survey data are used by the Federal Reserve to gather information specifically tailored to the Federal Reserve's policy and operational responsibilities. There are two parts to this event-generated survey. First, under the guidance of Board staff, the Federal Reserve Banks survey business contacts as economic developments warrant. Currently, they conduct these surveys as part of their usual Beige Book [1] process as needed, with approximately 240 business respondents for each survey (about 20 per Reserve Bank). It is necessary to conduct these surveys to provide timely information to the members of the Board and to the presidents of the Reserve Banks. Usually, these surveys are conducted by Reserve Bank staff economists telephoning or emailing purchasing managers, economists, or other knowledgeable individuals at selected, relevant businesses. The frequency and content of the questions, as well as the entities contacted, vary depending on developments in the economy. Second, economists at the Board survey business contacts by telephone, inquiring about current business conditions. Board economists conduct these surveys as economic conditions require, with approximately ten respondents for each survey.

Current actions: The Federal Reserve proposes to revise the panel to include state and local governments as economic conditions may warrant. Given that state and local governments now account for about 12 percent of total Gross Domestic Product, it may be important at times to survey these governments for up-to-date information about developments in this sector.

Board of Governors of the Federal Reserve System, June 10, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–14310 Filed 6–14–10; 8:45 am]

BILLING CODE 6210–01–P

[1] *http://www.federalreserve.gov/fomc/beigebook/2010/.*

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment.

At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 16, 2010.

ADDRESSES: You may submit comments, identified by FR HMDA/LAR or Reg CC, by any of the following methods:

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

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer 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: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device

for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report(s)

1. *Report title:* Home Mortgage Disclosure Act (HMDA) Loan/Application Register (LAR).

Agency form number: FR HMDA–LAR.

OMB control number: 7100–0247.

Frequency: Annual.

Reporters: State member banks, subsidiaries of state member banks, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

Estimated annual reporting hours: 151,134 hours.

Estimated average hours per response: State member banks, 242 hours; and mortgage subsidiaries, 192 hours.

Number of respondents: 519 State member banks, and 133 mortgage subsidiaries.

General description of report: This information collection is mandatory (12 U.S.C. 2803(j)). The information is not given confidential treatment, however, information that might identify individual borrowers or applicants is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) and section 304(j)(2)(B) of HMDA (12 U.S.C. 2803(j)(2)(B)).

Abstract: The information reported and disclosed pursuant to this collection is used to further the purposes of HMDA. These include: (1) To help determine whether financial institutions are serving the housing needs of their communities; (2) to assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and (3) to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.

2. *Report title:* Disclosure Requirements in Connection with Regulation CC (Expedited Funds Availability Act (EFAA)).

Agency form number: Reg CC.

OMB control number: 7100–0235.

Frequency: Event-generated.

Reporters: State member banks and uninsured state branches and agencies of foreign banks.

Annual reporting hours: 202,396 hours.

Estimated average hours per response: Banks: Specific availability policy disclosure and initial disclosures, 1 minute; notice in specific policy disclosure, 3 minutes; notice of exceptions, 3 minutes; locations where employees accept consumer deposits, 15 minutes; annual notice of new automated teller machines (ATMs), 5 hours; ATM changes in policy, 20 hours; notice of nonpayment, 1 minute; expedited recredit for consumers, 15 minutes; expedited recredit for banks, 15 minutes; consumer awareness, 1 minute. Consumers: Expedited recredit claim notice, 15 minutes.

Number of respondents: 1,060.

General description of report: This information collection is mandatory. Reg CC is authorized pursuant the EFAA, as amended, and the Check 21 Act (12 U.S.C. 4008 and 12 U.S.C. 5014, respectively). Because the Federal Reserve does not collect any information, no issue of confidentiality arises. However, if, during a compliance examination of a financial institution, a violation or possible violation of the EFAA or the Check 21 Act is noted then information regarding such violation may be kept confidential pursuant to section (b)(8) of the Freedom of Information Act. 5 U.S.C. 552(b)(8).

Abstract: Regulation CC requires banks to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and potentially costly) overdrafts, and allow customers to compare the policies of different banks before deciding at which bank to deposit funds. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check. Model disclosure forms, clauses, and notices are appended to the regulation to ease compliance.

Board of Governors of the Federal Reserve System, June 10, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–14311 Filed 6–14–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. Report title: Report of Selected Balance Sheet Items for Discount Window Borrowers.

Agency form numbers: FR 2046.

OMB control number: 7100–0289.

Frequency: On occasion.

Reporters: Depository institutions.

Annual reporting hours: Primary and Secondary Credit, 1 hour; Seasonal Credit, 386 hours.

Estimated average hours per response: Primary and Secondary Credit, 0.75 hour; Seasonal Credit, 0.25 hour.

Number of respondents: Primary and Secondary Credit, 1; Seasonal Credit, 103.

General description of report: This information collection is required to obtain a benefit pursuant to section 10B and 19(b)(7) of the Federal Reserve Act (12 U.S.C. 347b and 461(b)(7)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve's Regulation A, Extensions of Credit by Federal Reserve Banks, requires that the Federal Reserve review balance sheet data in determining whether to extend credit and to help ascertain whether undue use is made of such credit. Borrowers report certain balance sheet data for a period that encompasses the dates of borrowing.

Current Actions: The Federal Reserve proposed to revise the FR 2046 consistent with the 2009 revisions to the Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks (FR 2644; OMB No. 7100–0075). FR 2046 respondents that also file the FR 2644 need not report data items that are common to both reports. The recent changes to the FR 2644 included new reporting of total deposits and the elimination of a separate data item for total loans. As a result, FR 2046 respondents that also file the FR 2644 or the weekly Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900; OMB No. 7100–0087) need not provide data on total deposits, but must provide data on total loans.

On March 31, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 16120) seeking public comment for 60 days on the extension, with revision, of the Report of Selected Balance Sheet Items for Discount Window Borrowers. The comment period for this notice expired on June 1, 2010. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

2. Report title: Report of Terms of Credit Card Plans.

Agency form numbers: FR 2572.

OMB control number: 7100–0239.

Frequency: Semi-annual.

Reporters: Commercial banks, savings banks, industrial banks, and savings and loans associations.

Annual reporting hours: 75 hours.

Estimated average hours per response: 0.25 hours.

Number of respondents: 150.

General description of report: This information collection is authorized pursuant section 136(b) of the Truth in Lending Act, 15 U.S.C. 1646(b). Reporting the FR 2572 is required of the 25 largest issuers; other financial institutions participate voluntarily. The data are not considered confidential. Reporting the FR 2572S data is mandatory and the identity of survey respondents is considered confidential (5 U.S.C 552(b)(4)).

Abstract: The FR 2572 collects data on credit card pricing and availability from a sample of at least 150 financial institutions that offer credit cards to the general public. The information collected on the FR 2572 is reported to Congress and made available to the public in order to promote competition within the industry. The FR 2572S gathers information on the number of creditors that have engaged in one or more of the practices identified in Section 505 of the Credit Card Act.

Current Actions: The Federal Reserve proposed to discontinue collection of the FR 2572S data. As directed by the Section 505 of the Credit Card Act, the Federal Reserve Board conducted a one-time survey regarding the extent to which credit card issuers adjust consumer credit lines or interest rates based on certain factors. The Credit Card Act required the Federal Reserve Board to complete the survey and submit a report to Congress by May 22, 2010. For this reason, the Federal Reserve discontinued the FR 2572S.

On March 31, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 16120) seeking public comment for 60 days on the extension, with revision, of the Report of Terms of Credit Card Plans. The comment period for this notice expired on June 1, 2010. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Survey to Obtain Information on the Relevant Market in Individual Merger Cases.

Agency form number: FR 2060.

OMB control number: 7100–0232.

Frequency: On occasion.

Reporters: Small businesses and consumers.

Annual reporting hours: 9 hours.

Estimated average hours per response: Small businesses, 10 minutes; Consumers, 6 minutes.

Number of respondents: 25 small businesses and 50 consumers per survey.

General description of report: This information collection is voluntary pursuant to the Change in Bank Control Act (12 U.S.C. 1817(j)(7)(A) and (B)), the Bank Merger Act (12 U.S.C. 1828(c)(5)), and section 3(c)(1) of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1842(c)(1)). Individual responses are confidential pursuant to the Freedom of Information Act (5 U.S.C. § 552 (b)(4) and (b)(6)) for small businesses and consumers, respectively.

Abstract: The Federal Reserve uses this information to define relevant banking markets for specific merger and acquisition applications and to evaluate changes in competition that would result from proposed transactions.

Current Actions: On March 31, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 16120) seeking public comment for 60 days on the extension, without revision, of the Survey to Obtain Information on the Relevant Market in Individual Merger Cases. The comment period for this notice expired on June 1, 2010. The Federal Reserve did not receive any comments.

2. *Report title:* Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted.

Agency form number: FR 4006.

OMB control number: 7100–0129.

Frequency: Annual.

Reporters: BHCs.

Annual reporting hours: 505 hours.

Estimated average hours per response: 5 hours.

Number of respondents: 101

General description of report: This information collection is required to obtain a benefit pursuant to sections 4(a) and 4(c)(2) of the BHC Act (12 U.S.C. 1843(a) and (c)(2)) and may be given confidential treatment upon request. The Federal Reserve has established a procedure for requesting an extension in its Regulation Y (12 CFR 225.22(d)(1) and 225.140).

Abstract: BHC that acquired voting securities or assets through foreclosure in the ordinary course of collecting a debt previously contracted may not retain ownership of those shares or assets for more than two years without prior Federal Reserve approval. There is no formal reporting form and each request for extension must be filed at the appropriate Reserve Bank of the BHC. The Federal Reserve uses the information provided in the request to fulfill its statutory obligation to supervise BHCs.

Current Actions: On March 31, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 16120) seeking public comment for 60 days on the extension, without revision, of the Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted. The comment period for this notice expired on June 1, 2010. The Federal Reserve did not receive any comments.

3. *Report title:* Stock Redemption Notification.

Agency form number: FR 4008.

OMB control number: 7100–0131.

Frequency: On occasion.

Reporters: BHCs.

Annual reporting hours: 155 hours.

Estimated average hours per response: 15.5 hours.

Number of respondents: 10

General description of report: This information collection is mandatory pursuant to Sections 5(b) and (c) of the BHC Act (12 U.S.C. 1844(b) and (c)) and is generally not given confidential treatment. However, a respondent may request that the information be kept confidential on a case-by-case basis.

Abstract: The BHC Act and Regulation Y generally require a BHC to seek prior Federal Reserve approval before purchasing or redeeming its equity securities. Given that a BHC is exempt from this requirement if it meets certain financial, managerial, and supervisory standards, only a small portion of proposed stock redemptions actually require the prior approval of the Federal Reserve. There is no formal reporting form. The Federal Reserve uses the information provided in the redemption notice to fulfill its statutory obligation to supervise BHCs.

Current Actions: On March 31, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 16120) seeking public comment for 60 days on the extension, without revision, of the Stock Redemption Notification. The comment period for this notice expired on June 1, 2010. The Federal Reserve did not receive any comments.

4. *Report title:* Information Collections Related to the Gramm-Leach-Bliley (GLB) Act.

Agency form number: FR 4010, FR 4011, FR 4012, FR 4017, FR 4019, and FR 4023.

OMB control number: 7100–0292.

Frequency: On occasion.

Reporters: BHCs, foreign banking organizations (FBOs), and state member banks (SMBs).

Annual reporting hours: 3,485 hours.

Estimated average hours per response: FR 4010: BHC 3 hours, FBOs 3.5 hours; FR 4011: 10 hours; FR 4012: BHCs decertified as financial holding companies (FHCs) 1 hour, FHCs back into compliance 10 hours; FR 4017: 4 hours; FR 4019: Regulatory relief requests 1 hour, Portfolio company notification 1 hour; and FR 4023: 50 hours.

Number of respondents: FR 4010: BHC 35, FBOs 6; FR 4011: 6; FR 4012: BHCs decertified as FHCs 80, FHCs back into compliance 20; FR 4017: 3; FR 4019: Regulatory relief requests 5, Portfolio company notification 2; FR 4023: 60.

General description of report: The FR 4010 is required to obtain a benefit and is authorized under Section 4(l)(1)(C) of the BHC Act, 12 U.S.C. 1843(l)(l)(C); section 8(a) of the International Banking Act, 12 U.S.C. 3106(a); and sections 225.82 and 225.91 of Regulation Y, 12 CFR 225.82 and 225.91.

The FR 4011 is voluntary and is authorized under Sections 4(j) and 4(k) of the BHC Act, 12 U.S.C. 1843(j) through (k); and sections 225.88, and 225.89, of Regulation Y, 12 CFR 225.88, and 225.89.

The FR 4012 is mandatory and is authorized under Section 4(l)(1) and 4(m) of the BHC Act, 12 U.S.C. 1843(l)(1) and (m); section 8(a) of the International Banking Act, 12 U.S.C. 3106(a); and sections 225.83 and 225.93 of Regulation Y, 12 CFR 225.83 and 225.93.

The FR 4017 is required to obtain a benefit and is authorized under Section 9 of the Federal Reserve Act, 12 U.S.C. 335; and section 208.76 of Regulation H, 12 CFR 208.76.

The FR 4019 is required to obtain a benefit and is authorized under Section 4(k)(7) of the BHC Act, 12 U.S.C. 1843(k)(7); and sections 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2) of Regulation Y, 12 CFR 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2).

The FR 4023 is mandatory and is authorized under Section 4(k)(7) of the BHC Act, 12 U.S.C. 1843(k)(7); and sections 225.171(e)(4) and 225.175 of Regulation Y, 12 CFR 225.171(e)(4) and 225.175.

For the FR 4010, FR 4011, FR 4017, FR 4019, and information related to a failure to meet capital requirements on the FR 4012, a company may request confidential treatment of the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4) and (b)(6)). Information related to a failure to meet management requirements on the FR 4012 is confidential and exempt from disclosure under section (b)(4), because the release of this information would cause substantial harm to the competitive position of the entity, and (b)(8) if the information is related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. Since the Federal Reserve does not collect the FR 4023, no issue of confidentiality under the FOIA arises. FOIA will only be implicated if the Board's examiners retained a copy of the records in their examination or supervision of the institution, and would likely be exempt from disclosure pursuant to FOIA (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).

Abstract: Each BHC or FBO seeking FHC status must file the FR 4010 declaration, which includes information needed to verify eligibility for FHC status. By filing the FR 4011, a requestor may ask the Board to determine that an activity is financial in nature, to issue an advisory opinion that an activity is within the scope of an activity previously determined to be financial in nature, or to approve engagement in an activity complementary to a financial activity. Any FHC ceasing to meet capital or managerial prerequisites for FHC status must notify the Board of the deficiency by filing the FR 4012 and often must submit plans to the Board to cure the deficiency. Any SMB seeking to establish a financial subsidiary must seek the Board's prior approval by submitting the FR 4017. Any FHC seeking to extend the 10-year holding period for a merchant banking investment must submit the FR 4019 to apply for the Board's prior approval, and a FHC also must notify the Board if it routinely manages or operates a portfolio company for more than nine months. All FHCs engaging in merchant banking activities must keep records of those activities, and make them available to examiners as specified in the FR 4023 requirements.

There are no formal reporting forms for these collections of information, which are event generated, though in each case the type of information required to be filed is described in the Board's regulations. These collections of information are required pursuant to amendments made by the GLB Act to the BHC Act or the Federal Reserve Act, or Board regulations issued to carry out the GLB Act.

Current Actions: On March 31, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 16120) seeking public comment for 60 days on the extension, without revision, of the Information Collections Related to the GLB Act. The comment period for this notice expired on June 1, 2010. The Federal Reserve did not receive any comments.

5. *Report title:* Notice Claiming Status as an Exempt Transfer Agent.

Agency form number: FR 4013.

OMB control number: 7100–0137.

Frequency: On occasion.

Reporters: BHCs and certain trust companies.

Annual reporting hours: 20 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 10.

General description of report: This information collection is mandatory pursuant to section 17A(c) of the Securities Exchange Act of 1934 (15

U.S.C. 78q–1(c)) as amended by the Securities Acts Amendments of 1975. The Federal Reserve is authorized to collect these data from state member banks or their subsidiaries, and BHCs or their subsidiaries (except national banks and state nonmember banks that are insured by the FDIC) by 15 U.S.C. 78c(a)(34)(B)(ii). The data collected are not given confidential treatment.

Abstract: Banks, BHCs, and trust companies subject to the Federal Reserve's supervision that are low-volume transfer agents voluntarily file the notice on occasion with the Federal Reserve. Transfer agents are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers. The purpose of the notice, which is effective until the agent withdraws it, is to claim exemption from certain rules and regulations of the Securities and Exchange Commission (SEC). The Federal Reserve uses the notices for supervisory purposes because the SEC has assigned to the Federal Reserve responsibility for collecting the notices and verifying their accuracy through examinations of the respondents. There is no formal reporting form and each notice is filed as a letter.

Current Actions: On March 31, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 16120) seeking public comment for 60 days on the extension, without revision, of the Notice Claiming Status as an Exempt Transfer Agent. The comment period for this notice expired on June 1, 2010. The Federal Reserve did not receive any comments.

6. *Report title:* Investment in Bank Premises Notification.

Agency form number: FR 4014.

OMB control number: 7100–0139.

Frequency: On occasion.

Reporters: SMBs.

Annual reporting hours: 7 hours.

Estimated average hours per response: 30 minutes.

Number of respondents: 13.

General description of report: This information collection is required to obtain a benefit pursuant to Section 24A(a) of the Federal Reserve Act (12 U.S.C. 371d(a)) and is not given confidential treatment. However, a respondent may request confidential treatment for all or part of a notification, which would be reviewed on a case-by-case basis.

Abstract: The Federal Reserve Act requires an SMB to seek prior Federal Reserve approval before making an investment in bank premises that exceeds certain thresholds. There is no formal reporting form, and each required request for prior approval must be filed as a notification with the appropriate Reserve Bank of the SMB. The Federal Reserve uses the information provided in the notice to fulfill its statutory obligation to supervise SMBs.

Current Actions: On March 31, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 16120) seeking public comment for 60 days on the extension, without revision, of the Investment in Bank Premises Notification. The comment period for this notice expired on June 1, 2010. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, June 10, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–14312 Filed 6–14–10; 8:45 am]

BILLING CODE 6210–01–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 30, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Chittranjan Kashavji Thakkar, Alpharetta, Georgia; to acquire additional voting shares of Hometown Community Bancshares, Inc., and thereby indirectly acquire additional voting shares of Hometown Community Bank, both of Braselton, Georgia.

Board of Governors of the Federal Reserve System, June 10, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–14400 Filed 6–14–10; 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 July 9, 2010.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. First Southern Bancorp, Inc., Stanford, Kentucky; to acquire up to 24.99 percent of the voting shares of CKF Bancorp, Inc., and thereby indirectly acquire voting shares of Central Kentucky Federal Savings Bank, both of Danville, Kentucky, and thereby engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 10, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–14399 Filed 6–14–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. (Eastern Time), June 21, 2010.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Approval of the minutes of the May 17, 2010 Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

a. Monthly Participant Activity Report.

b. Monthly Investment Performance Review.

c. Legislative Report.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: June 11, 2010.

Megan G. Grumbine,

Secretary (Acting), Federal Retirement Thrift Investment Board.

[FR Doc. 2010–14523 Filed 6–11–10; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Privacy & Security Tiger Team Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming subcommittee meeting of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee's Privacy & Security Tiger Team.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on June 29, 2010, from 8 a.m. to 5:15 p.m./ Eastern Time.

Location: Grand Hyatt Washington Hotel, 1000 H Street, NW., Washington, DC 20001 (telephone: 202–582–1234). Please check the ONC Web site, *http://healthit.hhs.gov,* for additional information as it becomes available, instructions on how to listen via telephone or Web, and viewing a video recording of the event which will be available following the meeting.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroup will be discussing technologies that enable consumer choice for sharing their information in health information exchange. The workgroup will be hearing testimony from current users of such technologies, developers of "cutting edge" technologies that may be useful in the clinical care setting in the future, as well as stakeholder groups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 23, 2010. Oral comments from the public will be scheduled between approximately 5 p.m. and 5:15 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business on that day.

Persons attending advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Web registration is highly recommended and is available at *http://www.blsmeetings.net/consumerchoicetechnologyhearing.* Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: June 9, 2010.

Judith Sparrow,

Office of Programs and Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–14395 Filed 6–14–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0121]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; The Mammography Quality Standards Act Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 15, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0309. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

The Mammography Quality Standards Act Requirements—21 CFR Part 900 (OMB Control Number 0910–0309)—Extension

The Mammography Quality Standards Act requires the establishment of a Federal certification and inspection program for mammography facilities;

regulations and standards for accreditation and certification bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. The intent of these regulations is to assure safe, reliable, and accurate mammography on a nationwide level. Under the regulations, as a first step in becoming certified, mammography facilities must become accredited by an FDA-approved accreditation body. This requires undergoing a review of their clinical images and providing the accreditation body with information showing that they meet the equipment, personnel, quality assurance and quality control standards, and have a medical reporting and recordkeeping program, a medical outcomes audit program, and a consumer compliant mechanism. On the basis of this accreditation, facilities are then certified by FDA or an FDA approved State certification agency and must prominently display their certificate. These actions are taken to ensure safe, accurate, and reliable mammography on a nationwide basis. The following sections of title 21 of the Code of Federal Regulations (CFR) were not included in the previously mentioned burden tables because they were considered usual and customary practice and were part of the standard of care prior to the implementation of the regulations. Therefore, they resulted in no additional reporting or recordkeeping burden: 21 CFR 900.12(c)(1) and (c)(3) and 21 CFR 900.3(f)(1). Section 900.3(c) was not included in the previously mentioned burden tables because all four existing accreditation bodies are approved until late in 2013; so, no applicants will reapply during the requested information collection period. Section 900.24(c) was also not included in the previously mentioned burden tables because if a certifying state had its approval withdrawn, FDA would take over certifying authority for the affected facilities. Because FDA already has all the certifying state's electronic records, there wouldn't be an additional reporting burden.

In the **Federal Register** of March 11, 2010 (75 FR 11542), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.3(b)(1)	0.33	1	0.33	1	0.33		
900.3(b)(3) full[1]	0.33	1	0.33	320	106	$10,000	
900.3(b)(3) limited[2]	5	1	5	30	150		
900.3(c)[3]	1.33	1	1.33	15	20		
900.3(d)(2)	0.1	1	0.1	30	3		
900.3(d)(5)	0.1	1	0.1	30	3		
900.3(e)	0.1	1	0.1	1	0.1		
900.3(f)(2)	0.1	1	0.1	200	20		$45
900.4(c), 900.11(b)(1), and 900.11(b)(2) facility[4]	2,894	1	2,894	1.5	4,341		
900.4(c) AB[5]	5	1	5	421	2,105		$173,620
900.4(d), 900.11(b)(1), and 900.11(b)(2) facility[4]	2,894	1	2,894	.75	2,171		
900.4(d) AB[5]	5	1	5	211	1,055		
900.4(e), 900.11(b)(1), and 900.11(b)(2) facility[4]	8,681	1	8,681	1	8,681		$8,681
900.4(e) AB[5]	5	1	5	1,736	8,680		

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.4(f)	331	1	331	7	2,317		$77,640
900.4(h) facility[4]	8,681	1	8,681	1	8,681		$3,820
900.4(h) AB[5]	5	1	5	10	50		
900.4(i)(2)	1	1	1	16	16		
900.6(c)(1)	0.1	1	0.1	60	6		
900.11(b)(3)	5	1	5	.5	2.5		
900.11(c)	400	1	400	5	2,000		
900.12(c)(2)	8,681	4,942	42,901,502	.0833333	3,575,124		$19,500,000
900.12(c)(2) patient refusal[6]	87	1	87	.5	43.5		
900.12(h)(4)	7	1	7	1	7		
900.12(j)(1) facility[4]	8	1	8	200	1,600		$120
900.12(j)(1) AB[5]	8	1	8	320	2,560		$240
900.12(j)(2)	2	1	2	100	200		$3,875
900.15(c)	5	1	5	2	10		
900.15(d)(3)(ii)	1	1	1	2	2		
900.18(c)	2	1	2	2	4		
900.18(e)	2	1	2	1	2		
900.21(b)	0.33	1	0.33	320	106	$30,000	$174
900.21(c)(2)	0.1	1	0.1	30	3		
900.22(h)	5	200	1,000	.083	83		
900.22(i)	2	1	2	30	60		$20
900.23	5	1	5	20	100		
900.24(a)	0.4	1	0.4	200	80		$42
900.24(a)(2)	0.15	1	0.15	100	15		$21
900.24(b)	1	1	1	30	30		
900.24(b)(1)	0.3	1	0.3	200	60		$42
900.24(b)(3)	0.15	1	0.15	100	15		$21
900.25(a)	0.2	1	0.2	16	3.2		
FDA Form 3422	700	1	700	.25	175		
Total					3,620,692	$40,000	$19,768,361

[1] One-time burden.
[2] Refers to accreditation bodies applying to accredit specific Full Field Digital Mammography units.
[3] While not included in the 60-day notice, all 4 accreditation bodies are expected to reapply to continue to be accreditation bodies during the information collection period.
[4] Refers to the facility component of the burden for this requirement.
[5] Refers to the accreditation body component of the burden for this requirement.
[6] Refers to the situation where a patient specifically does not want to receive the lay summary of her exam.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.3(f)(1)	0.1	1	0.1	0	0		
900.4(g)	5	1	5	1	5		
900.12(a)(1)(i)(B)(2)	87	1	87	8	696		
900.12(a)(4)	8,681	4	34,724	1	34,724		
900.12(c)(4)	8,681	1	8,681	1	8,681	$28,000	
900.12(e)(13)	8,681	52	451,412	.083333	37,618		
900.12(f)	8,681	1	8,681	16	138,896		
900.12(h)(2)	8,681	2	17,362	1	17,362		
900.22(a)	5	1	5	1	5		
900.22(d)	5	1	5	1	5		
900.22(e)	5	1	5	1	5		
900.22(f)	3	1	3	1	3		
900.22(g)	5	1	5	1	5		$50
900.25(b)	5	1	5	1	5		
Total					238,010	$28,000	$50

Dated: May 27, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14317 Filed 6–14–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Tobacco Product Constituents Subcommittee of the Tobacco Products Scientific Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Tobacco Product Constituents Subcommittee of the Tobacco Products Scientific Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 7, 2010, from 8:30 a.m. to 5 p.m. and on July 8, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Montgomery Ballroom, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel phone number is 301–977–8900.

Contact Person: Karen Templeton-Somers, Office of Science, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373 (choose Option 4), e-mail: *TPSAC@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732110002. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On July 7 and 8, 2010, the subcommittee will continue discussions, as needed, from the June 8 and 9, 2010, meeting of this subcommittee. The subcommittee will then receive presentations and discuss the analytic methods and ancillary and normalization standards applicable to the measurement and reporting of harmful or potentially harmful constituents in tobacco products, including smoke constituents. The subcommittee will finalize its proposed list of harmful or potentially harmful constituents, the rational for inclusion of each substance, validated methods for measuring the constituents and the ancillary and normalization standards for the identified constituents for presentation at a future meeting of the Tobacco Products Scientific Advisory Committee.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 29, 2010. Oral presentations from the public will be scheduled between approximately 2:45 p.m. and 3:45 p.m. on July 7, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 21, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 22, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Templeton-Somers at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 10, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–14383 Filed 6–10–10; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC) meeting.

The purpose of the IACC meeting is to listen to presentations on various aspects of autism spectrum disorder research and services and to discuss plans for the annual update of the IACC Strategic Plan for Autism Spectrum Disorders Research. The meeting will be open to the public and will be accessible by webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open meeting.

Date: July 16, 2010.

Time: 10 a.m. to 5 p.m e.t.—approximate end time.

Agenda: Invited speakers will give presentations on various aspects of autism spectrum disorder research and services and the IACC will discuss plans for the annual update of the IACC Strategic Plan for Autism Spectrum Disorder Research.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Webcast Live: http://videocast.nih.gov/.

Conference Call Access: Dial: 1–888–577–8995, access code: 1991506.

Cost: The meeting is free and open to the public.

Registration: http://www.acclaroresearch.com/oarc/7-16-10_IACC. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis.

Deadlines: Notification of intent to present oral comments: July 8th by 5 p.m. e.t. Submission of written/electronic statement for oral comments: July 9th by 5 p.m. e.t. Submission of written comments: July 12th by 5 p.m. e.t.

Access: Metro accessible—Medical Center Metro (Red Line) 1.5 miles from hotel.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 8200, Bethesda, MD 20892–9669, Phone: 301–443–6040, e-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5 p.m. e.t. on Thursday, July 8, 2010 with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral statement/comments including a brief description of the organization represented by 5 p.m. e.t. on Friday, July 9, 2010. Statements submitted will become a part of the public record. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5 p.m. e.t. Monday, July 12, 2010. The comments should include the name and when applicable, the business or professional affiliation of the interested person. All written comments received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record.

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast live or conference call, please e-mail *IACCTechSupport@acclaroresearch.com.*

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

To access the webcast live on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (recommended); E) Java Virtual Machine enabled (recommended).

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered. **Please note:** Online pre-registration will close by 5 p.m. the day before the meeting. After that time, registration will have to be done onsite the day of the meeting.

Meeting schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: June 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14378 Filed 6–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Developmental Pharmacology.

Date: July 7–8, 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: Janet M. Larkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Arthritis, Skin and Immunology.

Date: July 7–8, 2010.

Time: 9 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: Daniel F. McDonald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Adult Psychopathology and Disorders of Aging.

Date: July 7, 2010.

Time: 10 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cheri Wiggs, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–10–002: Science of Behavior Change.

Date: July 16, 2010.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Computational Biology, Image Processing, and Data Mining.

Date: July 21, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Allen Richon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *allen.richon@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Devices and Detection Systems.

Date: July 21–22, 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: Ross D. Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Immune Mechanism.

Date: July 21, 2010

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patrick K Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genes, Genomes and Genetics Member Applications.

Date: July 21, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Panniers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Biophysical and Biochemical Sciences.

Date: July 22, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise Beusen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892, (301) 435–1267, *beusend@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Cell Biology and Development.

Date: July 22–23, 2010.

Time: 8:30 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: Alessandra M. Bini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: HIV Immunology and Vaccine.

Date: July 28–30, 2010.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@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: June 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14351 Filed 6–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Experimental Therapeutics Program (NExT) .

Date: July 1, 2010.

Time: 8:30 a.m.—4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: 6116 Executive Boulevard, Suite 109, Rockville, MD 20852 (Teleconference).

Contact Person: Dr. Barbara Mroczkowski, Executive Secretary, NCI Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20817, (301) 496–4291, *mroczkowskib@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14342 Filed 6–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Feasibility Studies for Collaborative Interaction for Minority Institution.

Date: July 13–14, 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: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14346 Filed 6–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Translational PAR.

Date: July 8, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan Sullivan, PhD, Scientific Review Officer, National Institute of Deafness and Other Communication Disorders, 6120 Executive Blvd Ste., 400C, Rockville, MD 20852, 301–496–8683, *sullivas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14350 Filed 6–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Pathogenic Mechanisms in UTI.

Date: July 7, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Planning Grant for Ulcerative Colitis Trial in Children.

Date: July 14, 2010.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Inflammatory Bowel Disease Consortium Ancillary Study.

Date: July 19, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14340 Filed 6–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; VSL—SEP Review.

Date: June 14, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14349 Filed 6–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Nationwide Limited Public Interest Waiver of Section 1605 (Buy American Requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) For De Minimis Incidental Components of Sanitation Facilities Construction Projects Financed With Funds Provided Under ARRA

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: The Indian Health Service (IHS) hereby gives notice of granting a nationwide limited waiver of the Buy American requirements of the American Recovery and Reinvestment Act of 2009 (ARRA) Section 1605 under the authority of Section 1605(b)(1) (public interest waiver) for de minimis incidental components of sanitation facilities construction projects funded by ARRA. This action permits the use of non-domestic iron, steel, and manufactured goods when they occur in de minimis incidental components of projects funded by ARRA that may otherwise be prohibited under section 1605(a). As used in this Notice, "de minimis incidental components" means those components otherwise prohibited under Section 1605(a) that cumulatively comprise no more than a total of 5 percent of the total of the materials used in a project funded in whole or in part with ARRA assistance.

DATES: *Effective Date:* Upon signature.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and Section 176.80 of the rules of the Office of Management and Budget (OMB) (2 CFR 176.80), the IHS hereby provides notice that it is granting a nationwide limited waiver of the requirements of section 1605(a) of Public Law 111–5, Buy American requirements, based on the public interest authority of section 1605(b)(1), to allow the use of non-domestic iron, steel, and manufactured goods when they occur in de minimis incidental components of eligible sanitation facilities construction projects, where such components cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project funded in whole or in part by ARRA.

ARRA 1605(a) prohibits the use of recovery funds for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced

in the United States, or unless a waiver is granted by the head of the Federal department or agency. ARRA 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. ARRA 1605(c) provides that if the head of a Federal department or agency makes a determination under 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**. The finding relevant to this waiver is at ARRA 1605(b)(l), that applying the Buy American requirement would be inconsistent with the public interest.

The IHS's sanitation facilities construction projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel, and manufactured goods, such as pipe, tanks, pumps, motors, instrumentation, control equipment, treatment process equipment, and relevant materials to build structures for treatment plants, pumping stations, pipe networks, etc. In bid solicitations for a project, these high cost components are generally described in detail via project specific technical specifications. For these major components, Tribes, utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost, and the country of manufacture of the available components.

Every sanitation facilities construction project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and incorporated into the physical structure of the project, such as nails, nuts, bolts, other fasteners, tubing, gaskets, etc. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, characterize them as incidental to the facility or project.

In drafting this waiver, because the majority of IHS sanitation facilities construction projects occur in remote locations, IHS considered the fact that these types of incidental components are obtained by contractors in many different ways from many different sources, and the disproportionate cost and delay that would be imposed on projects if the IHS did not issue this waiver. Such delays would jeopardize project completion and related jobs in remote areas including Alaska villages where the only means of transporting such components is by air.

Due to the diverse characteristics of the specific configurations of these individually low-cost components, the analysis and consideration of waiver requests for them—and particularly of ascertaining whether U.S.-made products exist or can be made to meet these diverse configurations—have been a demanding and time consuming task far out of proportion to the percentage of total project materials cost they comprise. Further, since the specific use of these low-cost components can be expected to be widely varied, formulating categorical waivers for specific types of components would be impractical. Recipients who do not have their compliance with respect to section 1605 clarified may in many cases be unable to initiate or continue constructing their projects resulting in the loss of jobs that were a result of the project. Because the situations described above can be effectively addressed by a comprehensive application of a nationwide de minimis waiver, the IHS finds that it would be inconsistent with the public interest to apply the Buy American requirement to incidental components when they in total comprise no more that 5 percent of the total cost of the materials used in and incorporated into a project.

For many years, the IHS and the Environmental Protection Agency's (EPA) Clean Water Act lndian Set Aside and Drinking Water Infrastructure Grants-Tribal Set Aside programs jointly funded water infrastructure projects. The EPA undertook inquiries to identify the approximate scope of incidental components within its water infrastructure projects. The responses were consistent and indicated that the percentage of total costs for drinking water or wastewater treatment infrastructure projects represented by these incidental components is generally not in excess of 5 percent of the total costs of the materials used in and incorporated into a project.

As a result of its research and analysis, EPA published two **Federal Register** notices of de minimis waivers. The first was published on Tuesday, June 2, 2009 (FR Vol. 74, No. 104, pp. 26398 and 26399), and set forth the EPA's determination with respect to a public interest finding on de minimis. The second notice, which revised the first, was published on Monday, August 10, 2009 (FR Vol. 74, No. 152, pp. 39959 and 39960). By these waivers the EPA has also determined that imposing ARRA's Buy American requirements for the category of de minimis incidental components is not in the public interest.

While the authorizing statutes and funding sources for the EPA and IHS recipients are different, the types of projects that EPA finances under its programs are substantially similar in size, scope and purpose as those funded by the IHS and, as stated above, some projects are jointly funded by the IHS and the EPA. The IHS has decades of experience in constructing water and waste disposal facilities in rural Indian country and shares the EPA's rationale with respect to incidental components used in similar projects. With respect to jointly-funded projects, it is desirable to avoid disparate treatment of components based on whether or not ARRA funds come from the EPA or the IHS. Section 1605 should be administered consistently, both within a particular Federal agency and, to the extent possible, between agencies. Promoting consistent treatment and avoiding unnecessary delays in committing ARRA financing to projects around the country are crucial to the success of ARRA. Requiring individual waivers for incidental components would be time prohibitive and overly burdensome for applicants and the IHS. Therefore, a de minimis waiver of incidental components totaling no more that 5 percent of the total cost of the materials used in and incorporated into a project is in the public interest.

Based on the public interest finding discussed above and pursuant to Section 1605(c), the IHS has found that it would be inconsistent with the public interest—and particularly with ARRA's directives to ensure expeditious construction consistent with prudent management, as cited above—to apply the Buy American requirement to incidental components when they in total comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project. Accordingly, IHS is hereby issuing a national waiver from the requirements of ARRA Section 1605(a) for any components described above as incidental that comprise in total a de

minimis amount of the project, that is, for any such incidental components up to a limit of no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Recipients who wish to use this waiver should in consultation with their contractors determine the items to be covered by this waiver. They must retain relevant documentation as to those items in their project files, including the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

In using this waiver, recipients should consider that all sanitation facilities construction projects by definition require the expenditure of a certain amount of project funds on the literal "nuts and bolts"-type components whose origins cannot readily be identified prior to procurement. The IHS has determined the 5 percent limit based on the previously mentioned EPA inquiries, its 50-year experience constructing sanitation facilities for American Indian and Alaska Native communities, and informed professional engineering judgment as to the maximum total amount of incidental goods used in most sanitation facilities construction projects. In a few, exceptional cases, recipients using this waiver may have multiple types of low-cost components which, when combined and in conjunction with those literal "nuts and bolts"-type components, may total more than 5 percent. Recipients in such cases will have to choose which of these incidental components will be covered by the waiver and which will not, and will document the type and amount of such items covered. Components which the recipient is unable to include within the 5 percent limit of this waiver must comply with the requirements of section 1605 by appropriate means other than coverage under this waiver.

Further, as described above, in some cases projects are jointly funded by IHS and the EPA. Both the IHS and the EPA have issued de minimis waivers that have a cap of a total of 5 percent of the total cost of the materials used in and incorporated into a project. In the case of a jointly funded project, these waivers shall not be combined to create a waiver of greater than 5 percent of total project costs.

This supplementary information constitutes the "detailed written justification" required by Section 1605(c) of ARRA and Section 176.80 of OMB's rules for waivers of the Buy American provisions.

Authority: Public Law 111–5, Section 1605.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Gould, Regulations Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852–1627; call non-toll free (301) 443–7899; send via facsimile to (301) 443–9879; or send your e-mail requests, comments, and return address to: *Betty.Gould@ihs.gov.*

Dated: June 9, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–14347 Filed 6–14–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0020]

Debris Contracting Guidance, RP 9580.201

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on Recovery Fact Sheet RP9580.201 *Debris Contracting Guidance.*

DATES: Comments must be received by July 15, 2010.

ADDRESSES: Comments must be identified by docket ID FEMA–2010–0020 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Byron Mason, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–646–4368.

SUPPLEMENTARY INFORMATION

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed fact sheet is available in docket ID FEMA–2010–0020. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

II. Background

This fact sheet assists Public Assistance applicants with meeting procurement requirements set forth in 44 CFR Part 13, as well as other eligibility requirements, when procuring debris removal and monitoring contracts.

FEMA seeks comment on the proposed fact sheet, which is available online at *http://www.regulations.gov* in docket ID FEMA–2010–0020. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov.*

Authority: 42 U.S.C. 5121–5207; 44 CFR parts 13 and 206.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–14289 Filed 6–14–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0034]

Recovery Fact Sheet RP9580.205, Public Assistance Funding to Public Housing Facilities

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: In this document the Federal Emergency Management Agency (FEMA) is providing notice of the availability of the final Recovery Fact Sheet RP9580.205, *Public Assistance Funding to Public Housing Facilities.*

DATES: The fact sheet is effective May 19, 2010.

ADDRESSES: The fact sheet is available online at *http://www.regulations.gov* under docket ID FEMA–2010–0034 and on FEMA's Web site at *http://www.fema.gov.* You may also view a hard copy of the fact sheet at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Elissa Fontenot, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–646–4014, or via e-mail at *Elissa.Fontenot@dhs.gov.*

SUPPLEMENTARY INFORMATION: The fact sheet describes assistance FEMA may provide to publicly subsidized housing facilities under the Public Assistance Program. FEMA may provide funding to public housing authorities for their emergency work costs as well as the cost to repair, replace or restore disaster-damaged public housing facilities in Presidentially-declared major disasters and emergencies declared on or after October 1, 2008.

Authority: 42 U.S.C. 5121–5207; 44 CFR part 206.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–14290 Filed 6–14–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0024]

Recovery Policy RP9524.10; Direct Disaster-Related Damage to Eligible Facilities

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on Recovery Policy RP9524.10, *Direct Disaster-Related Damage to Eligible Facilities.* The purpose of this policy is to clarify the definition of damage that is eligible for repair pursuant to FEMA's Public Assistance regulations regarding the restoration of damaged facilities.

DATES: Comments must be received by July 15, 2010.

ADDRESSES: Comments must be identified by docket ID FEMA–2010–0024 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Preston Wilson, Public Assistance Division, via e-mail at *Preston.Wilson@dhs.gov* or by facsimile at (202) 646–3304. If you have any questions, please contact Mr. Wilson at (202) 646–1648, or at the Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *http://www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed policy is available in docket ID FEMA–2010–0024. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

II. Background

This policy clarifies the definition of damage that is eligible for repair under FEMA's Public Assistance regulation at 44 CFR 206.226, "Restoration of damaged facilities". FEMA seeks comment on the proposed policy, which is available online at *http://www.regulations.gov* in docket ID FEMA–2010–0024. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov.*

Authority: 42 U.S.C. 5121–5207; 44 CFR part 206.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–14291 Filed 6–14–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–51]

Section 8 Random Digit Dialing Fair Market Rent Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This survey provides HUD with a fast, inexpensive way to estimate Section 8 Fair Market Rents (FMRs) in areas not covered by the American Community Survey annual reports and in areas where FMRs are believed to be incorrect. The Department has used this random digit dialing (RDD) survey methodology for 15 years, as recently improved to offset low response rates. The affected public would be those renters surveyed and Section 8 voucher holders. The change in this reinstatement is to reduce the burden, because of fewer respondents.

DATES: *Comments Due Date:* July 15, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0142) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Section 8 Random Digit Dialing Fair Market Rent Surveys.

OMB Approval Number: 2528–0142.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This survey provides HUD with a fast, inexpensive way to estimate Section 8 Fair Market Rents (FMRs) in areas not covered by the American Community Survey annual reports and in areas where FMRs are believed to be incorrect. The Department has used this random digit dialing (RDD) survey methodology for 15 years, as recently improved to offset low response rates. The affected public would be those renters surveyed and Section 8 voucher holders. The change in this reinstatement is to reduce the burden, because of fewer respondents.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	15,772	1		0.375		5,928

Total Estimated Burden Hours: 5,928.

Status: Reinstatement, with change, of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 8, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–14282 Filed 6–14–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N107; 1112–0000–81420–F2]

Los Esteros Critical Energy Facility Low-Effect Habitat Conservation Plan for the Bay Checkerspot Butterfly and Serpentine Endemic Plant Species, Santa Clara County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: proposed low-effect habitat conservation plan; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from the Calpine Corporation (applicant) for a 50-year incidental take permit for five species under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for "take" of one federally listed animal and four federally listed plants. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant's low-effect habitat conservation plan (plan). We request comments on the applicant's application and plan, and the preliminary determination that the plan qualifies as a "low-effect" habitat conservation plan, eligible for a Categorical Exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

DATES: We must receive written comments on or before July 15, 2010.

ADDRESSES: Please address written comments to Mike Thomas, Chief, Conservation Planning Branch, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825. Alternatively, you may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Mike Thomas, or Eric Tattersall, Deputy Assistant Field Supervisor/Division Chief, Conservation Planning and Recovery, at the address shown above or at (916) 414–6600 (telephone).

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the permit application, plan, and EAS from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**).

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.

Background Information

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing Federal regulations prohibit the "take" of fish or wildlife species listed as endangered or threatened. "Take" is defined under the Act to include the following activities: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or to attempt to engage in such conduct. However, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Although take of listed plant species is not prohibited under the Act, and therefore cannot be authorized under an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan. All species included in the incidental take permit would receive assurances under our "No Surprises" regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The applicant seeks an incidental take permit for indirect effects within 10,306 acres of serpentine grasslands associated with the operations and maintenance of the Los Esteros Critical Energy Facility (LECEF) located in Santa Clara County, California. The LECEF Phase 2 would covert the existing facility into a combined-cycle natural gas-fired generating facility by passing exhaust heat, normally released to the atmosphere, through a heat recovery steam generator. The applicant is requesting permits for take of one animal species federally listed as threatened: Bay checkerspot butterfly (*Euphydryas editha bayensis)* (butterfly). The plan also includes four plant species federally listed as endangered: Coyote ceanothus (*Ceanothus ferrisae*), Metcalf Canyon jewel-flower (*Streptanthus albidus albidus*), Santa Clara Valley dudleya (*Dudleya setchellii*), and Tiburon paintbrush (*Castilleja affinis neglecta*). Collectively, these five species are referred to as "Covered Species" in the plan.

The applicant owns and manages lands in Santa Clara County, California. Lands owned by the applicant include 34 acres of the Phase 2 LECEF in the City of San Jose and 40 acres of serpentine grassland on Coyote Ridge adjacent to Coyote Creek Golf Drive and northwest of Waste Management's Kirby Canyon Recycling and Waste facility in the City of Morgan Hill, California.

The following actions are proposed under the plan: Implementation and construction of the LECEF Phase 2, operations and maintenance of the Phase 2 combined-cycle facility for a period of 50 years, and implementation of monitoring and management of a 40-acre serpentine preserve; these actions are collectively referred to as the "Covered Activities." The LECEF Phase 2 is located within a 34-acre parcel, 21 acres previously developed under Phase 1 and 13 acres that will be used as staging and temporary parking during construction of Phase 2. There are no known threatened or endangered species or their habitats located within the 34-acre parcel. However, once the Phase 2 facility is completed, its operation is expected to result in indirect effects from nitrogen deposition within 10,306 acres of habitat for the Covered Species in Santa Clara County, California. Emissions from power plants, vehicles, and industrial development result in deposition of nitrogen compounds (such as nitrogen oxides, nitric acid, and ammonia) onto nutrient-poor serpentine soils. Enrichment of serpentine soils allows nonnative plants to outcompete native species, including the host plants for the Bay checkerspot butterfly and the four listed plants.

The applicant proposes to avoid, minimize, and mitigate the effects to the Covered Species associated with the Covered Activities by fully implementing the plan. The following mitigation measures will be implemented: Establishment of a 40-acre serpentine preserve on Coyote Ridge; implementation of a grazing management plan to benefit the Covered Species; implementation of a monitoring plan for the Covered Species; establishment of a non-wasting endowment in the amount of $541,600 to provide funding for changed circumstances, monitoring, and management of the 40-acre preserve in perpetuity; and purchase of Bay Area Air Quality Management District pollution credits equivalent to 27,945 tons/year for nitrogen deposition.

Alternatives

Our proposed action is approving the applicant's plan and issuing an incidental take permit for the applicant's Covered Activities. As required by the Act, the applicant's plan considers alternatives to the take under the proposed action. The plan considers the environmental consequences of the following four alternatives to the proposed action: No Action; Alternative Site Location; Alternative Project Configuration; and Alternative Technologies.

Under the No Action alternative, we would not issue a permit, and the applicant would not initiate construction on Phase 2. The No Action alternative would result in the applicant violating the terms of a power sales agreement with the California Department of Water Resources, and the U.S. DataPort (DataPort) would obtain electricity from the existing electrical grid, which would conflict with the City of San Jose's California Environmental Quality Act decision for the DataPort to be electrically self-sufficient.

Under the Alternative Site Location alternative, the LECEF Phase 2 would be constructed in a different location; however, construction of Phase 2 anywhere within the same air shed would not avoid the indirect effects to listed species resulting from nitrogen deposition. Since the LECEF is being constructed to supply power to the DataPort, constructing the plant outside of the air shed would likely result in greater ground disturbance since construction would not take place within the footprint of the existing power plant. Additional impacts would occur as a result of connecting the DataPort with a more remote power plant, potentially resulting in additional effects to natural resources, including other listed species.

Under the Alternative Projects Configuration alternative, alternative equipment would have been incorporated into the design of the project. However, the proposed project represents the latest generation of commercially demonstrated combustion and steam turbine technology and is believed to represent the most effective technology currently available in terms of highest power output and lowest emissions. Implementation of alternative equipment could result in less efficient energy production and additional air quality impacts.

Under the Alternative Technologies alternative, waste heat would involve the export of processed steam, instead of the steam being converted to electricity through the use of a steam turbine under the proposed alternative. Export of processed steam would necessitate a nearby steam host. There are no steam hosts currently available near the existing LECEF Phase 1 site; therefore, a steam host would have to be constructed, resulting in additional impacts outside of the existing 34-acre site.

Under the proposed action alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above and in more detail in the HCP. The proposed action alternative is not expected to result in the permanent loss of habitat for any of the Covered Species. The proposed project is expected to result in indirect effects to 10,306 acres of serpentine grassland. To mitigate these effects, the applicant proposes to permanently protect 40 acres of serpentine grassland on Coyote Ridge, implement a monitoring and management plan for the Covered Species, establish a non-wasting endowment, and purchase Bay Area Air Quality Management District pollution credits.

National Environmental Policy Act

As described in our EAS, we have made the preliminary determination that approval of the proposed plan and issuance of the permit would qualify as a categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), 1508.4) and the Department of the Interior Manual (516 DM 2 and 516 DM 8). Our EAS found that the proposed plan qualifies as a "low-effect" habitat conservation plan, as defined by our Habitat Conservation Planning Handbook (November 1996). Determination of low-effect habitat conservation plans is based on the following three criteria: (1) Implementation of the proposed plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determinations in the EAS, we do not intend to prepare further NEPA documentation. We will consider public comments when making the final determination on whether to prepare an additional NEPA document on the proposed action.

Public Review

We provide this notice pursuant to section 10(c) of the Act and the NEPA public-involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the Bay checkerspot butterfly, coyote ceanothus, Metcalf Canyon jewel-flower, Santa Clara Valley dudleya, and Tiburon paintbrush from the implementation of the Covered Activities described in the plan, or from mitigation conducted as part of this plan. We will make the final permit decision no sooner than 30 days after the date of this notice.

Dated: June 7, 2010.

Susan K. Moore,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. 2010–14322 Filed 6–14–10; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Third Review)]

Barium Chloride From China

Determination

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review effective July 1, 2009 (74 FR 31757, July 2, 2009) and determined on October 5, 2009 that it would conduct a full review (74 FR 54069, October 21, 2009). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 30, 2009 (74 FR 62587). Counsel for the domestic interested party filed a request to appear at the hearing or, in the alternative, for consideration of cancellation of the hearing. Counsel indicated a willingness to submit written testimony and responses to any questions by a date to be specified by the Commission in lieu of an actual hearing. No other party filed a request to appear at the hearing. Consequently, the public hearing in connection with the review, scheduled for April 15, 2010, was cancelled (75 FR 20625, April 20, 2010).

The Commission transmitted its determination in this review to the Secretary of Commerce on June 9, 2010. The views of the Commission are contained in USITC Publication 4157 (June 2010), entitled *Barium Chloride from China: Investigation No. 731–TA–149 (Third Review).*

By order of the Commission.

Issued: June 9, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–14234 Filed 6–14–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–520]

Pharmaceutical Products and Chemical Intermediates, Fourth Review: Advice Concerning the Addition of Certain Products to the Pharmaceutical Appendix to the HTS

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and invitation to file written submissions.

SUMMARY: Following receipt of a request dated May 27, 2010 from the United States Trade Representative (USTR) pursuant to section 115 of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3524) and 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. 332–520, *Pharmaceutical Products and Chemical Intermediates, Fourth Review: Advice Concerning the Addition of Certain*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Products to the Pharmaceutical Appendix to the HTS.

DATES:

July 14, 2010: Deadline for filing all written submissions.

September 1, 2010: Transmittal of Commission report to the United States Trade Representative.

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: Information specific to this investigation may be obtained from Philip Stone, Project Leader, Office of Industries (202–205–3424 or *philip.stone@usitc.gov*). For information on the legal aspects of this investigation, 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 indicated in the USTR's letter, as part of the Uruguay Round negotiations, the United States and 21 other countries agreed to eliminate duties on certain pharmaceutical products and chemical intermediates used primarily for the production of pharmaceuticals (pharmaceuticals zero-for-zero initiative) and to conduct periodic reviews to identify further products that could be covered by this duty elimination initiative. As a result of multilateral negotiations in the WTO in 1996, 1998, and 2006, the United States and other participants eliminated duties on additional pharmaceutical items. The USTR indicated that participants in the zero-for-zero initiative are conducting a fourth review to determine if products can be added to the initiative. As part of the consultation and layover requirements in section 115 of the URAA relating to an action by the President to eliminate U.S. duties on additional pharmaceutical products and chemical intermediates, the President must obtain advice regarding the proposed action from the U.S. International Trade Commission.

The USTR asked the Commission to provide advice in the form of information on the pharmaceutical products and chemical intermediates proposed for addition to the pharmaceuticals zero-for-zero initiative as follows: (1) A summary description of the products currently covered under the initiative as set out in the Pharmaceutical Appendix to the U.S. Harmonized Tariff Schedule (Appendix) and those proposed to be added to that Appendix; (2) an explanation of the relationship between the various elements in the Appendix and the Harmonized Tariff Schedule of the United States; and (3) an estimate of current U.S. imports and, where possible, current U.S. exports of the products included in the current Pharmaceutical Appendix and the proposed additions to the Appendix, based on product groupings as necessary.

The Commission has posted a list of the proposed additions to the Pharmaceutical Appendix on its Web site at *http://www.usitc.gov/research_and_analysis/ongoing/332_520_request_letter.pdf.* The Commission expects to provide its report to the USTR by September 1, 2010.

Written Submissions: Interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., July 14, 2010. 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.

In his request letter, the USTR stated that he intends to make the Commission's report available to the public in its entirety, and asked that the Commission not include any confidential business information or national security classified information in the report that the Commission sends to the USTR. 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: June 9, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–14236 Filed 6–14–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of First Material Modification to a Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on June 9, 2010, a proposed First Material Modification to the Consent Decree entered in *United States and the State of Kansas* v. *Coffeyville Resources Refining & Marketing, LLC et al.,* 04–cv–01064 (D. Kan. 2004), was lodged with the United States Court for the District of Kansas.

The Consent Decree, entered by the Court on July 13, 2004 (Docket No. 8), required Defendants to install certain air pollution controls to reduce emissions of oxides, sulfur dioxide and particulate matter at their oil refinery located in

Coffeyville, Kansas by December 31, 2010. Under the proposed First Material Modification to the Consent Decree, the United States and State grant Defendants a fifteen month extension on installation of some of the controls and the Defendants agree to specified measures that will reduce the subject emissions by more than the amount of excess emissions caused by the delay installing the controls.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Kansas* v. *Coffeyville Resources Refining & Marketing, LLC et. al.,* 04–cv–01064 (D. Kan. 2004) and DOJ Case No. 90–5–2–1–07459/1.

During the public comment period, the First Material Modification to the Consent Decree may be examined at the Office of the United States Attorney, District of Kansas, 500 State Ave., Suite 360, Kansas City, KS 66101, (913) 551–6730. The First Material Modification to the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the First Material Modification to the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief.

[FR Doc. 2010–14308 Filed 6–14–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0032]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review:

Records of acquisition and disposition, collectors of firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 16, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Industry Programs Branch, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records of Acquisition and Disposition, Collectors of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other:* None. The record keeping requirement is for the purpose of facilitating ATF's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it take 3 hours per year for line by line entry and that approximately 45,973 licensees will participate.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 137,919 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 10, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. 2010–14335 Filed 6–14–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0011]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Application to make and register a firearm.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 16, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Make and Register a Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 1 (5320.1). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, State, Local, or Tribal Government. The form is used by persons applying to make and register a firearm that falls within the purview of the National Firearms Act. The information supplied by the applicant on the form helps to establish the applicant's eligibility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,071 respondents will complete a 4 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,284 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 10, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. 2010–14337 Filed 6–14–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0056]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Special Agent Medical Preplacement.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 16, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Eddie Trejo, Recruitment, Hiring and Staffing Center, 99 New York Ave, NE., Room 2S–125, Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Special Agent Medical Preplacement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 2300.10. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. The form is used by a special agent who is applying for a position that has specific medical standards. The information collected is used to determine medical suitability to qualify for a position that has specific medical standards and physical requirements. The information will also be used to make a recommendation on either hiring or not hiring an applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 300 respondents will complete a 45 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 225 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 10, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–14344 Filed 6–14–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0012]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Notice of Firearms Manufactured or Imported.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 16, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Firearms Manufactured or Imported.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 2 (5320.2). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: State, Local or Tribal Government. ATF F 2 (5320.2) is used by a federally qualified firearms manufacturer or importer to report firearms manufactured or imported and to have these firearms registered in the National Firearms Registration and Transfer Record as proof of the lawful existence of the firearm.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 816 respondents will complete a 45-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,750 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 10, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–14341 Filed 6–14–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0053]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: State and Local Training Registration Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" August 16, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact James Scott, Chief, Learning Management Branch, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* State and Local Training Registration Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6400.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal Government. *Other:* None. The Bureau of Alcohol, Tobacco, Firearms and Explosives provides arson and explosives investigative techniques training to State and local investigators. The registration request form will be used by prospective students.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 6 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 50 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 10, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–14348 Filed 6–14–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0037]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Letter Application To Obtain Authorization for the Assembly of a Nonsporting Rifle or Nonsporting Shotgun for the Purpose of Testing or Evaluation.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 16, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Larry White, Firearms and Explosives Services Division, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Letter Application To Obtain Authorization for the Assembly of a Nonsporting Rifle or Nonsporting Shotgun for the Purpose of Testing and Evaluation.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The information is required by ATF to provide a means to obtain authorization for the assembly of a nonsporting rifle or nonsporting shotgun for the purpose of testing or evaluation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5 respondents will complete a written letter in 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 10, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–14374 Filed 6–14–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0038]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application for Federal Firearms License (Collector of Curios and Relics).

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 16, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed

information collection instrument with instructions or additional information, please contact Patricia Power, Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Federal Firearms License (Collector of Curios and Relics).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 7CR (5310.16). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The form is used by the public when applying for a Federal firearms license to collect curios and relics to facilitate a personal collection in interstate and foreign commerce. The information requested on the form establishes eligibility for the license.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 7,300 respondents will complete a 15 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,825 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 10, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–14352 Filed 6–14–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11337]

Adoption of Amendment to the Class Exemption for the Release of Claims and Extensions of Credit in Connection With Litigation (PTE 2003–39)

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Adoption of Amendment to a Class Exemption.

SUMMARY: This document amends PTE 2003–39 (68 FR 75632, Dec. 31, 2003), a class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986, as amended (the Code). PTE 2003–39 generally exempts a plan's receipt of consideration from a related party in partial or complete settlement of actual or threatened litigation, as well as extensions of credit from a plan in connection with settlement payments made over time by the related party. The amendment expands the categories of assets that may be accepted by plans in the settlement of litigation, subject to certain conditions. Among other things, the amendment permits the receipt of non-cash assets in settlement of a claim (including the promise of future employer contributions) but only in instances where the consideration can be objectively valued. The amendment also modifies PTE 2003–39 to permit plans to acquire, hold, or sell employer securities such as warrants and stock rights which are received in settlement of litigation, including bankruptcy proceedings.

This amendment is being granted in response to requests from practitioners and independent fiduciaries who sought an expansion of the types of consideration that plans could accept in connection with the settlement of litigation. The amendment affects all employee benefit plans, the participants and beneficiaries of such plans, and parties in interest with respect to those plans engaging in the described transactions.

DATES: *Effective Date:* The amendment is effective June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Christopher Motta or Allison Padams-Lavigne, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210 (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On November 21, 2007, a notice was published in the **Federal Register** (72 FR 65597) of the pendency before the Department of a proposed amendment to PTE 2003–39, which exempts certain transactions from the restrictions of sections 406(a) and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code.

The amendment described herein is being granted by the Department on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, August 10, 1990).[1] The notice gave interested persons an opportunity to submit written comments or request a public hearing on the proposed amendment to the Department. The Department received two comments and no requests for a public hearing. Upon consideration of the record taken as a whole, the Department has determined to grant the proposed amendment with minor modifications.

Executive Order 12866 Statement

Significant regulatory actions are subject to the requirements of Executive Order 12866 and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 214 (2000) generally transferred the authority of the Secretary of Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to specific provisions of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, this action is significant under section 3(f)(4) of the Executive Order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA 95), the Department submitted the information collection request (ICR) included in the Class Exemption for Release of Claims and Extensions of Credit in Connection With Litigation (the "Class Exemption") to the Office of Management and Budget (OMB) for review and clearance at the time the class exemption was published in the **Federal Register** (68 FR75632, December 31, 2003) under OMB control number 1210–0091. The ICR was renewed by OMB through June 30, 2012, on June 15, 2009.

The Amendment to the Class Exemption contains the following information collections:

Written Settlement Agreement. The terms of the settlement must be specifically described in a written agreement or consent decree.

Acknowledgement by Fiduciary. The fiduciary acting on behalf of the plan must acknowledge in writing that s/he is a fiduciary with respect to the settlement of the litigation.

The amendment would expand the scope of non-cash consideration that may be accepted by an authorizing fiduciary on behalf of the plan in connection with the settlement of litigation (subject to additional conditions) to include employer securities, including bonds, and stock rights or warrants to acquire employer stock. The amendment also would make the valuation methods used to value non-cash consideration more flexible.

The amendment to the class exemption would modify the written settlement agreement information collection by requiring the agreement to specifically describe (i) the employer securities and written promises of future employer contributions (and the methodology for determining the fair market value of such consideration) that has been tendered as consideration in settlement of litigation and/or (ii) benefit enhancements as approved by the authorizing fiduciary that are provided to the plan as consideration for settlement. Because it is usual and customary business practice to express the terms of a settlement in writing with some degree of detail, no additional hour burden has been accounted for this provision of the amendment.

The 2007 amendment modifies the information collection associated with the Fiduciary Acknowledgment by requiring the authorizing fiduciary to acknowledge its fiduciary responsibility for the approval of an attorney's fee award in connection with the settlement in writing. The Department expects the authorizing fiduciary to incorporate this acknowledgement into the investment management or trustee agreement outlining the terms and conditions of the fiduciary's retention as a plan service provider, and that this agreement will already be in existence as part of usual and customary business practice. The additional hour burden attributable to the acknowledgement provided in the amendment is negligible; therefore, the Department has not increased the overall hour burden for this provision of the amendment.

I. Background

Based upon feedback from practitioners and independent fiduciaries working to settle litigation with parties in interest, the Department is amending PTE 2003–39 to expand the type of consideration that can be accepted by an employee benefit plan in settlement of litigation. While the Department encourages cash settlements, it recognizes that there are situations in which it may be in the interest of participants and beneficiaries to accept consideration other than cash in exchange for releasing the claims of the plan and/or the plan fiduciary. Because ERISA does not permit plans to hold employer-issued stock rights, warrants, or most bonds, without an individual exemption,[2] the transactions covered by PTE 2003–39 have been expanded to include the acquisition, holding, and disposition of employer securities received in settlement of litigation, including bankruptcy litigation. Other amendments to the class exemption seek to clarify the scope of the duties of the independent fiduciary charged with responsibility for settling litigation.

The Department understands that segments of the pension community question whether the receipt of property by a plan in consideration for the release of a claim arising out of litigation with a party in interest would constitute a prohibited transaction under section 406 of the Act. It is the Department's position that the release by the plan of a legal or equitable claim against a party in interest in exchange for consideration is an exchange of property (a chose in action) between the plan and the party in interest which is prohibited under section 406(a)(1)(A) of the Act in the absence of an exemption. This administrative class exemption provides conditional relief from this prohibition.

In many cases where a plan has brought, or is considering, a lawsuit against a party in interest, the plan will have terminated its relationship with the party, and the party will no longer be party in interest at the time of the settlement. A settlement of the claims against such a party would not constitute a prohibited transaction. In addition, the Department has concluded that the statutory exemption in ERISA section 408(b)(2) may be available under limited circumstances for an exchange of property made solely to resolve claims arising out of the performance of an underlying service arrangement.[3]

II. Description of Existing Relief

The class exemption for the release of claims and extensions of credit in connection with litigation provides limited relief. Since conflicted fiduciaries are not permitted to have a role under the exemption in settling the litigation, no relief is provided from the self-dealing provisions of ERISA. The current exemption permits the release of the plan's or the plan fiduciary's claim against a party in interest in exchange for consideration, and related extensions of credit. No relief is provided for any prohibited transactions that are the subject of the underlying litigation, or any new prohibited transactions (other than consideration for the release of claims) that may be proposed in settlement of litigation.[4]

[2] For example, PTE 2004–03, Lodgian 401(k) Plan and Trust Agreement, 69 FR 7506, 7509 (Feb. 14, 2004) (warrants); PTE 2003–33, Liberty Media 401(k) Savings Plan, 68 FR 64657 (Nov. 14, 2003) (stock rights); PTE 2002–02, The Golden Retirement Savings Program and The Golden Security Program, 67 FR 1242, 1243 (Jan. 9, 2002) (warrants).

[3] *See* Advisory Opinion 95–26A (October 17, 1995).

[4] Where the Department of Labor (DOL) and/or the Internal Revenue Service (IRS) is a party to the litigation, new prohibited transactions may be

Continued

Where a prohibited transaction giving rise to the actual or potential litigation is "corrected" in compliance with section 4975(f)(5) of the Code, this exemption will not be necessary because correcting a prohibited transaction under section 4975 of the Code does not give rise to a prohibited transaction under Title I of the Act.[5] Additionally, there is no prohibited transaction if the plan receives consideration,[6] but does not have to relinquish its cause of action, or other assets. Finally, if the dispute involves the provision of services or incidental goods by a service provider, the settlement may fall within the statutory exemption under section 408(b)(2) of the Act.[7]

The exemption is not available where a party in interest is suing an employee benefit plan, unless the party in interest is suing on behalf of the plan pursuant to section 502(a)(2) or (3) of ERISA, in their capacity as a participant, beneficiary, or fiduciary. Further, it is the view of the Department that, in general, no exemption is needed to settle benefits disputes,[8] including subrogation cases.

III. Description of Amendments

New Transactions

The proposed amendment expanded the transactions covered by the exemption. In this regard, warrants and stock rights are often offered to shareholders, including the company's employee benefit plan, in settlement of litigation, including bankruptcy. In such situations, bonds or other property that do not constitute qualifying employer securities under ERISA may also be offered to employee benefit plans. ERISA does not permit plans to hold these assets absent an individual exemption. Effective as of the date of publication of the final exemption in the **Federal Register**, a plan may acquire, hold, and dispose of employer securities in settlement of litigation, including bankruptcy. The transactions covered by the exemption include the subsequent disposition of stock rights and warrants by sale or by exercise of the rights or warrants.

Modified Conditions

The exemption currently requires that an attorney retained to advise [9] the plan determine that there is a genuine controversy, unless the case has been certified as a class action. As amended, this genuine controversy requirement may be met in non-class action cases if a Federal or State agency is a plaintiff in the litigation.

Section II (b) has been redrafted to clarify that the settlement is being authorized by a fiduciary (hereinafter referred to as the authorizing fiduciary).

Currently, the independent fiduciary must assess the reasonableness of the settlement in light of the risks and costs of litigation, and the value of claims foregone. The Department had become concerned that some independent fiduciaries, and those responsible for their retention, were viewing this condition too narrowly. As a result, the amendment clarified that in assessing the reasonableness of any settlement, the authorizing fiduciary must consider the entire settlement. This includes the scope of the release of claims and the value of any non-cash assets. In this regard, the Department further emphasized that the authorizing fiduciary, in assessing the reasonableness of the settlement, may not exclude consideration of the attorney's fee award or any other sums to be paid from the recovery (*e.g.,* for consultants) in connection with the settlement of the litigation.

Since the class exemption was finalized, attorneys for the Department have reviewed numerous releases in class-action litigation involving employee benefit plans. Some of these releases were unreasonably broad. The Department continues to believe that the role of the authorizing fiduciary includes a careful review of the scope of any release that will eliminate the claims of the plan or the plan fiduciaries. In some instances, it may be necessary for the authorizing fiduciary to raise objections with the court, for example, requesting that the court narrow the scope of the release.[10]

When a plan participates in a settlement, it does so as an independent legal entity with legal rights and obligations distinct from those of both the plan sponsor and from any given plan participant or beneficiary. In a class action, the authorizing fiduciary should consider whether the plan is being treated less equitably than are other class members, either by the terms of the settlement or through the failure of the settlement to adequately recognize the plan's particular interests. For example, a settlement could be viewed as less advantageous to the plan than to other class members if it requires the plan to surrender ERISA-related claims without payment of additional consideration, or if it imposes restrictions on the plan that are not placed on other class members (*e.g.,* by not considering some or all of the plan's securities in allocating settlement proceeds).

Attorney's fees awarded to plaintiffs' attorneys may reduce the plan's recovery, directly or indirectly.[11] Although the attorneys bringing these class actions are entitled to fair compensation, in some instances abuses have occurred.[12] In 2005, Congress passed the Class Action Fairness Act of 2005 [13] to address some of these abuses. Where the plan's share of the settlement is significant, the authorizing fiduciary is generally well-positioned to use its bargaining strength to ensure that these fees are reasonable. It is the view of the Department that the authorizing fiduciary's role may require involvement in the attorney's fee

permitted to resolve litigation pursuant to PTE 79–15, Class Exemption for Certain Transactions Authorized or Required by Judicial Order or Judicially Approved Settlement Decree, 44 FR 26979 (May 8, 1979). DOL may also enter into a voluntary settlement with parties covered by ERISA, in which case any prospective prohibited transactions may be covered by the Class Exemption to Permit Certain Transactions Authorized Pursuant to Settlement Agreements between the Department of Labor and Plans, PTE 94–71, 59 FR 51216 (Oct. 7, 1994).

[5] It should be noted that the Department of the Treasury has authority to issue regulations, rulings and opinions regarding the term "correction" as defined in § 4975 of the Code. Reorg. Plan No. 4 of 1978, 5 U.S.C. App. at 214 (2000). Treas. Reg. § 53.4941(e)–1(c)(1) (1986) (excise taxes on private foundations) applies to "correction" of prohibited transactions under section 4975(f) of the Code (dealing with pension excise taxes) by reason of Temp. Treas. Reg. § 141.4975–13 (1986).

[6] Parties entering into such arrangement should review the IRS rules with respect to restorative payments. Rev. Rul. 2002–45, 2002–2 C.B. 116.

[7] *See,* Advisory Opinion 95–26A (Oct. 17, 1995).

[8] *See Lockheed* v. *Spink,* 517 U.S. 882, 892–893 (1996) (the payment of benefits is not a prohibited transaction).

[9] The Department is aware that at least one commentator has interpreted this condition as requiring a formal opinion of counsel. This is not the case. Further, it is not necessary for the litigation to be filed. If suit has not been filed, the independent attorney can review the disputed issues and conclude that there is a genuine controversy. As noted in the original exemption, the purpose of this condition is to avoid covering sham settlements. *See, Dairy Fresh Corp.* v. *Poole,* 108 F. Supp. 2d 1344, 1353 (S.D. Ala. 2000).

[10] The Department does not suggest that other litigants can release ERISA-based claims of the Secretary of Labor, plan fiduciaries, participants or beneficiaries.

[11] In some instances, the amount of the settlement fund is finalized before the attorney's fee awards are determined. In other instances, the attorney's fees are calculated as a percentage of the settlement fund. Generally, a court will review the reasonableness of the attorney's fee award.

[12] This issue was considered by the Federal Trade Commission's Class Action Fairness Project. The FTC's Web site contains links to many of the materials produced in connection with the Class-Action Fairness Project. Federal Trade Commission Home Page: *http://www.ftc.gov/bcp/workshops/classaction/index.htm.*

[13] Public Law 109–2, 119 Stat. 4 (2005). The Act amends both Rule 23 of the Federal Rules of Civil Procedure and 28 U.S.C. 1332. It expands federal jurisdiction over certain cases and contains new rules for class action settlements and calculation of attorney's fees.

decisions, including possibly filing a formal objection with the court regarding these fees.

The proposed amendment expanded the scope of non-cash consideration that may be accepted by an authorizing fiduciary on behalf of the plan, subject to additional conditions. Such consideration is divided into two categories: non-cash assets and benefits enhancements. Non-cash assets consist of property that can be appraised pursuant to the guidelines set forth in the Department's Voluntary Fiduciary Correction (VFC) Program.[14] As amended, employer securities, including bonds, and stock rights or warrants on employer securities, are covered.

The current exemption specifies that a written agreement to make future contributions could be accepted in exchange for a release. This continues to be the case. As amended, a written promise by the employer to increase future contributions falls within the expanded category of non-cash assets. The fair market value of a stream of future contributions can be determined by a qualified appraiser. In contrast, benefits enhancements, *i.e.,* where the employer offers to change the plan design to increase opportunities to diversify, or to offer other employee benefits, are plan amendments, not plan assets. Therefore, the exemption requires only approval by the authorizing fiduciary with respect to such benefits enhancements. Because such enhancements do not make the plan whole and may not benefit the same participants who were harmed by the actions that are the subject of litigation,[15] an authorizing fiduciary should give such offers special scrutiny.

As amended, relief is provided for the acquisition, holding, and disposition of employer securities that are not "qualifying," within the meaning of section 407(d)(5) of the Act. We understand from our conversations with independent fiduciaries that, in cases involving financially troubled companies, stock rights and warrants may be the only assets available. In other instances, employer-issued bonds or other debt instruments may offer the best value for the plan. The relief provided by the class exemption for accepting and holding such non-cash assets extends only to relief from the prohibited transaction provisions of sections 406(a) and 407(a) of the Act; no relief is provided from the fiduciary provisions of section 404 of the Act. Before authorizing a settlement involving non-cash assets, the authorizing fiduciary must determine whether accepting such assets is prudent and in the interest of participants and beneficiaries.

In addition, where such non-cash assets are employer securities, particular attention must be paid to ERISA's diversification requirements. Section 404(a)(1)(C) requires that a fiduciary diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Section 404(a)(2) provides that, in the case of an eligible individual account plan, the diversification requirement of section 404(a)(1)(C) and the prudence requirement (only to the extent that it requires diversification) of section 404(a)(1)(B) is not violated by the acquisition or holding of qualifying employer securities. If the employer securities do not meet the definition of qualifying employer securities under section 407(d)(5) of the Act, the exception contained in section 404(a)(2) from the diversification requirements of the Act will not apply to a Plan's investment in these assets. Accordingly, the authorizing fiduciary must determine the appropriate level of investment in employer securities, based on the particular facts and circumstances, consistent with its responsibilities under section 404 of the Act.

Where non-cash assets or benefits enhancements are being considered, the authorizing fiduciary must first determine that a cash settlement is either not feasible or is less beneficial than the alternative. Any non-cash assets must be valued at their fair market value in accordance with section 5 of the Voluntary Fiduciary Correction Program, 71 FR 20262, 20270 (Apr. 19, 2006). Both non-cash assets and benefits enhancements must be described in the written settlement agreement.

Where the plan receives employer securities as part of the settlement, the authorizing fiduciary or another independent fiduciary must retain sole responsibility for investment decisions regarding the assets unless the plan is a participant-directed individual account plan and the authorizing fiduciary allows the participants and beneficiaries to exercise control over the securities allocated to their accounts.[16] The proposed amendment provided that the plan could not pay any commissions in connection with the acquisition of assets pursuant to this exemption.

As is the case in the current exemption, the authorizing fiduciary must acknowledge in writing that it is a fiduciary for purposes of the settlement. As noted above, since the original exemption was granted at the end of 2003, the Department has learned that practitioners are divided on whether or not the authorizing fiduciary's role in the settlement included review of attorney's fees. It is the view of the Department that in any instance where an attorney's fee award or any other sums to be paid from the recovery has the potential to reduce the plan's overall recovery, the authorizing fiduciary should take appropriate steps to review the proposed fees. The exact nature of the authorizing fiduciary's role in connection with attorney's fees and other expenses paid from the recovery will vary depending on the size and nature of the litigation.

Discussion of the Comments Received

The Department received two comments with respect to the proposed amendment, each of which suggested modifications to the text of the proposal as described below.

One commenter suggested that the language of section II (m)(2) of the proposed exemption be modified to ensure that certain information offered confidentially by parties to a settlement (*i.e.,* data that is not readily classified as either company trade secrets or other commercial or financial information) be kept confidential by the Department and the Internal Revenue Service, and not be disclosable to plan participants or beneficiaries, fiduciaries, contributing employers or employee organizations.

To support its position, the commenter explained that settlements resulting from a mediation process

[14] 71 FR 20262 (Apr. 19, 2006). The VFC Program, as amended, covers certain prohibited transactions involving illiquid property. The exemption states that such property includes, but is not limited to, restricted and thinly traded stock, limited partnership interests, real estate and collectibles. 71 FR at 20279. Authorizing Fiduciaries may find the guidelines in the VFC Program helpful in considering whether accepting Non-Cash property as part of a settlement is appropriate given the risks and additional costs that may be incurred where a plan holds such property. Illiquid assets may complicate the plan's mandatory distributions at age 70½ pursuant to section 401(a)(9) of the Code. The Service takes the position that compliance with this provision may necessitate distribution of a participant's fractional interest in the illiquid asset, which could result in additional costs to the plan. *See, e.g.,* I.R.S. Priv. Ltr. Rul. 9726032 (June 27, 1997) and I.R.S. Priv. Ltr. Rul. 9226066 (June 26, 1992).

[15] *See generally,* Field Assistance Bulletin No. 2006–01 (Apr. 9, 2006) at *http://www.dol.gov/ebsa/regs/fab_2006-1.html* for a discussion of issues to be considered when the need arises to allocate settlement proceeds among different classes of participants and beneficiaries.

[16] The Department encourages the independent fiduciary to the extent possible, consistent with its fiduciary obligations, to dispose of property received as part of a settlement within a reasonably short timeframe in order to limit costs to the plan of the independent fiduciary's services.

frequently involve the preparation of statements by the parties; these statements may contain certain information relevant to the dispute, such as a company's loss analysis, that is deemed sensitive by one of the parties. Because such information may not always be readily classified as a trade secret or as confidential, commercial or financial information under either the current or amended version of the exemption, the commenter believes that an independent fiduciary may not be able to guarantee the confidentiality of such internally-generated information. As a result, the commenter stated that parties to a mediation are often unwilling to share sensitive information and analysis; thus depriving the independent fiduciary of information that may be relevant in evaluating the appropriateness of a proposed settlement. In the commenter's opinion, the independent fiduciary's access to sensitive information relevant to the settlement is paramount, even if such access results in a less transparent decisional record for plan participants and other interested parties.

After considering this comment, the Department has determined to modify the language of the final exemption to clarify that, where information is offered to an authorizing fiduciary by a party to the settlement negotiations on the condition that the fiduciary agree that the information be kept confidential, the fiduciary may accept the information and use it to assist in its decision making without making it available to plan participants and beneficiaries or the Secretary, provided that: (i) the fiduciary makes a written finding that the proferred information would likely assist the fiduciary in carrying out its responsibilities; and (ii) a decision of a court or an opinion of counsel confirms that the proferred information likely cannot be obtained unconditionally by seeking discovery through the court, or cannot be obtained in a timely fashion.

Another commenter proposed that Section I of the exemption be amended to modify the relief provided for the "acquisition, holding and disposition of employer securities received in settlement of litigation, including bankruptcy." This commenter stated that section II(i)(2) of the proposed amendment, which requires that the fair market value of non-cash assets tendered to a plan in exchange for a release of claims must be determined in accordance with section 5 of the Voluntary Fiduciary Correction (VFC) Program, would prove unduly restrictive and burdensome with respect to achievement of settlements involving the pricing and transfer of employer securities. The commenter stated that the valuation of non-cash assets in a settlement transaction is generally the product of litigation and settlement negotiations between adverse parties to a genuine controversy which may not have involved employee benefits, and as to which ERISA-regulated plans may have only a minor stake. The commenter also opined that a plan's decision whether to receive the non-cash assets will be made by an authorizing fiduciary who is, by definition, independent, a feature not present in the typical VFC context. The commenter further argues that certain conditions of the exemption (sections II (c) and (d)) of the exemption already require that the authorizing fiduciary find the settlement terms, including the value of any non-cash assets, are "reasonable" and "no less favorable to the plan than comparable arms-length terms and conditions." Accordingly, the commenter believes that the existing conditions in the exemption are sufficiently protective and rigorous without incorporating additional requirements from the VFC program.

Section 5(a)(1) of the VFC states that, for securities for which "there is a generally recognized market," the fair market is the "average" value of the asset "on the applicable date" unless the plan document provides another objectively determined value. According to the commenter, legal counsel for the plaintiff class may have good reason for agreeing to a method for valuing publicly traded employer securities on a basis other than the average price on a given date. Moreover, the commenter represents that, for some plans, the acceptance of settlement proceeds at the average daily price may require amending the terms of the plan. The commenter further states that, even in rare instances where an independent fiduciary possesses the authority to make such an amendment, the process of adopting such a change would consume time and resources without providing meaningful protection to plan participants.

The commenter notes that, in certain situations, the parties to a lawsuit may agree to settle their claims by utilizing the average price of publicly traded employer securities over a range of days rather than on a single day. The commenter then expresses the view that, because section 5(a)(1) of the VFC Program utilizes the words "the applicable date" in connection with determining the value of an asset for which there is a generally recognized market, any plan receiving proceeds under a settlement agreement that utilizes the average price of an employer security spread over a range of days would not be eligible for the relief afforded under the amended class exemption. The commenter further states that an authorizing fiduciary would thus be required to petition the Department for an individual exemption to obtain relief for transactions involving these types of settlements. Such an outcome would be unsatisfactory, the commenter states, because the authorizing fiduciary cannot know, at the time a settlement is reached, whether the Department ultimately, will approve such an individual exemption application.

Additionally, the commenter states that the other VFC related requirement of the proposed amendment imposes burdens on authorizing fiduciaries, particularly with respect to the valuation of securities such as warrants, and even stock, issued through bankruptcy reorganization. Specifically, the commenter points to section 5(a)(2) of the VFC program, which requires that, if there is no generally recognized market for the assets, the fair market value of such assets must be determined in accordance with "generally accepted appraisal standards by a qualified, independent appraiser." The commenter maintains that a company emerging from bankruptcy typically is not required to obtain appraisals of its securities from licensed appraisers. In this connection, the commenter states that it is unrealistic to expect that bankruptcy reorganizations will be negotiated to meet the requirements of the VFC Program because one of the shareholders or creditors that will be receiving a distribution also happens to be a benefit plan sponsored by the reorganizing debtor. The commenter states that the VFC-related requirements of the proposed amendment are administratively burdensome to authorizing fiduciaries, and that the remaining conditions of the proposed class exemption, along with the general fiduciary standards of ERISA, provide safeguards that are sufficient to protect plans receiving settlement proceeds.

After considering these comments, the Department has decided to modify the language of section II(i)(2) of the exemption to read as follows:

The non-cash assets are specifically described in writing as part of the settlement, and valued at their fair market value as of the date or dates specified in the settlement agreement utilizing objective third party sources such as price quotations from persons independent of the issuer or independent third party pricing services for the non-cash assets (in instances where there is a generally recognized market for the

assets) or utilizing an objective and generally recognized methodology for valuing the non-cash assets that is approved as reasonable by the authorizing fiduciary and fully described in the written settlement agreement.

The Department expects the authorizing fiduciary to be experienced and knowledgeable regarding the valuation of any non-cash asset that is part of a settlement. If the authorizing fiduciary is not experienced with the type of asset offered as part of the settlement, such fiduciary must seek advice from an experienced independent party with respect to the valuation at issue.

The commenter also suggested that, in the case of a securities class action in section (i)(1), the authorizing fiduciary cannot know in advance of a settlement what percentage of the recovery will be in the form of cash and what percentage will be in the form of employer securities, thus complicating the fiduciary's evaluation of the plan's diversification of assets. The preamble to the proposed exemption notes that a fiduciary must be mindful of ERISA's general diversification requirements under ERISA section 404(a) in instances where the plan is to receive employer securities as part of a settlement. The commenter also noted that, if the authorizing fiduciary must decline to accept a settlement which may result in a distribution raising a diversification issue, the plan may receive nothing if there is no cost-efficient means for the plan to pursue a recovery in a form that avoids a diversification problem.

The commenter suggested to the Department that the value of a particular settlement payable in employer securities, and the absence of cost-effective alternatives to accepting the settlement, may constitute circumstances which make it "clearly prudent" to accept the settlement although doing so would result in a lack of diversification. The authorizing fiduciary would still be required to consider whether the receipt of the employer securities would impair the plan's overall operations or ability to make benefit payments. In addition, the commenter opined that the amendment to the class exemption should permit a grace period (perhaps one year in duration) for the plan to divest those employer securities which exceed the limitations described in section 407(a) of the Act. In response, the Department continues to believe that the authorizing fiduciary has a responsibility to consider ERISA's diversification requirements when evaluating a settlement offer. Nevertheless, the Department concurs with the commenter's argument that the fiduciary must consider the totality of circumstances when evaluating a settlement consisting in whole or part of employer securities under section 404(a) of ERISA. Clearly, the impact of the receipt of employer securities on the plan's overall operations or the ability to make benefit payments is relevant to the authorizing fiduciary's determination as to whether or not the settlement is reasonable and consistent with the requirements of section 404 of ERISA. In addition, the Department has determined not to adopt the commenter's suggestion for a grace period. In the Department's view, it is the responsibility of the authorizing fiduciary to determine when to sell or otherwise dispose of the employer securities and the best method for such disposition.

Another commenter states that section II(c) of the proposed amendment, which requires that the authorizing fiduciary consider the scope of the release of claims and the attorney's fee award and other payments from the recovery in evaluating a particular settlement, is potentially problematic because: (1) Prospective members of a class must decide whether to opt out of the class, thereby foregoing the benefits of a settlement, before or simultaneously with the deadline for objecting; (2) class members who decline to opt out become bound to the terms of the settlement, including its release provisions; and (3) persons who opt out of the class have no standing to object to the settlement. Thus, according to the commenter, an authorizing fiduciary cannot object to the attorney's fees, or any other aspect of the settlement, without waiving the plan's right to opt out, and binding the plan to the release, even if the court overrules the objection and approves a fee award or other provision which the authorizing fiduciary found unreasonable. The commenter also believes that at the time of the opt-out decision, counsel for the plaintiff class will not yet have filed its motion for attorney's fees, and the notice to class members typically states only the upper limit of attorney's fees which counsel may receive.

The commenter notes that some of these issues would be mitigated if the authorizing fiduciary is retained well in advance of a settlement in order to raise plan-related concerns before the settlement is finalized. However, the commenter continues to believe that, even in situations of early retention, independent fiduciaries may find themselves with little leverage to negotiate modifications of a fee arrangement or other aspects of the settlement due to the plan's relatively small stake in the litigation. The commenter suggests that the language in the preamble be modified to acknowledge these constraints imposed on authorizing fiduciaries. The commenter also suggests that the text of the exemption be modified to provide that the authorizing fiduciary's judgments on the matters set forth in sections II(c), (d) and (i)(l), in situations where the plan is a member of a class asserting claims, are to be made on the basis of the information available to the authorizing fiduciary as of the deadline by which class members must decide whether to grant a release.

The Department continues to believe that the authorizing fiduciary must consider the entire settlement, including the scope of the release of claims and the amount of any attorney's fee award. In this regard, the Department recognized, in the preamble to the proposed amendment, that where the plan's share of the settlement is significant, the authorizing fiduciary is generally well-positioned to use its bargaining strength to ensure that the legal fees are reasonable. Conversely, where the plan has a small stake in the litigation as a member of a class asserting claims, the authorizing fiduciary, after the end of the opt-out period, may raise objections with the court which the court subsequently finds unpersuasive. The Department recognizes that there may be constraints on an authorizing fiduciary's ability to influence the terms of a settlement. Similarly, the Department also recognizes that judgments must be made on the basis of all of the information available to the fiduciary as of the deadline for the decision by class members to opt out of the class. The Department believes that section II(b) as proposed provides sufficient flexibility to enable an authorizing fiduciary to carry out its responsibilities under the class exemption, notwithstanding the variety of facts and circumstances that may arise in connection with each settlement.

Finally, the commenter notes that the proposed amendment in section II(i) limits the scope of acceptable consideration (other than cash) to non-cash assets and benefit enhancements. The commenter states that other types of non-cash elements that fall outside the categories enumerated in section II(i) of the proposed exemption often constitute a meaningful part of securities litigation settlements. These may include corporate governance reforms, resignations of corporate officials, and other promised actions which will enhance the value of the corporation whose securities are subject to the litigation.

The Department recognizes that the aforementioned types of corporate reforms could constitute a meaningful part of securities litigation settlements.[17] Thus, the Department has amended section II(i) of the operative language of the amendment in order to expand the scope of other enhancements that may be accepted by an authorizing fiduciary on behalf of the plan in determining whether to grant a release.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his or her duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The amendment will not extend to transactions prohibited under sections 406(b) of the Act and 4975(c)(1)(E) and (F) of the Code.

(3) In accordance with sections 408(a) of the Act and section 4975(c)(2) of the Code, the Department finds that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of plans.

(4) The amendment is supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The amendment is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Amendment

Section I. Prospective Exemption—Covered Transactions

Effective [INSERT DATE OF PUBLICATION OF FINAL EXEMPTION IN THE FEDERAL REGISTER], the restrictions of sections 406(a) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions, if the relevant conditions set forth in sections II through III below are met:

(a) The release by the plan or a plan fiduciary of a legal or equitable claim against a party in interest in exchange for consideration, given by, or on behalf of, a party in interest to the plan in partial or complete settlement of the plan's or the fiduciary's claim.

(b) An extension of credit by a plan to a party in interest in connection with a settlement whereby the party in interest agrees to repay, over time, an amount owed to the plan in settlement of a legal or equitable claim by the plan or a plan fiduciary against the party in interest.

(c) The plan's acquisition, holding, and disposition of employer securities received in settlement of litigation, including bankruptcy. Disposition of employer securities that are stock rights or warrants includes sale of these securities, as well as the exercise of the rights or warrants.

Section II Prospective Exemption—Conditions

(a) Where the litigation has not been certified as a class action by the court, and no federal or state agency is a plaintiff in the litigation, an attorney or attorneys retained to advise the plan on the claim, and having no relationship to any of the parties involved in the claims, other than the plan, determines that there is a genuine controversy involving the plan.

(b) The settlement is authorized by a fiduciary (The authorizing fiduciary) that has no relationship to, or interest in, any of the parties involved in the claims, other than the plan, that might affect the exercise of such person's best judgment as a fiduciary.

(c) The settlement terms, including the scope of the release of claims; the amount of cash and the value of any non-cash assets received by the plan; and the amount of any attorney's fee award or any other sums to be paid from the recovery, are reasonable in light of the plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.

(d) The terms and conditions of the transaction are no less favorable to the plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

(f) Any extension of credit by the plan to a party in interest in connection with the settlement of a legal or equitable claim against the party in interest is on terms that are reasonable, taking into consideration the creditworthiness of the party in interest and the time value of money.

(g) The transaction is not described in section A.I. of Prohibited Transaction Exemption (PTE) 76–1 (41 FR 12740, 12742 (Mar. 26, 1976), as corrected, 41 FR 16620 Apr. 20, 1976) (relating to delinquent employer contributions to multiemployer and multiple employer collectively bargained plans).

(h) All terms of the settlement are specifically described in a written settlement agreement or consent decree.

(i) Non-cash assets, which may include employer securities, and written promises of future employer contributions (hereinafter, "non-cash assets"), and/or a written agreement to adopt future plan amendments or provide additional employee benefits or corporate reforms (hereinafter "enhancements") may be provided to the plan by a party in interest in exchange for a release by the plan or a plan fiduciary only if:

(1) The Authorizing Fiduciary determines that an all cash settlement is either not feasible, or is less beneficial to the participants and beneficiaries than accepting all or part of the settlement in non-cash assets and/or enhancements;

(2) The non-cash assets are specifically described in writing as part of the settlement, and valued at their fair market value as of the date or dates specified in the settlement agreement utilizing objective third party sources such as price quotations from persons independent of the issuer or independent third party pricing services for the non-cash assets (in instances where there is a generally recognized market for the assets) or utilizing an objective and generally recognized methodology for valuing the non-cash assets that is approved as reasonable by the authorizing fiduciary and fully described in the settlement agreement;

(3) The enhancements are specifically described in writing as part of the

[17] The Department notes that the authorizing fiduciary, in assessing the reasonableness of a settlement, must evaluate the totality of circumstances, which may include corporate reforms. *See* section II(i) of final exemption.

settlement. Enhancements may be included as part of the settlement without an independent appraisal. In deciding whether to approve the release of a claim in exchange for enhancements, the authorizing fiduciary shall take into account all aspects of the settlement, including the cash or other assets to be received by the plan, the solvency of the party in interest, and the best interests of the class of participants harmed by the acts that are the subject of the plan's claims;

(4) The authorizing fiduciary, or another independent fiduciary, acts on behalf of the plan and its participants and beneficiaries for all purposes related to any property, including employer securities as defined by section 407(d)(1) of the Act, received by the plan from the employer as part of the settlement. The authorizing fiduciary or another independent fiduciary continues to act on behalf of the plan and its participants and beneficiaries for the period that the plan holds the property, including employer securities, received from the employer as part of the settlement. The authorizing fiduciary or another independent fiduciary shall have sole responsibility relating to the acquisition, holding, disposition, ongoing management, and where appropriate, exercise of all ownership rights, including the right to vote securities, unless the plan is a participant-directed individual account plan and the authorizing fiduciary allows the participants and beneficiaries to exercise control over the securities allocated to their accounts;

(j) The plan does not pay any commissions in connection with the acquisition of the assets;

(k) The authorizing fiduciary acting on behalf of the plan has acknowledged in writing that it is a fiduciary with respect to the settlement of the litigation on behalf of the plan;

(l) The plan fiduciary maintains or causes to be maintained for a period of six years the records necessary to enable the persons described below in paragraph (m) to determine whether the conditions of this exemption have been met, including documents evidencing the steps taken to satisfy section II (c), such as correspondence with attorneys or experts consulted in order to evaluate the plan's claims, except that:

(1) if the records necessary to enable the persons described in paragraph (m) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than the plan fiduciary responsible for record-keeping, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (m) below;

(m)(1) Except as provided below in paragraph (m)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (l) are unconditionally available at their customary location for examination during normal business hours by—

(A) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) any fiduciary of the plan or any duly authorized employee or representative of such fiduciary;

(C) any contributing employer and any employee organization whose members are covered by the plan, or any authorized employee or representative of these entities; or

(D) any participant or beneficiary of the plan or the duly authorized employee or representative of such participant or beneficiary.

(2) Nothing in this exemption supersedes any restriction on the disclosure of trade secrets or other commercial or financial information which is privileged or confidential and this exemption does not authorize any of the persons described in paragraph (m)(1)(B)–(D) to examine trade secrets or such commercial or financial information. Similarly, nothing in this exemption requires the disclosure of information to the persons described in paragraph (m)(1)(A–(D) which is offered to the authorizing fiduciary by a party to the settlement negotiations conditioned on the maintenance of its confidentiality, provided that: (1) the Fiduciary makes a written determination that the information would likely assist the Fiduciary in carrying out its responsibilities on behalf of the plan; and (2) a decision of a court or an opinion of an attorney, having no relationship to any of the parties involved in the claims other than the plan, confirms that the proffered information likely cannot be obtained unconditionally by seeking discovery through the court, or cannot be obtained in a timely fashion.

Section III. Definitions

For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

For purposes of this exemption, the term "employer security" refers to employer securities described in section 407(d)(1) of ERISA.

IV. Effective Dates

This amendment to the class exemption is effective for settlements occurring on or after the date of publication of the final exemption in the **Federal Register**. For settlements occurring before the date of publication of the final exemption in the **Federal Register**, see the original grant of the Class Exemption for Release of Claims and Extensions of Credit in Connection with Litigation, 68 FR 75632 (Dec. 31, 2003).

Signed at Washington, DC this *10th* day of *June,* 2010.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–14381 Filed 6–14–10; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–066)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, July 7, 8:30 a.m. to 5 p.m., and Thursday, July 8, 2010, 8:30 a.m. to 4 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 3H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Astrophysics Division Update
—Ethics Briefing
—Government Performance and Results Act Discussion
—Update of Flight Missions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: June 9, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–14410 Filed 6–14–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–065)]

NASA Advisory Council; Ad-Hoc Task Force on Planetary Defense; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Ad-Hoc Task Force on Planetary Defense of the NASA Advisory Council.

DATES: Thursday, July 8, 2010, 8:30 a.m.–5:30 p.m., and Friday, July 9, 2010, 8 a.m.–12:45 p.m. (all times are Mountain Daylight Savings Time).

ADDRESSES: Millennium Harvest House, 1345 28th Street, Boulder, Colorado 80302 (room will be posted in hotel lobby).

FOR FURTHER INFORMATION CONTACT: Ms. Jane Parham, Exploration Systems Mission Directorate, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–1715; *jane.parham@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Work plan and timeline.
- Report on fact-finding meetings.
- Asteroid detection, warning, response, and concepts for deflection.
- International coordination on planetary defense against asteroids.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be required to sign a register when they enter the meeting room.

For questions, please call Ms. Jane Parham, at (202) 358–1715.

Dated: June 9, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–14408 Filed 6–14–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–064)]

National Environmental Policy Act; Scientific Balloon Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability and request for comments on the Draft Programmatic Environmental Assessment (PEA) and Draft Finding of No Significant Impact (FONSI) for NASA's Scientific Balloon Program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA NEPA policy and procedures (14 CFR Part 1216, Subpart 1216.3), NASA has prepared a Draft PEA that analyzes scientific balloon launch and flight operations originating from NASA's Columbia Scientific Balloon Facilities (CSBF) in Fort Sumner, New Mexico and Palestine, Texas. NASA has launched and monitored the flights of balloons from these locations for over 25 years. NASA is not proposing to change the launch locations and is only proposing to increase the number of scientific balloons launched each year. Balloon flights originating from CSBF Fort Sumner would increase from 15 to 25 annually; balloons launched from CSBF Palestine would continue at approximately 6 per year. The No Action Alternative, under which balloon launch and flight operations would not increase, is also analyzed in detail in the Draft PEA.

In accordance with its NEPA procedures, NASA has also prepared a Draft FONSI that preliminarily concludes that an Environmental Impact Statement is not needed for the proposal.

DATES: Interested parties are invited to submit comments on the draft PEA and the draft FONSI, preferably in writing, no later than 30 days from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Comments submitted via mail should be addressed to: Joshua A. Bundick, NEPA Program Manager, Scientific Balloon Program, NASA Goddard Space Flight Center's Wallops Flight Facility, Wallops Island, VA 23337. Comments also may be submitted via electronic mail to: *wff-nepa@lists.nasa.gov.*

The Draft PEA and Draft FONSI may be viewed at the following locations:

(a) Fort Sumner Public Library, 235 West Sumner Avenue, Fort Sumner, New Mexico 88119 (575–355–2832).

(b) Palestine Public Library, 1101 North Cedar Street, Palestine, Texas 75801 (903–729–4121).

(c) NASA Headquarters Library, Room 1J20, 300 E Street, SW., Washington, DC 20546–0001 (202–358–0168).

The Draft PEA and Draft FONSI are also available on the internet in Adobe® portable document format at the following address: *http://sites.wff.nasa.gov/code250/BPO_PEA.php.* Limited hard copies of the Draft PEA and Draft FONSI are available, on a first request basis, by contacting Joshua Bundick at the address or telephone number indicated below.

FOR FURTHER INFORMATION CONTACT: Joshua Bundick, NEPA Program Manager, NASA Goddard Space Flight Center's Wallops Flight Facility; telephone 757–824–2319; or electronic mail at *Joshua.A.Bundick@nasa.gov.* Additional information about the

Scientific Balloon Program may be found on the internet at *http://sites.wff.nasa.gov/code820/.*

SUPPLEMENTARY INFORMATION: NASA has launched and monitored the flights of balloons from the Columbia Scientific Balloon Facilities (CSBF) located in Fort Sumner, New Mexico and Palestine, Texas for over 25 years. Balloons are used to collect scientific data and conduct research on the atmosphere and near-space environments primarily in support of NASA's Science Mission Directorate. Significant finds, such as the discovery of the ozone hole above the Antarctic in the mid-1980s, have been made by instruments tested or operated on balloon missions launched from CSBF. In recent years, NASA's balloon program has seen a dramatic increase in sophistication of experiments and demands for service. Due to the flexibility and relatively low cost of the program, there is an increased need for balloon-based research and development missions. As such, NASA seeks to increase the annual number of balloons launched from the CSBF Fort Sumner facility.

The Draft PEA addresses the environmental impacts associated with balloon launch, flight, and recovery operations. Although balloons are typically launched from one of the two CSBF facilities, their flight paths are wind-driven, and they could land in adjacent states. An analysis of the past ten years of flights indicates that the majority of balloons and payloads are recovered from Texas, New Mexico, and Arizona. Only a handful of balloons or payloads have landed in the neighboring states of Oklahoma, Kansas, and Colorado.

In preparing the Draft PEA, NASA requested input from over fifty potentially interested parties, including those in Federal, State, and Tribal governments. During this process, several commenters expressed an interest in potential effects on cultural resources; others either offered support of the proposal or did not comment. Accordingly, NASA has assessed the potential effects of the proposal and the No Action Alternative on physical, biological, and social resources and has tentatively concluded those impacts are not significant.

Olga M. Dominguez,

Assistant Administrator for Office of Strategic Infrastructure.

[FR Doc. 2010–14406 Filed 6–14–10; 8:45 am]

BILLING CODE P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 22, 2010.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 8092A Highway Accident Report—Bus Loss of Control and Rollover, Dolan Springs, Arizona, January 30, 2009 (HWY–09–MH–009).

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, June 11, 2010.

The public may view the meeting via a live or archived Webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Candi Bing, (202) 314–6403.

Dated: June 11, 2010.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2010–14494 Filed 6–11–10; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0195]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 20, 2010 to June 2, 2010. The last biweekly notice was published on June 1, 2010 (75 FR 30440).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to Cindy Bladey, Chief, Rules, Announcements, and Directives Branch

(RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web

site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: April 21, 2010.

Description of amendment request: The proposed amendment would revise James A. FitzPatrick Technical Specification (TS) 2.0, "Safety Limits (SLs)." Specifically, TS 2.1.1.2 would replace the listed safety limit minimum critical power ratio values of 1.07 for two recirculation loop operation and 1.09 for single recirculation loop operation with new values of 1.08 and 1.11, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of JAF [James A. FitzPatrick Nuclear Power Plant] in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The basis of the Safety Limit Minimum Critical Power Ratio (SLMCPR) is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPR values preserve the existing margin to transition boiling and probability of fuel damage is not increased. The derivation of the revised SLMCPR for JAF, for incorporation into the Technical Specifications and its use to determine plant and cycle-specific thermal limits, has been performed using NRC approved methods. These plant-specific calculations are performed each operating cycle and, if necessary, will require future changes to these values based upon revised core designs. The revised SLMCPR values do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

Based on the above, JAF has concluded that the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of JAF in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes result only from a specific analysis for the JAF core reload design. These changes do not involve any new or different methods for operating the facility. No new initiating events or transients will result from these changes.

Based on the above, JAF has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. The operation of JAF in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The new SLMCPR is calculated using NRC approved methods with plant and cycle specific parameters for the current core design. The SLMCPR value remains conservative enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. The operating MCPR limit is set appropriately above the safety limit value to ensure adequate margin when the cycle specific transients are evaluated. Accordingly, the margin of safety is maintained with the revised values.

As a result, JAF has determined that the proposed change will not result in a significant reduction in a margin of safety.

On the basis of the above, JAF has determined that operation of the facility in accordance with the proposed change does not involve a significant hazards consideration as defined in 10 CFR 50.92(c), in that it: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) does not create the possibility of a new or different kind of accident from any accident previously evaluated; and (3) does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy L. Salgado.

Pacific Gas and Electric Co., Docket No. 50–133, Humboldt Bay Power Plant (HBPP), Unit 3 Humboldt County, California

Date of amendment request: April 9, 2010.

Description of amendment request: The licensee has proposed amending the technical specifications (TS) to delete TS 3.1.3, "Fuel Storage Pool Liner Water Level." TS 3.1.3 places restrictions on the maximum operating water level in the gap between the stainless steel liner covering the inside surface of the fuel storage pool and the pool walls. This TS restriction was originally intended to preclude leakage from the fuel storage pool to surrounding groundwater, and to preclude groundwater seepage into the pool. Additional conforming and editorial changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes eliminate the TS requirement to control the operating water level in the gap between the fuel storage pool liner and the pool concrete structure and delete the TS sections that are applicable to Limiting Conditions for Operation (LCO).

Elimination of the TS requirements to control liner gap water level will not increase the probability or consequences of the previously analyzed (and recently updated) fuel storage pool rupture accident. The basis of TS 3.1.3 is to preclude both pool leakage to the surrounding groundwater and groundwater leakage into the pool. The radiological consequences of pool leakage are conservatively bounded by the fuel storage pool rupture analysis, an analysis which demonstrates that the consequences of a breech of the fuel storage pool are insignificant.

Additionally, the proposed changes will not result in the modification of any systems, structures or components and will not affect any parameters or conditions that could contribute to the initiation of an accident.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident evaluated?

Response: No.

The proposed changes will not result in the modification of any systems, structures or components and will not affect any parameters or conditions that could contribute to the initiation of an accident. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from those previously evaluated

(3) Does the change involve a significant reduction in a margin of safety?

Response: No.

The design basis and accident assumptions within the Humboldt Bay Power Plant (HBPP) Unit 3 Defueled Safety Analysis Report and the TS relating to spent fuel are no longer applicable. The proposed changes do not affect remaining plant operations, nor structures, systems, or components supporting decommissioning activities. In addition, the proposed changes do not result in a change in initial conditions, system response time, or in any other parameter affecting the course of a decommissioning activity accident analysis. Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Jennifer K. Post, Pacific Gas and Electric Company, 77 Beale Street, B30A, San Francisco, CA.

NRC Branch Chief: Bruce Watson (Acting).

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 19, 2010.

Description of amendment request: The proposed amendment would modify the Hope Creek Generating Station (HCGS) Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program, the Surveillance Frequency Control Program (SFCP). The proposed changes are based on Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) change TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed TSTF] Initiative 5b" (Agencywide Documents Access and Management System (ADAMS) Package Accession No. ML090850642). Plant-specific deviations from TSTF–425 are proposed to accommodate differences between the HCGS TSs and the model TSs originally used to develop TSTF–425.

The NRC staff issued a Notice of Availability for TSTF–425 in the **Federal Register** on July 6, 2009 (74 FR 31996). The notice included a model safety evaluation and a model no significant hazards consideration (NSHC) determination. In its application dated March 19, 2010, PSEG Nuclear LLC (PSEG, the licensee) provided its analysis of the issue of NSHC based on the model NSHC determination for TSTF–425.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the Technical Specifications for which the surveillance

frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, PSEG will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1 in accordance with the TS SFCP. [The] NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent Zabielski, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 25, 2010.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) associated with reactor coolant system (RCS) structural integrity requirements for Hope Creek Generating Station (Hope Creek) and Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2. Specifically, the amendments would: (1) Delete the structural integrity requirements contained in TS ¾.4.8 (Hope Creek), TS ¾.4.10 (Salem Unit 1), and TS ¾.4.11 (Salem Unit 2); (2) relocate the augmented inservice inspection requirements for the reactor coolant pump flywheel, currently contained in Salem Unit 1 surveillance requirement (SR) 4.4.10.1.1 and Salem Unit 2 SR 4.4.11.1, to a new program in TS Section 6.8.4; and (3) delete the augmented inservice inspection program requirements for the steam generator channel heads currently contained in Salem Unit 1 SR 4.4.10.1.2 and Salem Unit 2 SR 4.4.11.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with Nuclear Regulatory Commission (NRC) staff edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to remove the RCS Structural Integrity TS does not impact any mitigation equipment or the ability of the RCS pressure boundary to fulfill any required safety function. Since no accident mitigation or initiators are impacted by this change, no design basis accidents are affected. The removal of the RCS Structural Integrity TS eliminates from the TS the redundancy of requirements that are already covered by the inspections necessary to maintain structural integrity under 10 CFR 50.55a [Section 50.55a of Title 10 of the *Code of Federal Regulations* (10 CFR)].

Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a modification to the physical configuration of the plant (*i.e.,* no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Therefore, this proposed change does not create the possibility of an accident of a [new or] different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Removal of the RCS Structural Integrity TS does not reduce the controls that are required to maintain the RCS pressure boundary for ASME Code [American Society of Mechanical Engineers *Boiler and Pressure Vessel Code*] Class 1, 2, or 3 components. The removal of the RCS Structural Integrity TS eliminates from the TS the redundancy of requirements that are already covered by the inspections necessary to maintain structural integrity under 10 CFR 50.55a. No equipment or RCS safety margins are impacted due to the proposed change[.]

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, and with the changes noted above in square brackets, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent Zabielski, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 23, 2010.

Description of amendment request: The proposed amendment would modify the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program, the Surveillance Frequency Control Program (SFCP). The proposed changes are based on Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) change TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed TSTF] Initiative 5b" (Agencywide Documents Access and Management System (ADAMS) Package Accession No. ML090850642). Plant-

specific deviations from TSTF–425 are proposed to accommodate differences between the Salem TSs and the model TSs originally used to develop TSTF–425.

The NRC staff issued a Notice of Availability for TSTF–425 in the **Federal Register** on July 6, 2009 (74 FR 31996). The notice included a model safety evaluation and a model no significant hazards consideration (NSHC) determination. In its application dated March 23, 2010, PSEG Nuclear LLC (PSEG, the licensee) provided its analysis of the issue of NSHC based on the model NSHC determination for TSTF–425.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in [a] margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, PSEG will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI [Nuclear Energy Institute] 04–10, Rev. 1 in accordance with the TS SFCP. [The] NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent Zabielski, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 13, 2010.

Description of amendment request: The proposed amendment would add a footnote to Function 8.a in Technical Specification (TS) Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation," concerning the reactor trip P–4 engineered safety feature actuation system (ESFAS) interlock. This would specify which functions of the interlock are necessary in each mode in order to meet the limiting condition for operation. Specifically, the functions of tripping the main turbine and isolating main feedwater with a coincident low average temperature would no longer be applicable in Mode 3, which is hot standby. The amendment would also identify that the function of the P–4 interlock that allows arming of the steam dump valves and transfers the steam dump load rejection (T_{avg}) controller to the plant trip controller is not required in any mode.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses. Defeating the feedwater isolation low T_{avg} coincident with P–4 function will not impact any accidents previously evaluated in the Updated Safety Analysis Report (USAR) since feedwater isolation on low T_{avg} coincident with P–4 is not credited. Bypassing the turbine trip on reactor trip function will not impact any accidents previously evaluated in the USAR since the turbine trip on reactor trip function of P–4 is not credited.

The instrumentation utilized to initiate transfer to the plant trip steam dump controller does not serve a primary protective function so as to warrant inclusion in the TS. The instrumentation does not serve to ensure that the plant is operated within the bounds of initial conditions assumed in design basis accident and transient analyses. Likewise, the transfer to the plant trip steam dump controller instrumentation does not serve as part of the primary success path of a safety sequence analysis used to demonstrate that the consequence of these events are within the appropriate acceptance criteria.

The ESFAS will continue to function in a manner consistent with the accident analysis assumptions and the plant design basis. As such, there will be no degradation in the performance of, nor an increase in, the number of challenges to equipment assumed to function during an accident situation. The proposed changes to the TSs do not affect the probability of any event initiators. There will be no change to normal plant operating parameters or accident mitigation capabilities.

Therefore, this change will not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

There are no changes in the method by which any safety related plant system performs its safety function and the normal manner of plant operation is unaffected, other than the proposed allowance to defeat feedwater isolation on low T_{avg} coincident with P–4 and the proposed allowance to defeat the turbine trip on reactor trip function of P–4.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effect or challenges imposed on any safety related system as a result of this change. Therefore,

the possibility of a new or different type of accident is not created. The proposed change does not affect the steam generator high-high level trip ESFAS function which initiates feedwater isolation and trips the turbine and main feedwater pumps. Therefore, this change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor ($F_Q(Z)$) limits, nuclear enthalpy rise hot channel factor ($F^N_{\Delta H}$) limits, peak centerline temperature (PCT) limits, peak local power density or any other margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Duke Energy Carolinas, LLC, *et al.*, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 28, 2009, as supplemented by letter dated April 5, 2010.

Brief description of amendments: The amendments revised the Technical Specification (TS) 3.8.1, "AC Sources—Operating," to restrict voltage limits for the applicable TS 3.8.1 surveillances governing the Emergency Diesel Generators.

Date of issuance: May 27, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 255, 250.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 9, 2010 (75 FR 10825). The supplement dated April 5, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 27, 2010.

No significant hazards consideration comments received: No.

Duke Energy Corporation, *et al.*, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: May 18, 2009.

Brief description of amendments: The proposed changes would revise the Technical Specifications (TSs) to adopt Technical Specification Task Force (TSTF)–248, "Revise Shutdown Margin Definition For Stuck Rod Exception." The TSTF revises the definition of shutdown margin (SDM) in the TSs with all control rods verified fully inserted by two independent means. It is not necessary to account for a stuck control rod in the SDM calculation.

Date of issuance: May 28, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 254, 249, 255, 235, 367, 369, and 368.

Renewed Facility Operating License Nos. NPF–35, NPF–52, NPF–9, NPF–17, DPR–38, DPR–47, and DPR–55: Amendments revised the Operating Licenses and the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 9, 2010 (75 FR 10827).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 28, 2010.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: August 17, 2009, as supplemented by letter dated January 21, 2010.

Brief description of amendment: The amendment modified (1) Technical Specification (TS) 3.8.3, "Diesel Fuel Oil, Lube Oil, and Starting Air," to relocate specific numerical values for fuel oil and lube oil storage volumes from the TS to the TS Bases, (2) TS 3.8.1, "AC [Alternating Current] Sources—Operating," to relocate

specific values for the day tank fuel oil volumes from the TS to the TS Bases, and (3) TS 5.5.9, "Diesel Fuel Oil Testing Program," to relocate the specific standard for particulate concentration testing of fuel oil from the TS to the TS Bases.

Date of issuance:

Effective Date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 215.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 3, 2009 (74 FR 56884). The supplemental letter dated January 21, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 2010.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: March 31, 2010, supplemented by letter dated May 13, 2010.

Brief description of amendment: The amendment adds a new license condition 2.C(4) to Palisades Nuclear Plant, renewed facility license No. DPR–20. This license condition would state that performance of Technical Specification (TS) surveillance requirement (SR) 3.1.4.3 is not required for control rod drive 22 through cycle 21 or until the next entry into Mode 3. The amendment consists of changes to TS by addition of a note in SR 3.1.4.3, stating: "Not required to be performed or met for control rod 22 during cycle 21 provided control rod 22 is administratively declared immovable, but trippable and Condition D is entered for control rod 22."

Date of issuance: June 2, 2010.

Effective date: As of the date of issuance and shall be implemented within 15 days.

Amendment No.: 239.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications and license.

Public comments requested as to proposed no significant hazards consideration (NSHC): The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by June 13, 2010, which is within 60 days of the individual notice published on April 14; but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

Date of initial Individual notice in ***Federal Register:*** April 14, 2010 (75 FR 19428), followed by the repeat biweekly notice in the **Federal Register** on May 4, 2010 (75 FR 23818).

The Commission's related evaluation of the amendment, state consultation, and final NSHC determination are contained in a Safety Evaluation dated June 2, 2010.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 15, 2009, as supplemented by letters dated November 10, 2009, and May 17, 2010.

Brief description of amendment: The amendment modified Technical Specification (TS) 6.6.5, "Core Operating Limits Report (COLR)," to minimize the number of U.S. Nuclear Regulatory Commission (NRC)-approved references consistent with the guidance provided in NRC Generic Letter 88–16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications," dated October 3, 1988. This also fulfills the commitment made in the licensee's letter to the NRC dated March 11, 2008, "Response to Request for Additional Information License Amendment Request to Revise Technical Specification 6.6.5, Core Operating Limits Report."

Date of issuance: May 25, 2010.

Effective Date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 290.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of initial notice in ***Federal Register***: June 30, 2009 (74 FR 31321). The supplemental letters dated November 10, 2009, and May 17, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 2010.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 22, 2009, as supplemented by letter dated May 17, 2010.

Brief description of amendment: The amendment modified Technical Specification 6.9.1.11 to minimize the number of references that reflect U.S. Nuclear Regulatory Commission (NRC)-approved methods used in establishing the Core Operating Limits Report (COLR) parameter limits, consistent with the guidance provided in NRC Generic Letter 88–16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications," dated October 3, 1988.

Date of issuance: May 25, 2010.

Effective Date: As of the date of issuance and shall be implemented 90 days from the date of issuance.

Amendment No.: 226.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: June 30, 2009 (74 FR 31322). The supplemental letter dated May 17, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: September 29, 2008, supplemented by letters dated May 6, 2009, June 23, 2009, August 21, 2009, September 17, 2009, October 15, 2009, and November 11, 2009.

Brief description of amendment: The changes revise the TMI–1 technical

specifications (TSs) to reflect design changes resulting from the planned Control Rod Drive Control System digital upgrade project. In addition, the proposed amendment revises the TS to remove all references to the Axial Power Shaping Rods to reflect changes resulting from their elimination from the TMI–1 reactor.

Date of issuance: May 27, 2010.

Effective Date: Immediately, and shall be implemented prior to exiting cold shutdown from the fall 2011 (T1R19) refueling outage.

Amendment No.: 273.

Renewed Facility Operating License No. DPR–50. Amendment revised the license and the technical specifications. The supplements dated May 6, 2009, June 23, 2009, August 21, 2009, September 17, 2009, October 15, 2009, and November 11, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination.

Date of initial notice in ***Federal Register***: March 10, 2009 (74 FR 10308).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 2010.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, *et al.,* Docket Nos. 50–334 and 50–412 Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendment: June 11, 2009.

Brief description of amendment: The amendments will (1) modify Technical Specifications (TSs) to eliminate Surveillance Requirement (SR) 3.3.2.9, which verifies that the Engineered Safety Feature Actuation System Response Times are within the limits for the recirculation spray pumps, (2) revise Section 1.4 of the TSs to add clarification to Notes associated with SRs in accordance with Technical Specification Task Force Traveler, TSTF 475–A, Revision 1, "Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action," (3) revise the BVPS–1 operating license to remove a License Condition for recommended inspections of steam generator repairs, and (4) make some editorial changes to the operating license pages.

Date of issuance: May 20, 2010.

Effective Date: As of the date of issuance, and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 285 and 171.

Facility Operating License Nos. DPR–66 and NPF–73: The amendments revised the License, TSs, Appendix B, and Appendix D.

Date of initial notice in ***Federal Register***: December 15, 2009 (74 FR 66385).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 2010.

No significant hazards consideration comments received: No.

Florida Power and Light Company, *et al.,* Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: May 22, 2009, as supplemented June 22, 2009.

Brief description of amendment: Revises Technical Specification 3.1.3.4, related to requirements for Control Element Assembly drop time.

Date of Issuance: May 31, 2010.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 158.

Renewed Facility Operating License No. NPF–16: Amendment revised the license and the Technical Specifications.

Date of initial notice in ***Federal Register***: June 1, 2009 (74 FR 26261). The supplement dated June 22, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 2010.

No significant hazards consideration comments received: No.

NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 17, 2009, as supplemented by letter dated January 19, 2010.

Brief description of amendments: Amend Renewed Operating Licenses DPR–24 and DPR–27 for Point Beach Nuclear Plant Units 1 and 2, respectively, to reflect a change in the legal name of the licensee from "FPL Energy Point Beach, LLC" to "NextEra Energy Point Beach, LLC" and correct a typographical error in Appendix C from "FPLE Group Capital" to "FPL Group Capital."

Date of issuance: May 13, 2010.

Effective Date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 237, 241.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications/License.

Date of initial notice in ***Federal Register:*** July 14, 2009 (74 FR 34048) as supplemented by March 3, 2010 (75 FR 9619).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 2010.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: June 24, 2009, as supplemented by letter dated December 21, 2009.

Brief description of amendments: The amendments modify the technical specification requirements to control room habitability in accordance with Technical Specification Task Force (TSTF)–448, Revision 3, "Control Room Habitability."

Date of issuance: May 20, 2010.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 195, 184.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Facility Operating Licenses and the Technical Specifications.

Date of initial notice in ***Federal Register***: September 8, 2009 (74 FR 46243). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 2010.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company *et al.*, Docket No. 52–011, Vogtle Electric Generating Plant ESP Site, Burke County, Georgia

Date of amendment request: April 20, 2010, as supplemented April 23 and 28, May 5, 10, 13, and 20, 2010.

Description of amendment request: The amendment revised the Vogtle Electric Plant (VEGP) ESP Site Safety Analysis Report (SSAR) to allow the use of Category 1 and 2 backfill material

from additional onsite areas that were not specifically identified in the VEGP ESP SSAR as backfill sources for the activities approved under the ESP and Limited Work Authorization. After consideration of the applicant's request by letter dated May 13, 2010, for a limited scope approval, this amendment only approved a subset of onsite backfill locations pending the NRC determination on the remainder of the backfill sources identified in the license amendment request.

Date of issuance: May 21, 2010.

Effective Date: As of date of issuance and shall be implemented within 15 days from the date of issuance.

Amendment No.: One.

Early Site Permit No. ESP–004: Amendment revised the VEGP ESP SSAR .

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. May 6, 2010 (75 FR 24993). The supplements dated May 5, 10, 13, and 20, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination. The May 6 notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The May 6 notice also provided an opportunity to request a hearing by July 6, 2010, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the requested limited scope approval of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated May 21, 2010. The NRC staff prepared an environmental assessment (75 FR 28664) and determined that the requested limited scope approval of the amendment will not have a significant effect on the quality of the human environment.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham, LLP.

NRC Branch Chief: Jeffrey Cruz.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: May 4, 2009.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.7.2, "Main Steam Isolation Valves (MSIVs)," to add the main steam isolation valve bypass valves and main steam low point drain isolation valves to the scope of this TS and modify the title and page header of TS 3.7.2; revised footnotes (i) and (k) in TS Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation," of TS 3.3.2 to make the Applicability of TS Table 3.3.2–1 consistent with the Applicability of TS 3.7.2 and deleted footnote (l) which is no longer used in the Table; and added new TS 3.7.19, "Secondary System Isolation Valves (SSIVs)," Limiting Condition for Operation 3.7.19, and Surveillance Requirements (SRs) 3.7.19.1 and 3.7.19.2 for the following secondary system isolation valves: steam generator chemical injection isolation valves, steam generator blowdown isolation valves, and steam generator sample line isolation valves. Correspondingly, the amendment added new Function 10, "Steam Generator Blowdown System and Sample Line Isolation Valve Actuation," and new exception footnote (t) for Function 10 in TS Table 3.3.2–1.

Date of issuance: May 28, 2010.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 197.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: August 25, 2009 (74 FR 42933).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 2010.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: December 16, 2009.

Brief description of amendment: The amendment would revise the Technical Specifications (TSs) to adopt Nuclear Regulatory Commission (NRC)-approved Revision 2 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–427, "Allowance for Non Technical Specification Barrier Degradation on Support System Operability." The proposed amendment will modify the requirements for unavailable barriers by adding a Limiting Condition for Operation 3.0.9.

Date of issuance: May 4, 2010.

Effective Date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 259 and 240.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the licenses and the TSs.

Date of initial notice in ***Federal Register***: January 26, 2010.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 4, 2010.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a

nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—Primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. *Environmental*—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous*—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 31, 2010, as supplemented by letter dated June 1, 2010.

Description of amendment request: The amendment modified Technical Specification (TS) 2.15, "Instrumentation and Controls," Table 2–5, Note c to allow a one-time extension of the 7-day allowed outage time for inoperability of Item 4, "Safety Valve Acoustic Position Indication," to allow repair prior to the next entry into Operating Mode 3 (Hot Shutdown) from Operating Mode 4 (Cold Shutdown).

Date of issuance: June 2, 2010.

Effective Date: As of its date of issuance and shall be implemented upon issuance.

Amendment No.: 265.

Renewed Facility Operating License No. DPR–40: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated June 2, 2010.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Dated at Rockville, Maryland, this 3rd day of June 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–14063 Filed 6–14–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–040 and 52–041; NRC–2009–0337]

Florida Power & Light Company; Turkey Point, Units 6 and 7; Combined License Application, Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Florida Power & Light Company (FPL) has submitted an application for a combined license (COL) to build Units 6 and 7 at its Turkey Point site, located in Miami-Dade County, Florida. The nearest incorporated municipality is the City of Homestead located approximately 4.5 miles from the nearest boundary of the Turkey Point site; the site is approximately 25 miles south of the City of Miami. The application for the COL was submitted by FPL by letter dated June 30, 2009, pursuant to Title 10 of the *Code of Federal Regulations (10 CFR*), Part 52.

A notice of receipt and availability of the application including the environmental report (ER) was published in the **Federal Register** on August 3, 2009 (74 FR 38477). A notice of acceptance for docketing of the application for the COL was published in the **Federal Register** on October 7, 2009 (74 FR 51621). A notice of hearing and opportunity to petition for leave to intervene will be published at a later date. The purposes of this notice are (1) to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) as part of the review of the COL application and (2) to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29. The NRC has invited the U.S. Army Corps of Engineers, Jacksonville District, to participate in the preparation of the EIS as a cooperating agency.

In addition, as outlined in 36 CFR 800.8(c), "Coordination with the National Environmental Policy Act," the NRC staff plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) with steps taken to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA). Pursuant to 36 CFR 800.8(c), the NRC staff intends to use its process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45 and 51.50, FPL submitted the ER as part of the COL application. The ER was prepared pursuant to 10 CFR parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 or from the Publicly Available Records (PAR) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Electronic Reading Room (ERR) link. The accession number in ADMAS for the environmental report is ML091870926. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209/301–415–4737 or via e-mail at *pdr@nrc.gov.* The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-reactors/col/turkey-point.html.* In addition, the South Dade Regional Library located at 10750 SW 211th Street in Miami, Florida; and the Homestead Branch Library at 700 North Homestead Boulevard in Homestead, Florida have agreed to maintain a copy of the ER and make it available for public inspection.

The following key reference documents related to the application and the NRC staff's review processes are available through the NRC's Web site at http://www.nrc.gov:

a. 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,

b. 10 CFR part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants,

c. 10 CFR part 100, Reactor Site Criteria,

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants,

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process,

f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations,

g. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations,

h. Fact Sheet on Nuclear Power Plant Licensing Process,

i. Regulatory Guide 1.206, Combined License Applications for Nuclear Power Plants,

j. Nuclear Regulatory Commission Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions.

The regulations, NUREG-series documents, regulatory guides, and the fact sheet can be found under Document Collections in the ERR on the NRC webpage. The environmental justice policy statement can be found in the **Federal Register**, 69 FR 52040, August 24, 2004.

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS as part of the review of the application for the COLs at the Turkey Point site. Possible alternatives to the proposed action (issuance of the COLs for the Turkey Point site) include no action, reasonable alternative energy sources, and alternate sites. This notice is being published in

accordance with NEPA and the NRC's regulations found in 10 CFR part 51. As set forth in 10 CFR 51.20(b)(2), issuance of a COL under 10 CFR part 52 is an action that requires an EIS.

The NRC will first conduct a scoping process for the EIS and thereafter will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged.

The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action that is to be the subject of the EIS,

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth,

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant,

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered,

e. Identify other environmental review and consultation requirements related to the proposed action,

f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i),

g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule,

h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

i. Describe how the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, FPL,

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards,

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards,

d. Any affected Indian tribe,

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC staff has elected to hold two identical public scoping meetings at the Homestead YMCA located at 1034 Northeast 8th Street, Homestead, Florida, 33030, on Thursday, July 15, 2010. The first meeting will convene at 1 p.m., and will continue until approximately 4 p.m. The second meeting will convene at 7 p.m. and will continue until approximately 10 p.m. The meetings will be transcribed and will include the following: (1) an overview by the NRC staff of the environmental review process, the proposed scope of the EIS, and the proposed review schedule; (2) an opportunity for interested government agencies, organizations, and individuals to submit comments on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions for one hour prior to the start of each public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may register to attend or present oral comments at the meeting on the scope of the EIS by contacting Mr. Andrew Kugler or Ms. Tomeka L. Terry at 1–800–368–5642, extensions 2828 or 1488, respectively. In addition, persons can register via e-mail to the NRC at *TurkeyPoint.COLEIS@nrc.gov* no later than July 12, 2010.

Members of the public may also register to speak at the meetings prior to the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. If special equipment or accommodations are needed to attend or present information at the public meeting, such requests should be brought to Mr. Kugler's or Ms. Terry's attention no later than July 7, 2010, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the scope of the Turkey Point COL environmental review to the Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. To be considered in the scoping process, written comments must be postmarked or delivered by the comment period end date of August 16, 2010. Electronic comments may be sent by e-mail to the NRC at *TurkeyPoint.COLEIS@nrc.gov.* Electronic submissions must be sent no later than the comment period end date of August 16, 2010, to be considered in the scoping process.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Notice of a hearing regarding the application for COLs will be noticed separately in the **Federal Register**.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions on the scope of the environmental review, including the significant issues identified, and will make this summary publicly available. The staff will then prepare and issue for comment the draft EIS, which will be the subject of a separate **Federal Register** notice and a separate public meeting. Copies of the draft EIS will be available for public inspection at the PDR through the above-mentioned address and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final EIS, which will also be available to the public. Information about the proposed action, the EIS, and the scoping process may be obtained from Mr. Andrew Kugler or Ms. Tomeka L. Terry at the U.S. Nuclear Regulatory Commission, Mail Stop T7–E30, Washington, DC 20555–0001, by phone at 1–800–368–5642, extensions 2828 or 1488, respectively, or via e-mail at *Andrew.Kugler@nrc.gov* or *Tomeka.Terry@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of June, 2010.

For the Nuclear Regulatory Commission.

Scott Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. 2010–14338 Filed 6–14–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0202]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1240, "Condition Monitoring Program for Electric Cables Used in Nuclear Power Plants."

FOR FURTHER INFORMATION CONTACT: Satish Aggarwal, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7627 or e-mail *Satish.Aggarwal@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG) is temporarily identified by its task number, DG–1240, which should be mentioned in all related correspondence. DG–1240 is a proposed new regulatory guide.

10 CFR 50.65, "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," (Maintenance Rule), states that "Each holder of an operating license for a nuclear power plant * * * shall monitor the performance or condition of structures, systems, or components * * * in a manner sufficient to provide reasonable assurance that these structures, systems, and components * * * are capable of fulfilling their intended functions." This guide describes a method that the staff of the NRC considers acceptable for condition monitoring of electric cables for nuclear power plants, for those licensees choosing to use monitoring to meet the requirements of the Maintenance Rule.

II. Further Information

The NRC staff is soliciting comments on DG–1240. Comments may be accompanied by relevant information or supporting data and should mention DG–1240 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Comments would be most helpful if received by August 13, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0202 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0202. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–1240 is available electronically under ADAMS Accession Number ML100760364. The regulatory analysis is available electronically under ADAMS Accession Number ML101530476. In addition, electronic copies of DG–1240 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.*

Federal Rulemaking Web Site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0202.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 8th day of June, 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–14339 Filed 6–14–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Dockets 50–309, 72–30; NRC–2010–0204]

Maine Yankee Atomic Power Company; Independent Spent Fuel Storage Installation; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Request for Exemption From Requirements of 10 CFR Part 72

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation,

Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3325; Fax number: (301) 492–3342; E-mail: *john.goshen@nrc.gov.*

Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering the issuance of an exemption to Maine Yankee Atomic Power Company (MY), pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214. MY is using a dry cask storage system, the NAC–UMS, Certificate of Compliance (CoC) No. 1015, to store spent nuclear fuel under a general license in an independent spent fuel storage installation (ISFSI) associated with the decommissioned Maine Yankee plant, located in Wiscasset, Maine. MY stores spent fuel in sixty NAC–UMS casks at the MY ISFSI, all loaded under Amendment No. 2 to CoC No. 1015. Under the current 10 CFR part 72 regulations, the general licensee is bound by the terms and conditions of the CoC under which it loaded a given cask. Amendment No. 2 will remain in effect for the casks at the MY ISFSI until the NRC expressly approves the application of changes authorized by a later CoC amendment. Such an approval is typically accomplished through a 10 CFR 72.7 exemption.

In its letter dated January 15, 2010, MY stated that it desired to adopt Amendment No. 5 to CoC No. 1015 for all sixty NAC–UMS casks at the site. Adaption of the changes authorized by Amendment No. 5 will allow a visual alternative to Technical Specification (TS) Surveillance Requirement 3.1.6.1 to verify the operability of the concrete cask heat removal system to maintain safe storage conditions and will also remove the for a specification in the CoC for tamper indicating devices. CoC No. 1015, Amendment No. 5 was issued by the NRC on September 19, 2007.

MY initiated an evaluation to determine if the sixty casks conform to the requirements of Amendment No. 5 of CoC No. 1015. The evaluation concluded that 59 of the 60 casks conform to Amendment No. 5. The sixtieth cask, NAC–UMS–TSC–790–016, did not comply with the 25-day of requirement in TS Limiting Condition of Operation (LCO) 3.1.4, "Canister Maximum Time in Transfer Cask," of Amendment No. 5. MY requested an exemption from TS LCO 3.1.4 in its January 15, 2010, letter. Although not expressly requested by MY, implicit in MY's exemption request is the application of the changes authorized by Amendment No. 5 to the casks at the ISFSI (which are presently operated under Amendment No. 2).

Under the current 10 CFR 72.212, a general licensee, such as MY, is not authorized to apply changes allowed by a later CoC amendment (in this case, Amendment No. 5) to a cask loaded under an earlier CoC amendment (in this case, Amendment No. 2) without express prior approval of the NRC.[1] Thus, in order to effectuate the requested exemption, the NRC will have to expand the scope of the requested exemption to include the application of the changes authorized by Amendment No. 5 to the subject casks. The applicable regulation, 10 CFR 72.7, allows the NRC to grant exemptions upon its own initiative.

MY also requests continuation of three exemptions from the terms and conditions of Amendment No. 5, similar to three previously granted exemptions of Amendment No. 2. These are:

1. Appendix A, Section A 5.1, Training Program. Exemption from the requirement to develop a systematic approach to training (SAT) that includes comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC–UMS Universal Storage System. This was approved by the NRC in its letter to MY dated December 13, 2004 (ADAMS Accession Number ML043620200).

2. Appendix A, Section A 5.5 (Section A. 5.4 in Amendment No. 2), Radioactive Effluent Control Program. Exemption from the requirement to submit an annual report pursuant to 10 CFR 72.44(d)(3) or 10 CFR 50.36(a). This was approved by the NRC in its letter to MY dated December 13, 2004 (ADAMS Accession Number ML043620200).

3. Appendix B, Section B 3.4.2.6. Exemption from the requirement to maintain a coefficient of friction on the ISFSI pad surface of at least 0.5. This was approved by the NRC in its letter to MY dated February 1, 2004 (ADAMS Accession Number ML 0403507970).

The requests for an exemption from the requirements of Appendix A, Section A 5.5, Radioactive Effluent Control Program, and Appendix A, Section A 5.1, Training Program are categorically excluded from further environmental review in accordance with 10 CFR 51.22(c)(25)(vi)(B) and (E), respectively. In accordance with the requirements in 10 CFR part 51, the NRC prepared an Environmental Assessment to analyze the remainder of MY's exemption requests. Based on the Environmental Assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate.

Environmental Assessment (EA)

Identification of Proposed Action: The NRC proposes to issue exemptions that would relieve MY from complying with the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214. Section 72.212(a)(2) provides that the general license is limited to storage of spent fuel in casks approved under the provisions of part 72; Section 72.212(b)(2)(i)(A) requires the general licensee to perform written evaluations, prior to use of a cask, that establish that the conditions set forth in the CoC have been met; Section 72.212(b)(7) requires that the general licensee comply with the terms and conditions of the CoC; and Section 72.214 lists the cask designs that have been approved by the NRC and are available for use by general licensees under the 10 CFR part 72 general license.

Specifically, the proposed action would be allowing MY to apply the changes authorized by Amendment No. 5 to CoC No. 1015 to the casks at the MY ISFSI and further, to exempt MY from the requirements of the following terms and conditions of Amendment No. 5 to CoC No. 1015:

1. TS LCO 3.1.4, "Canister Maximum Time in Transfer Cask," and

2. Appendix B, Section B 3.4.2.6.

The NRC's regulatory authority to grant these exemptions is 10 CFR 72.7.

Need for the Proposed Action: Approval of the proposed exemption requests will provide MY with significant cost savings and flexibility, without any decrease in safety.

Environmental Impacts of the Proposed Action: CoC No. 1015, Amendment No. 5 has been previously evaluated by the NRC, and its adoption presents no additional radiological environmental impacts. The exemption from the requirement to maintain a coefficient of friction on the ISFSI pad surface of at least 0.5 was previously evaluated by the NRC, and it was determined to pose no increased risk to health and safety. The proposed action also includes consideration of an exemption from the requirements of TS LCO 3.1.4 of Amendment No. 5 for one storage canister at the MY ISFSI. The affected storage canister had a heat load of 9.59kW, and was placed in a transfer cask for a total of 43 days between December 28, 2002, and February 18, 2003. At that time the MY ISFSI operated under the provisions of CoC No. 1015, Amendment No. 2, and the LCO 3.1.4 time limit for a canister

[1] *See* Enforcement Guidance Memorandum 09–006, dated September 15, 2009 (ADAMS Accession No. ML091970035).

having a content decay heat load of less than or equal to 14kW was unlimited. During this period, the storage canister was in full compliance with CoC No. 1015, Amendment No. 2, and its stored spent fuel was maintained in a safe condition during the time the canister was in the transfer cask. The transfer of the loaded canister was completed in a safe manner to ensure the transfer cask was not used as a long-term storage device.

Further, NRC has evaluated the impact to public safety that would result from granting the proposed action. The approval of the proposed action would not increase the probability or consequences of accidents, no changes would be made to the types of effluents released offsite, and there would be no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Additionally the proposed action would not involve any construction or other ground disturbing activities, would not change the footprint of the existing ISFSI, and would have no other significant non-radiological impacts. In this regard, and as the ISFSI is located on previously disturbed land, it is extremely unlikely that approval of the proposed action would create any significant impact on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or to essential fish habitat covered by the Magnuson-Stevens Act. Similarly, approval of the proposed action is not the type of activity that has the potential to cause effects on historic or cultural properties, assuming such properties are present at the site of the MY ISFSI.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. This alternative would have the same environmental impact.

Given that there are no significant differences in environmental impact between the proposed action and the alternative considered and that the applicant has a legitimate need, the Commission concludes that the preferred alternative is to grant the requested exemptions.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting exemptions from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Further Information

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," NRC records and documents related to this action, including the application for exemption and supporting documentation are available electronically at the NRC's Electronic Reading Room, at: *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access NRC's ADAMS, which provides text and image files of NRC's public documents. The ADAMS Accession Number for the application, dated January 15, 2010, is ML100260280.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1–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 4th day of June 2010.

For the Nuclear Regulatory Commission.

Pierre Saverot,

Acting Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–14336 Filed 6–14–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of June 14, 21, 28, July 5, 12, 19, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 14, 2010

Thursday, June 17, 2010

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

a. *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station) Remaining Issues from Pilgrim Watch Petition for Review (Tentative).

b. *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station) Pilgrim Watch Motion for Reconsideration of CLI–10–11 (Tentative).

This meeting will be webcast live at the Web address—www.nrc.gov.

9 a.m. Briefing on Blending (Public Meeting) (*Contact:* George Deegan, 301–415–7834).

This meeting will be webcast live at the Web address—www.nrc.gov.

Week of June 21, 2010—Tentative

Friday, June 25, 2010

9 a.m. Briefing on Office of Nuclear Material Safety and Safeguards (NMSS)—Programs, Performance and Future Plans and Integrated Strategy on Spent Fuel Management (Public Meeting) (*Contact:* Hipolito Gonzalez, 301–492–3141)

This meeting will be webcast live at the Web address—www.nrc.gov.

Week of June 28, 2010—Tentative

There are no meetings scheduled for the week of June 28, 2010.

Week of July 5, 2010—Tentative

There are no meetings scheduled for the week of July 5, 2010.

Week of July 12, 2010—Tentative

There are no meetings scheduled for the week of July 12, 2010.

Week of July 19, 2010—Tentative

There are no meetings scheduled for the week of July 19, 2010.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The *NRC Commission Meeting Schedule can be found on the Internet at: www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the

transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov. mailto:dlc@nrc.gov.mailto:aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: June 10, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–14496 Filed 6–11–10; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Announcement of Public Meeting

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management will hold a public meeting on June 25, 2010, as part of its hiring reform initiative to hear and consider views on whether normal, competitive hiring is an effective avenue for bringing recent college graduates into the Federal workforce. On May 11, 2010, President Obama issued a Memorandum for the Heads of Executive Departments and Agencies in which he stated that "the Federal Government must recruit and hire highly qualified employees and public service should be a career of choice for the most talented Americans." This public meeting will constitute one phase of that initiative.

DATES: The meeting will occur on June 25, 2010, from 10 a.m. to 5 p.m. at the Office of Personnel Management, Campbell Auditorium, 1900 E Street, NW., Washington, DC 20415. Notice of this meeting is published well in advance of the meeting to give sufficient notice to interested parties. Members of the public wishing to make an oral presentation at the hearing must submit a written statement on the issue(s) they would like to present, as well as a written request to make an oral presentation at the meeting, on or before June 18, 2010. Members of the public wishing to submit written statements only, must submit such statements by 5 p.m. on June 24, 2010.

ADDRESSES: The meeting will be held at the Office of Personnel Management, Campbell Auditorium, 1900 E Street, NW., Washington, DC 20415. Send written statements and, if desired, requests to make an oral presentation to Ms. Angela Bailey, 1900 E Street, NW., Room 6551, Washington, DC 20415 or hiringevent@opm.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Bailey, Deputy Associate Director for Recruitment and Diversity. She can be reached on 202–606–8097, *Angela.Bailey@opm.gov*, and at the address listed above.

SUPPLEMENTARY INFORMATION:

Objective: The purpose of this meeting is (1) to hear and consider views on whether normal, competitive hiring is an effective avenue for bringing recent college graduates into the Federal workforce and, if so, why that is the case; (2) to ascertain from those who believe that it is not effective, whether this presents a problem for the Federal Government that is sufficiently significant to warrant action or changes to policy; and (3) if action or changes in policy are warranted, to determine what change should be effected and by whom.

Panel Discussions: The meeting will commence with a series of panels to discuss these issues, comprised of individuals from a broad variety of organizations with an interest in Federal hiring.

Public Presentations: Any member of the public may request to make an oral presentation at the hearing. Any such request must be in writing and be accompanied by a written statement addressing the issue(s) on which the individual would like to present. Requests to make an oral presentation and the accompanying written statement must reach Ms. Angela Bailey, Deputy Associate Director for Recruitment and Diversity, on or before June 18, 2010. Individuals who do not wish to make an oral presentation but would like to submit a written statement for consideration must ensure that their statement is received by Ms. Bailey no later than 5 p.m. on June 24, 2010. Submission by e-mail or by a delivery service such as Fedex or UPS is preferred to ensure delivery on time. Oral presentations will be limited to 5 minutes. Members of the public who submit written statements need not make an oral presentation at the hearing. All written statements and oral presentations will become part of the record of proceedings and deliberations.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–14520 Filed 6–14–10; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Regulation 12B; OMB Control No. 3235–0062; SEC File No. 270–70.

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") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation 12B (17 CFR 240.12b–1—12b–37) includes rules governing all registration statements and reports under Sections 12(b), 12(g), 13(a), and 15(d) (15 U.S.C. 78l(b), 78l(g), 78m(a) and 78o(d)) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act"). The purpose of the regulation is to set forth guidelines for the uniform preparation of Exchange Act documents. Regulation 12B is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO,

Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 7, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14355 Filed 6–14–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29295; 812–13539]

DWS Advisor Funds, et al.; Notice of Application

June 9, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies.

APPLICANTS: (a) DWS Advisor Funds, DWS Blue Chip Fund, DWS Communications Fund, Inc., DWS Equity Trust, DWS Global/International Fund, Inc., DWS High Income Series, DWS Income Trust, DWS Institutional Funds, DWS International Fund, Inc., DWS Investment Trust, DWS Investments VIT Funds, DWS Money Funds, DWS Money Market Trust, DWS Mutual Funds, Inc., DWS Portfolio Trust, DWS Securities Trust, DWS Strategic Income Fund, DWS Target Fund, DWS Target Date Series, DWS Technology Fund, DWS Value Equity Trust, DWS Value Series, Inc., DWS Variable Series I, and DWS Variable Series II (each, a "DWS Investment Company" and collectively, the "DWS Investment Companies"); and (b) Deutsche Investment Management Americas Inc. ("DIMA" or the "Adviser").

FILING DATES: The application was filed on May 28, 2008, and amended on January 9, 2009, and May 11, 2010. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the 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 July 6, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, 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. Each DWS Investment Company is organized as a Massachusetts business trust or a Maryland corporation and is registered as an open-end management investment company under the Act.[1] Each DWS Investment Company is comprised of separate DWS Funds that pursue distinct investment objectives and strategies. The series of DWS Variable Series I, DWS Variable Series II and DWS Investments VIT Funds are offered to registered separate accounts ("Registered Separate Accounts") and unregistered separate accounts ("Unregistered Separate Accounts," collectively with Registered Separate Accounts, "Separate Accounts") of affiliated and unaffiliated insurance companies (collectively, "Insurance Companies") as the underlying investment vehicles for the variable life insurance and variable annuity contracts ("Variable Contracts") issued by the Insurance Companies. Shares of the above funds may be offered to qualified pension and retirement plans. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), is the investment adviser for each DWS Fund and will serve as investment adviser to each DWS Fund of Funds (as defined below).[2]

2. Applicants request relief to permit certain DWS Funds (each such DWS Fund, a "DWS Fund of Funds") to invest in: (a) Other DWS Funds ("Affiliated Underlying Funds"), and (b) registered open-end management investment companies ("Unaffiliated Funds") and registered unit investment trusts ("Unaffiliated Trusts," and together with Unaffiliated Funds, "Unaffiliated Underlying Funds") that are not part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) as the DWS Funds (Unaffiliated Underlying Funds and Affiliated Underlying Funds are collectively referred to as the "Underlying Funds"). The relief also would permit the Underlying Funds, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 ("Broker") to sell shares of the Underlying Funds to the DWS Fund of Funds. Each DWS Fund of Funds may invest in Unaffiliated Underlying Funds that have received exemptive relief to list and trade their shares on a national securities exchange at negotiated prices ("ETFs"). Applicants state that the DWS Funds of Funds will offer investors a range of investment objectives generally designed to either provide diversified exposure to specific asset classes or meet long-term objectives.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring

[1] Applicants request that the order also extend to existing and future series of the DWS Investment Companies, and any existing or future registered open-end management investment companies and any series thereof that are part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the DWS Investment Companies and that are, or may in the future be, advised by DIMA (together with series of the DWS Investment Companies, the "DWS Funds"). All entities that currently intend to rely on the requested order are named as applicants, and any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] The term "DIMA" or "Adviser" includes any existing or future entity controlling, controlled by or under common control with Deutsche Investment Management Americas Inc.

shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit the DWS Fund of Funds to acquire shares of the Underlying Funds in excess of the limits in section 12(d)(1)(A), and the Underlying Funds, their principal underwriters and any Broker to sell shares of the Underlying Funds to the DWS Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither a DWS Fund of Funds nor its affiliate would be able to exert undue influence over the Unaffiliated Underlying Funds. The concern about undue influence does not arise in connection with a DWS Fund of Funds investing in Affiliated Underlying Funds since they are part of the same group of investment companies. To limit the control that a DWS Fund of Funds or its affiliate may have over an Unaffiliated Underlying Fund, applicants propose a condition prohibiting the Adviser, any person controlling, controlled by, or under common control with the Adviser, any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Adviser or any person controlling, controlled by, or under common control with the Adviser (the "Group") from controlling (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any other investment adviser within the meaning of section 2(a)(20)(B) of the Act to a DWS Fund of Funds ("Subadviser"), any person controlling, controlled by or under common control with the Subadviser, any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (the "Subadviser Group"). Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Underlying Funds, including that no DWS Fund of Funds or DWS Fund of Funds Affiliate [3] (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Underlying Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, advisory board member, Adviser, Subadviser, or employee of a DWS Fund of Funds, or a person of which any such officer, director, Adviser, Subadviser, member of an advisory board, or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Underlying Fund is covered by section 10(f) of the Act.

5. To further ensure that an Unaffiliated Fund understands the implications of a DWS Fund of Funds' investment under the requested relief, prior to an investment in the shares of the Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a DWS Fund of Funds and the Unaffiliated Fund will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that an Unaffiliated Underlying Fund (other than an ETF whose shares are purchased by a DWS Fund of Funds in the secondary market) will retain the right to reject any investment by a DWS Fund of Funds.[4]

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees ("Board") of each DWS Fund of Funds, including a majority of the directors or trustees who are not "interested persons" (within the meaning of section 2(a)(19) of the Act) ("Disinterested Trustees"), will find that the advisory fees charged under the advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contracts of any Underlying Funds in which a DWS Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to it by the DWS Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b–1 under the Act) received from an Unaffiliated Underlying Fund by the Adviser or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by an Unaffiliated Fund, in connection with the investment by the DWS Fund of Funds in the Unaffiliated Underlying Fund.

7. Applicants state that with respect to Registered Separate Accounts that invest in a DWS Fund of Funds, no sales load will be charged at the DWS Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD ("NASD Conduct Rule 2830"), will only be charged at the DWS Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a DWS Fund of Funds, any sales charges and/or service fees charged with respect to shares of the DWS Fund of Funds will not exceed the limits

[3] A "DWS Fund of Funds Affiliate" is a DWS Fund of Funds Adviser, DWS Fund of Funds Subadviser, promoter and principal underwriter of a DWS Fund of Funds and any person controlling, controlled by, or under common control with any of those entities. An "Unaffiliated Underlying Fund Affiliate" is an investment adviser(s), sponsor, promoter and principal underwriter of an Unaffiliated Underlying Fund and any person controlling, controlled by, or under common control with any of those entities.

[4] An Unaffiliated Fund, including an ETF, would retain its right to reject an initial investment by a DWS Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the DWS Fund of Funds.

applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[5]

8. Applicants represent that each DWS Fund of Funds will represent in the Participation Agreement that no Insurance Company sponsoring a Registered Separate Account funding variable insurance contracts will be permitted to invest in the DWS Fund of Funds unless the Insurance Company has certified to the DWS Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the DWS Fund of Funds, including fees and charges at the Separate Account, DWS Fund of Funds, and Underlying Fund levels, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Insurance Company.

9. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 11 below.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the DWS Funds of Funds and the Affiliated Underlying Funds may be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that the DWS Funds of Funds and an Underlying Fund may be deemed to be affiliated persons of one another if a DWS Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these and other possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a DWS Fund of Funds.[6]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of 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 policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a DWS Fund of Funds will be based on the net asset value of each Underlying Fund.[7] Applicants state that the proposed investment will be consistent with the policies of each DWS Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Underlying Fund, the Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of the Unaffiliated Underlying Fund, then the Group or the Subadviser Group (except for any member of the Group or Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. This condition will not apply to the Subadviser Group with respect to an Unaffiliated Underlying Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Fund) or the sponsor (in the case of an Unaffiliated Trust). A Registered Separate Account will seek voting instructions from its Variable Contract holders and will vote its shares of an Unaffiliated Underlying Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (a) vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares, or (b) seek voting instructions from its Variable Contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No DWS Fund of Funds or DWS Fund of Funds Affiliate will cause any existing or potential investment by the DWS Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the DWS Fund of Funds or a DWS Fund of Funds Affiliate

[5] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority, Inc.

[6] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a DWS Fund of Funds, or an affiliated person of such person, for the purchase by the DWS Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a DWS Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgment.

[7] Applicants note that a DWS Fund of Funds generally would purchase and sell shares of an Unaffiliated Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Unaffiliated Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. To the extent that a DWS Fund of Funds purchases or redeems shares from an Unaffiliated Underlying Fund that is an ETF and an affiliated person of the DWS Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) for those transactions.

and the Unaffiliated Underlying Fund or an Unaffiliated Underlying Fund Affiliate.

3. Each DWS Fund of Funds Board, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to ensure that the Adviser and any Subadviser are conducting the investment program of the DWS Fund of Funds without taking into account any consideration received by the DWS Fund of Funds or a DWS Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Underlying Fund Affiliate in connection with any services or transactions.

4. Once an investment by a DWS Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit contained in section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Fund to a DWS Fund of Funds or a DWS Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Fund and its investment adviser(s) or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No DWS Fund of Funds or DWS Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Underlying Fund to purchase a security in an Affiliated Underwriting.

6. The Board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Fund in an Affiliated Underwriting once an investment by a DWS Fund of Funds in the securities of the Unaffiliated Fund exceeds the limit contained in section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the DWS Fund of Funds in shares of the Unaffiliated Fund. The Board of the Unaffiliated Fund will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compared to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and it will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a DWS Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit contained in section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identities of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Unaffiliated Fund were made.

8. Before making an investment in shares of an Unaffiliated Fund in an amount in excess of the limit contained in section 12(d)(1)(A)(i) of the Act, the DWS Fund of Funds and the Unaffiliated Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of making its investment in shares of an Unaffiliated Fund in an amount in excess of the limit contained in section 12(d)(1)(A)(i), the DWS Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the DWS Fund of Funds will also transmit to the Unaffiliated Fund a list of the names of each DWS Fund of Funds Affiliate and Underwriting Affiliate. The DWS Fund of Funds will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the DWS Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to approving any advisory contract under section 15 of the Act, each DWS Fund of Funds Board, including a majority of the Disinterested Trustees, will be required to find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Funds in which the DWS Fund of Funds may invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate DWS Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by the DWS Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b–1 under the Act) received from an Unaffiliated Underlying Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by an Unaffiliated Fund, in connection with the investment by the DWS Fund of Funds in the Unaffiliated Underlying Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the DWS Fund of Funds in an amount at least equal to any compensation received from an Unaffiliated Underlying Fund by the Subadviser, or any affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or an affiliated person of the Subadviser by an Unaffiliated Fund, in connection with the investment by the DWS Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Subadviser. In the event that the Subadviser waives such fees, the benefit of the waiver will be passed through to the DWS Fund of Funds.

11. No Underlying Fund will acquire securities of any other investment

company or company relying on section 3(c)(1) or 3(c)(7) of the Act in an amount in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

12. With respect to Registered Separate Accounts that invest in a DWS Fund of Funds, no sales load will be charged at the DWS Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will be charged at the DWS Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a DWS Fund of Funds, any sales charges and/or service fees charged with respect to shares of a DWS Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14356 Filed 6–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62237; File No. SR–NYSEArca–2010–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the United States Commodity Index Fund

June 7, 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 25, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the United States Commodity Index Fund under NYSE Arca Equities Rule 8.200, Commentary .02. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").[3] The Exchange proposes to list and trade shares ("Units") of the United States Commodity Index Fund ("USCI" or "Fund") pursuant to NYSE Arca Equities Rule 8.200.[4] The Fund is a commodity pool that is a series of United States Commodity Index Funds Trust ("Trust"), a Delaware statutory trust.[5]

Overview of USCI

According to the Registration Statement, the investment objective of USCI is to have the daily changes in percentage terms of the Units' net asset value ("NAV") reflect the daily changes in percentage terms of the SummerHaven Dynamic Commodity Index ("SDCI") Total Return (the "Index"), less USCI's expenses. The Index is designed to reflect the performance of a diversified group of commodities. The Index is owned and maintained by SummerHaven Index Management, LLC ("SummerHaven Indexing"), and calculated and published by Bloomberg, L.P. ("Bloomberg"). The Index was developed based upon academic research by Yale University professors Gary B. Gorton and K. Geert Rouwenhorst, and Hitotsubashi University professor Fumio Hayashi.

USCI's sponsor is United States Commodity Funds LLC ("USCF" or the "Sponsor"), a Delaware limited liability company that is registered as a commodity pool operator with the Commodity Futures Trading Commission ("CFTC") and a member of the National Futures Association ("NFA"). The Sponsor controls the operations of USCI. USCI's trading advisor is SummerHaven Investment Management, LLC ("SummerHaven"), a Delaware limited liability company that is registered as a commodity trading advisor and a commodity pool operator with the CFTC and is a member of the NFA. SummerHaven provides advisory services to the Sponsor with respect to the Index and the investment decisions of USCI. The Sponsor, SummerHaven Indexing, SummerHaven, and Bloomberg are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] The Commission previously has approved listing on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 of certain securities issuers holding commodities-related instruments. *See, e.g.,* Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (order granting accelerated approval to list on NYSE Arca of 14 ProShares funds). The Commission also has approved issues of Partnership Units based on commodities, which are listed on the Exchange pursuant to NYSE Arca Equities Rule 8.300 and which have certain characteristics similar to the Units. *See, e.g.,* Securities Exchange Act Release Nos. 59173 (December 29, 2008), 74 FR 490 (January 6, 2009) (SR–NYSEArca–2008–125) (order approving listing and trading of United States Short Oil Fund, LP); and 61881 (April 9, 2010), 75 FR 20028 (April 16, 2010) (SR–NYSEArca–2010–14) (order approving listing on the Exchange of United States Brent Oil Fund).

[5] The Fund has filed Amendment No. 3 to Form S–1, dated May 25, 2010 (File No. 333–164024) ("Registration Statement"). The description of the Fund and the Units contained herein are based on the Registration Statement. *See* E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated June 2, 2010 ("Exchange Confirmation").

nonpublic information regarding the Index or the Fund's portfolio.[6]

According to the Registration Statement, it is anticipated that the net assets of USCI will consist primarily of investments in futures contracts for commodities that are traded on the New York Mercantile Exchange ("NYMEX"), ICE Futures ("ICE"), Chicago Board of Trade ("CBOT"), Chicago Mercantile Exchange ("CME"), London Metal Exchange ("LME"), Commodity Exchange, Inc. ("COMEX") or on other foreign exchanges (such exchanges, collectively, the "Futures Exchanges") (such futures contracts, collectively, "Futures Contracts") and, to a lesser extent, in order to comply with regulatory requirements or in view of market conditions, other commodity-based contracts and instruments such as cash-settled options on Futures Contracts, forward contracts relating to commodities, cleared swap contracts and other over-the-counter transactions that are based on the price of commodities and Futures Contracts (collectively, "Other Commodity-Related Investments"). Market conditions that the Sponsor currently anticipates could cause USCI to invest in Other Commodity-Related Investments would be those allowing USCI to obtain greater liquidity or to execute transactions with more favorable pricing. Futures Contracts and Other Commodity-Related Investments collectively are referred to herein as "Commodity Interests." The Sponsor expects to manage USCI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Index and USCF's selection of investments on behalf of USCI.

USCI seeks to achieve its investment objective by investing in Futures Contracts and Other Commodity-Related Investments such that daily changes in USCI's NAV will closely track the changes in the Index.[7] The Index is comprised of 14 Futures Contracts that will be selected on a monthly basis from a list of 27 possible Futures Contracts. The Futures Contracts that at any given time make up the Index are referred to herein as "Benchmark Component Futures Contracts." USCI anticipates that to meet its investment objective it will invest first, in the current Benchmark Component Futures Contracts and other Futures Contracts intended to replicate the return on the current Benchmark Component Futures Contracts and, thereafter, to comply with regulatory requirements or in view of market conditions, in Other Commodity-Related Investments intended to replicate the return on the Benchmark Component Futures Contracts, including cleared swap contracts and other over-the-counter transactions, and in other Futures Contracts.

USCI's positions in Commodity Interests will be rebalanced on a monthly basis in order to track the changing nature of the Index. If Futures Contracts relating to a particular commodity remains in the Index from one month to the next, such Futures Contracts will be rebalanced to the 7.14% target weight, as described below. Specifically, on a specified day near the end of each month called the Selection Date (as defined below),[8] it will be determined if a current Benchmark Component Futures Contract will be replaced by a new Futures Contract in either the same or different underlying commodity to be used as a Benchmark Component Futures Contract for the following month, in which case USCI's investments would have to be changed accordingly. In order that USCI's trading does not unduly cause extraordinary market movements, and to make it more difficult for third parties to profit by trading based on market movements that could be expected from changes in the Benchmark Component Futures Contracts, USCI's investments typically will not be rebalanced entirely on a single day, but rather will typically be rebalanced over a period of four days. After fulfilling the margin and collateral requirements with respect to its Commodity Interests, USCI will invest the remainder of its proceeds from the sale of baskets in short-term obligations of the United States government ("Treasury Securities") or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

According to the Registration Statement, the Sponsor endeavors to place USCI's trades in Commodity Interests and otherwise manage USCI's investments so that A will be within plus/minus 10 percent of B, where:

- A is the average daily change in USCI's NAV for any period of 30 successive valuation days, *i.e.,* any NYSE Arca trading day as of which USCI calculates its NAV, and
- B is the average daily change in the Index over the same period.

The Sponsor believes that market arbitrage opportunities will cause USCI's Unit price on NYSE Arca to closely track USCI's NAV per Unit. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between USCI's NAV and the Index will be that the changes in the price of USCI's Units on the NYSE Arca will closely track, in percentage terms, changes in the Index, less USCI's expenses.

The Sponsor will employ a "neutral" investment strategy intended to track the changes in the Index regardless of whether the Index goes up or goes down. The Sponsor does not intend to operate USCI in a fashion such that its per Unit NAV will equal, in dollar terms, the spot prices of the commodities comprising the Index or the prices of any particular group of Futures Contracts.

USCI creates and redeems Units only in blocks called Creation Baskets and Redemption Baskets, respectively. Only Authorized Purchasers may purchase or redeem Creation Baskets or Redemption Baskets. The creation and redemption of baskets are only made in exchange for delivery to USCI or the distribution by USCI of the amount of Treasury Securities and/or cash equal to the combined NAV of the number of Units included in the baskets being created or redeemed, determined as of 4 p.m. Eastern time ("E.T.") on the day the order to create or redeem baskets is properly received.

All proceeds from the sale of Creation Baskets will be invested as quickly as practicable in the investments described in the Registration Statement. Investments and related margin or collateral are held through USCI's custodian, Brown Brothers Harriman & Co. ("Custodian"), in accounts with USCI's commodity futures brokers or, in some instances when agreed to by USCI, in collateral accounts held by third parties with respect to its non-exchange traded or cleared over-the-counter Commodity Interests.

The principal types of Commodity Interests in which USCI may invest are set forth in the Registration Statement and include futures contracts, forward contracts, swaps or options on futures contracts,[9] forward contracts or commodities on the spot market.

USCI will invest in Commodity Interests to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or

[6] In the event the Sponsor, SummerHaven Indexing, SummerHaven, or Bloomberg become affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

[7] Futures Contracts may have various expiration dates.

[8] *See* Exchange Confirmation, *supra* note 5.

[9] *See* Exchange Confirmation, *supra* note 5.

collateral obligations with respect to its investments in Commodity Interests. The primary focus of the Sponsor is the investment in Commodity Interests and the management of USCI's investments in Treasury Securities, cash and/or cash equivalents.

USCI seeks to achieve its investment objective by investing in a mix of Commodity Interests such that the changes in its NAV will closely track the changes in the Index. USCI's positions in Commodity Interests will be rebalanced on a monthly basis in order to track the changing nature of the Index. The portfolio rebalancing takes place during the last four business days of the month ("Rebalancing Period"). At the end of each of the days in the Rebalancing Period, one fourth of the prior month portfolio positions are replaced by equally-weighted positions reflecting the particular Benchmark Component Futures Contracts determined on the selection date, which is the fifth business day before the end of the month ("Selection Date"). At the end of the Rebalancing Period, the Index will have an equal-weight position of approximately 7.14% in each of the selected Benchmark Component Futures Contracts which will be reflected in the rebalanced portfolio. After fulfilling the collateral requirements with respect to its Commodity Interests, USCI will invest the remainder of its proceeds from the sale of baskets in short-term Treasury Securities or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

According to the Registration Statement, the specific Commodity Interests purchased will depend on various factors, including a judgment by the Sponsor as to the appropriate diversification of USCI's investments. While the Sponsor anticipates significant investments in Futures Contracts on the Futures Exchanges, for various reasons, including the ability to enter into the precise amount of exposure to the commodities market and position limits on Futures Contracts, it may also invest in Other Commodity-Related Investments, such as swaps, in the over-the-counter market. If USCI is required by law or regulation, or by one of its regulators, including a Futures Exchange, to reduce its position in one or more Futures Contracts to the applicable position limit or to a specified accountability level, a substantial portion of USCI's assets could be invested in Other Commodity-Related Investments that are intended to replicate the return on the Index or particular Benchmark Component Futures Contracts. As USCI's assets reach higher levels, USCI is more likely to exceed position limits, accountability levels or other regulatory limits and, as a result, it is more likely that it will invest in Other Commodity-Related Investments at such higher levels.[10]

The Sponsor may not be able to fully invest USCI's assets in Futures Contracts having an aggregate notional amount exactly equal to USCI's NAV. For example, as standardized contracts, the Benchmark Component Futures Contracts included in the Index are for a specified amount of a particular commodity, and USCI's NAV and the proceeds from the sale of a Creation Basket is unlikely to be an exact multiple of the amounts of those contracts. As a result, in such circumstances, USCI may be better able to achieve the exact amount of exposure to changes in price of the Benchmark Component Futures Contracts through the use of Other Commodity-Related Investments, such as over-the-counter contracts that have better correlation with changes in price of the Benchmark Component Futures Contracts.[11]

USCI anticipates that, to the extent it invests in Futures Contracts other than the Benchmark Component Futures Contracts and Other Commodity-Related Investments, it will enter into various non-exchange-traded derivative contracts to hedge the short-term price movements of such Futures Contracts and Other Commodity-Related Investments against the current Benchmark Component Futures Contracts.

Index Methodology

According to the Registration Statement, the Index is designed to reflect the performance of a fully margined or collateralized portfolio of 14 commodity futures contracts with equal weights, selected each month from a universe of 27 eligible commodity futures contracts. The Index is rules-based and rebalanced monthly based on observable price signals. The overall return on the Index is generated by two components: (i) Uncollateralized returns from the commodity Benchmark Component Futures Contracts[12] comprising the Index; and (ii) a daily fixed income return reflecting the interest earned on a hypothetical 3-month U.S. Treasury Bill collateral portfolio, calculated using the weekly auction rate for the 3-month U.S. Treasury Bills published by the U.S. Department of the Treasury. SummerHaven Indexing is the owner of the Index.

The Index is composed of physical non-financial commodity futures contracts with active and liquid markets traded upon futures exchanges in major industrialized countries. The Benchmark Component Futures Contracts[13] are denominated in U.S. dollars and weighted equally by notional amount. The commodity sectors for the Index include grains (*e.g.,* wheat, corn, soybeans, etc.), precious metals (*e.g.,* gold, silver, platinum), industrial metals (*e.g.,* zinc, nickel, aluminum, copper, etc.), livestock (*e.g.,* live cattle, lean hogs, feeder cattle), softs (*e.g.,* sugar, cotton, coffee, cocoa) and energy (*e.g.,* crude oil, natural gas, heating oil, etc.).

The eligible commodities and relevant Futures Exchange on which the Futures Contract is listed are as follows:[14]

Commodity	Designated contract	Exchange	Units	Position limits single month[15]	Position limits all months	Trading hours (E.T.)
Crude Oil (Brent) ...	Crude Oil	ICE–UK	1,000 barrels	none	none	8 p.m.–6 p.m. (next day).
Crude Oil (WTI)	Light, Sweet Crude Oil.	NYMEX	1,000 barrels	none	none	10 a.m.–2:30 p.m.
Gas Oil	Gas Oil	ICE–UK	100 metric tons ...	none	none	8 p.m.–6 p.m. (next day).
Heating Oil	Heating Oil	NYMEX	42,000 gallons	none	none	9 a.m.–2:30 p.m.
Natural Gas	Henry Hub Natural Gas.	NYMEX	10,000 mmbtu	none	none	9 a.m.–2:30 p.m.

[10] *See* note 15, *infra.*

[11] *See* Exchange Confirmation, *supra* note 5.

[12] *See id.*

[13] *See id.*

[14] *See id.*

Commodity	Designated contract	Exchange	Units	Position limits single month [15]	Position limits all months	Trading hours (E.T.)
Unleaded Gasoline	Reformulated Blendstock for Oxygen Blending "RBOB".	NYMEX	42,000 gallons	none	none	9 a.m.–2:30 p.m.
Feeder Cattle	Feeder Cattle	CME	50,000 lbs	1,600	1,600	10:05 a.m.–2 p.m.
Lean Hogs	Lean Hogs	CME	40,000 lbs	4,100	4,100	9:10 a.m.–1 p.m.
Live Cattle	Live Cattle	CME	40,000 lbs	5,400	5,400	10:05 a.m.–2 p.m.
Bean Oil	Bean Oil	CBOT	60,000 lbs	5,000	6,500	10:30 a.m.–2:15 p.m.
Corn	Corn	CBOT	5,000 bushels	13,500	22,000	10:30 a.m.–2:15 p.m.
Soybeans	Soybeans	CBOT	5,000 bushels	6,500	10,000	10:30 a.m.–2:15 p.m.
Soybean Meal	Soybean Meal	CBOT	100 tons	5,000	6,500	10:30 a.m.–2:15 p.m.
Wheat	Wheat	CBOT	5,000 bushels	5,000	6,500	10:30 a.m.–2:15 p.m.
Aluminum	High Grade Primary Aluminum.	LME	25 metric tons	none	none	6:55 a.m.–12 p.m.
Copper	Copper	COMEX	25,000 lbs.	none	none	8:10 a.m.–1 p.m.
Lead	Lead	LME	25 metric tons	none	none	3 p.m.–2:45 p.m. (next day).
Nickel	Primary Nickel	LME	6 metric tons	none	none	3 p.m.–2:45 p.m. (next day).
Tin	Tin	LME	5 metric tons	none	none	3 p.m.–2:45 p.m. (next day).
Zinc	Special High Grade Zinc.	LME	25 metric tons	none	none	3 p.m.–2:45 p.m. (next day).
Gold	Gold	COMEX	100 troy oz	none	none	8:20 a.m.–1:30 p.m.
Platinum	Platinum	NYMEX	50 troy oz	none	none	8:20 a.m.–1:05 p.m.
Silver	Silver	COMEX	5,000 troy oz	none	none	8:25 a.m.–1:25 p.m.
Cocoa	Cocoa	ICE–US	10 metric tons	none	none	4 a.m.–2 p.m.
Coffee	Coffee "C"	ICE–US	37,500 lbs	none	none	3:30 a.m.–2 p.m.
Cotton	Cotton	ICE–US	50,000 lbs	3,500	5,000	9 p.m.–2:30 p.m.
Sugar	World Sugar No. 11.	ICE–US	112,000 lbs	none	none	3:30 a.m.–2 p.m.

[15] The Sponsor has represented that the positions limits in the chart above reflect fixed limits on the maximum number of futures contracts that any person may hold in a single month or all months combined for a given contract as of date of the date of this filing. These limits are subject to change and may be altered if a proposed rule by the CFTC to impose new position limits on energy futures contracts is implemented (*see* 75 FR 1209 (January 26, 2010)), if federal financial regulatory reform is passed by Congress, or in a variety of other ways. In addition to the specific position limits noted above, many of the futures contracts listed in the chart above are also subject to position limits in the spot or expiration month of such contract, in addition to various accountability levels and/or other limits that allow the Futures Exchanges to exercise greater scrutiny and control over an investor's positions. A more complete description of the limits placed upon these futures contracts is available in the Registration Statement.

Values of the Index are computed by Bloomberg and disseminated approximately every fifteen seconds from 8 a.m. to 5 p.m., E.T., which also publishes a daily Index value at approximately 5:30 p.m., E.T. Additional information regarding calculation of the Index and the selection of eligible commodities is included in the Registration Statement. In addition, the Registration Statement contains detailed information regarding the Index methodology.

The Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 under the Act,[16] the Trust relies on the exception contained in Rule 10A–3(c)(7).[17] A minimum of 100,000 Units will be outstanding as of the start of trading on the Exchange.

A more detailed description of the Units, the Fund, the Index and Commodity Interests as well as investment risks, are set forth in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Availability of Information Regarding the Units

The NAV for the Fund will be calculated by the Administrator, (Brown Brothers Harriman & Co., Inc.), once a day and will be disseminated daily to all market participants at the same time. The Exchange will make available on its Web site daily trading volume of each of the Units, closing prices of such Units, and number of Units outstanding.

The closing prices and settlement prices of the Futures Contracts are also readily available from the Web sites of the applicable futures exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Complete real-time data for the Futures Contracts is available by subscription from Reuters and Bloomberg. The relevant futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge

[16] 17 CFR 240.10A–3.

[17] 17 CFR 240.10A–3(c)(7).

on their respective Web sites. The specific contract specifications for the Futures Contracts are also available on such Web sites, as well as other financial informational sources. Quotation and last-sale information regarding the Units will be disseminated through the facilities of the CTA. In addition, the Fund's Web site at *http://www.unitedstatescommodityindexfund.com* will display the end of day closing index levels, and NAV.

The Fund will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and value (in U.S. dollars) of Financial Instruments and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. This Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Purchasers. Accordingly, each investor will have access to the current portfolio composition of the Fund through the Fund's Web site.

Dissemination of Indicative Trust Value

In addition, in order to provide updated information relating to the Fund for use by investors and market professionals, an updated Indicative Trust Value ("ITV") will be calculated. The ITV is calculated by using the prior day's closing NAV per Unit of the Fund as a base and updating that value throughout the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. E.T. each trading day to reflect current changes in the value of the Futures Contracts. The ITV disseminated during the Trading Session should not be viewed as an actual real time update of the NAV, which is calculated only once a day.

The ITV will be disseminated on a per Unit basis by one or more major market data vendors every 15 seconds during the Core Trading Session. The value of a Unit may be influenced by non-concurrent trading hours between NYSE Arca and the applicable Futures Exchanges when the Units are traded on NYSE Arca after normal trading hours of such Futures Exchanges. The ITV will be updated during the NYSE Arca Core Trading Session when Futures Exchanges are trading any Futures Contracts held by the Fund. However, a static ITV will be disseminated between the close of trading of all applicable Futures Contracts on Futures Exchanges and the close of the NYSE Arca Core Trading Session.

The Exchange believes that dissemination of the ITV provides additional information regarding the Fund that is not otherwise available to the public and is useful to professionals and investors in connection with the related Units trading on the Exchange or the creation or redemption of such Units.

Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities. Units will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions.

The trading of the Units will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying Futures Contracts,[18] or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule [19] or by the halt or suspension of trading of the underlying Futures Contracts.[20]

The Exchange represents that the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value, ITV or the value of the underlying Futures Contracts occurs. If the interruption to the dissemination of the Index value, ITV or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Units. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Units, the physical commodities included in, or options, futures or options on futures on, Units through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. The Exchange currently has in place an Information Sharing Agreement with the ICE and LME for the purpose of providing information in connection with trading in or related to Futures Contracts traded on their respective exchanges. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the exchanges that are members of the Intermarket Surveillance Group ("ISG"), including CME, CBOT, COMEX and NYMEX. A list of ISG members is available at *http://www.isgportal.org.*[21]

In addition, with respect to Fund assets traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

[18] *See* Exchange Confirmation, *supra* note 5.

[19] *See* NYSE Arca Equities Rule 7.12.

[20] *See* Exchange Confirmation, *supra* note 5.

[21] The Exchange notes that not all Commodity Interests may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Units during the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Units in Creation Baskets and Redemption Baskets (and that Units are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (4) how information regarding the ITV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Units directly from the Fund will receive a prospectus. ETP Holders purchasing Units from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the Futures Contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Units of the Fund and that the NAV for the Units is calculated after 4 p.m. E.T. each trading day. The Bulletin will disclose that information about the Units of the Fund is publicly available on the Fund's Web site.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5),[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will permit the listing of an additional issuance of Trust Issued Receipts on the Exchange that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.200 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2010–44 and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14365 Filed 6–14–10; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62230; File No. SR–ISE–2010–52]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Temporary Rule 1903

June 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 21, 2010, International Securities Exchange, LLC ("ISE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to delete Temporary Rule 1903. The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com,* on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to delete outdated rules, specifically, Temporary Rule 1903, related to the receipt, execution, and reporting of Principal ("P") and Principal Acting as Agent ("P/A") orders entered to the Exchange through the order routing hub developed by the Options Clearing Corporation ("OCC Hub").

At the time of approval of the Options Order Protection and Locked/Crossed Market Plan ("New Plan") and the simultaneous withdrawal of the Exchange from the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Old Plan"), the Exchange also filed and received approval for rules implementing the New Plan.[3] Certain Participants to the New Plan did not have technology in place to take full advantage of the New Plan, and remained dependent on the OCC Hub to route orders to markets at the NBBO. The Exchange was aware that such dependence might occur, and included a Temporary Rule Governing P and P/A orders as part of the implementing rules for the New Plan.

All of the Participant Exchanges have now migrated off the OCC Hub; consequently the rules related to the OCC Hub and the Old Plan are no longer necessary.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, as the rules are now obsolete and should be removed from the Exchange's rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–52. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60559 (August 21, 2009), 74 FR 44425 (August 28, 2009).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to 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.

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–52 and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14366 Filed 6–14–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62247; File No. SR–NYSEArca–2010–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 5.2(b)(1)

June 9, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 21, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have substantially been prepared by NYSE Arca. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5.2(b)(1)—Notification Requirements for Offering of Securities to clarify its applicability. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to clarify the applicability of Rule 5.2(b)(1)—Notification Requirements for Offering of Securities. Specifically, the Exchange proposes to amend Rule 5.2(b)(1) in order to make clear that an Equity Trading Permit ("ETP") Holder, acting as the lead underwriter for any offering in a security listed on any national securities exchange, is obligated to notify the Exchange of the offering, regardless of where the offering is listed. In its current form, Rule 5.2(b)(1) requires ETP Holders to notify the Exchange of "any" offering when acting as the lead underwriter. Therefore, the current rule language can be construed to require that ETP Holders notify the Exchange of all offerings in such circumstances, including offerings of securities listed on national securities exchanges other than NYSE Arca. However, the purpose section of the November 2004 19b–4 rule filing that created Rule 5.2(b)(1) states that "Rule 5.2(b)(1) would require an [ETP Holder] that participates in any offering of securities *listed on the Exchange* to submit certain information to PCXE regarding the offering (emphasis added)."[6] For the following reasons, the Exchange proposes to add language to Rule 5.2(b)(1) in order to make clear that ETP Holders who act as lead underwriters in offerings of securities listed on NYSE Arca or any other national securities exchange must notify the Exchange of such offerings. First, the language in the November 2004 19b–4 unnecessarily limits the scope of Rule 5.2(b)(1) to offerings of securities listed on NYSE Arca. Second, the Exchange regularly receives notices from ETP Holders of offerings of securities listed on national securities exchanges other than NYSE Arca and regularly investigates potential Regulation M violations in connection with such offerings. Finally, the Exchange depends on ETP Holders to notify it of offerings of securities listed on NYSE Arca and other national securities exchanges in order to effectively surveil for and investigate potential violations of Regulation M in connection with such offerings.[7]

The proposed amendment to Rule 5.2(b)(1) codifies the Exchange's previously published interpretation of Rule 5.2(b)(1),[8] and the Exchange's practice of requiring that ETP Holders who act as lead underwriters in any offering in a security listed on any national securities exchange notify the Exchange of such offering. The Exchange is not otherwise altering the rights or obligations of ETP Holders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Exchange Act Release No. 34–50662 (November 15, 2004), 69 FR 67770 (November 19, 2004) (File No. SR–PCX–2004–102).

[7] The Exchange cannot investigate offerings of securities that are not listed on a national securities exchange because the Exchange's jurisdictional purview does not cover trading activity in such securities.

[8] *See* Exchange Regulatory Information Bulletin RBE 07–04 (May 31, 2007).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–43 and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14359 Filed 6–14–10; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62234; File No. SR–Phlx–2010–78]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading Halts in Foreign Currency Options Under Rule 133

June 7, 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 June 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Rule 133, Trading Halts Due to Extraordinary Market Volatility, to delete a parenthetical exception for trading in foreign currency options. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Rule 133 provides that trading in securities (other than FCOs) shall halt on the Exchange and shall not reopen for the time periods described in the rule if the Dow Jones Industrial Average reaches certain levels below its closing value on the previous trading day. When the Exchange added the parenthetical exceptions regarding FCOs to Rule 133 in 1997, all FCOs trading on the Exchange were physically settled options that traded on a different system than the system on which equity and index options traded.[3] The Exchange has since delisted all physical delivery FCOs.

In 2006 the Exchange began listing and trading U.S. dollar-settled FCOs.[4] Unlike the physical delivery FCOs which the Exchange also listed at the time, the U.S. dollar-settled FCOs trade on the same platform as the Exchange's equity and equity index options. Consequently, due to trading system limitations when U.S. dollar-settled FCOs were first listed by the Exchange, it was not feasible to halt trading in equity and equity index options without also halting trading in U.S. dollar-settled FCOs. The proposing release for the U.S. dollar-settled FCOs therefore stated that "[i]n the event of system-wide trading halts in equity and equity index options required by Exchange Rule 133 (the 'circuit breaker' rule), Trading Halts Due to Extraordinary Market Volatility, trading in U.S. dollar-settled FCO also would be halted."[5] The Exchange is now updating Rule 133 to reflect that, consistent with the Exchange's proposed rule change to list and trade the U.S. dollar-settled FCOs, trading U.S. dollar-settled FCOs is also halted in the event equity and index options trading is halted pursuant to Rule 133.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by clarifying in Exchange Rule 133 that trading in U.S. dollar-settled FCO also halts when trading in equity and equity index options halts pursuant to that rule.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change would immediately conform Phlx Rule 133 to the Exchange's practice since 2006. As noted above, when the Exchange began listing and trading U.S. dollar-settled FCOs in 2006, it stated in its notice of the proposed rule change that the trading halts in Rule 133 would apply to U.S. dollar-settled FCOs.[12] However, at that time, the Exchange did not amend Rule 133 to make clear that U.S. dollar-settled FCOs, unlike physical delivery FCOs, would halt if the circuit breaker provisions were triggered. As such, the Commission believes that the current proposed rule change raises no new regulatory issues and waiver of the operative delay will allow the Exchange to immediately clarify in its rules its current practice with regard to trading halts and FCOs. For these reasons, the Commission designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[3] It was therefore a straightforward and simple process to halt trading in equity and index options without also being required to halt the FCOs that traded on a separate system. Due to an oversight, the text of Rule 133 was not also amended when U.S. dollar-settled FCOs were originally listed to make clear that U.S. dollar-settled FCOs, unlike physical delivery FCOs, would indeed halt if the circuit breaker provisions were triggered and equity and index options trading were halted.

[4] *See* Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (approving SR–Phlx–2006–34).

[5] *See* Securities Exchange Act Release No. 54652 (October 25, 2006), 71 FR 64597 (November 2, 2006), footnote 33.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to 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.

[10] 17 CFR 240.19b 4(f)(6).

[11] 17 CFR 240.19b 4(f)(6)(iii).

[12] *See supa* note 5 and accompanying text.

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–78 and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14362 Filed 6–14–10; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62236; File No. SR–FICC–2010–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Modifications to the Rules of the Government Securities Division

June 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 28, 2010, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was 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 proposed rule change will modify FICC's Government Securities Division's ("GSD") rules pertaining to the Required Fund Deposit Deadline.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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

The proposed rule change makes technical corrections to certain GSD rules in order to make them consistent with FICC's rules. Specifically, in SR–FICC–2006–17, FICC amended the time of the Required Fund Deposit Deadline in the GSD's Schedule of Timeframes but failed to amend the references to that time in its rules.[4] This filing addresses these inconsistencies by adding a reference to the deadline established in the Schedule of Timeframes in those previously missed places.

FICC states that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations promulgated thereunder because it makes technical corrections to the GSD rules for consistency.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any comments it receives.

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)(iii) of the Act[6] and Rule 19b–4(f)(4) thereunder[7] because the proposed rule change effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in FICC's custody or control or for which it is responsible and (ii) does not significantly affect the respective rights of FICC or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–FICC–2010–01 on the subject line.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] Securities Exchange Act Release No. 55136 (Jan. 19, 2007), 72 FR 3887 (Jan. 26, 2007) (order approving proposed rule change adjusting the deadline for satisfying a clearing fund deficiency calls from 10:30 a.m. to 9:30 a.m.).

[5] 15 U.S.C. 78q–1.

[6] *Supra* note 2.

[7] *Supra* note 3.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File No. SR–FICC–2010–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://ficc.com/gov/gov.docs.jsp?NS-query=#rf.* 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 submission should refer to File No. SR–FICC–2010–01 and should be submitted on or before July 6, 2010.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14364 Filed 6–14–10; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62231; File No. SR–NYSE–2010–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 123C(9)(a)(1) To Extend the Operation of a Pilot Operating Pursuant to the Rule Until December 1, 2010

June 4, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 27, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 123C(9)(a)(1) to extend the operation of a pilot operating pursuant the Rule until December 1, 2010. The text of the proposed rule change is available at the Exchange, on the Commission's Web site at *http://www.sec.gov,* the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange ("NYSE" or the "Exchange") proposes to amend NYSE Rule 123C(9)(a)(1) to extend the operation of a pilot that allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price ("Extreme Order Imbalances Pilot" or "Pilot")[4] until December 1, 2010.[5]

Background

Pursuant to NYSE Rule 123C(9)(a)(1), the Exchange may suspend NYSE Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems or represented to a DMM orally at or near the close. The provisions of NYSE Rule 123C(9)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) how often a Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m.

During the operation of the Pilot, the Exchange believed that the systems modifications to allow Exchange systems to accept orders electronically after 4 p.m. would not be as onerous as previously believed when the Pilot was initially commenced. The Exchange completed the system modifications necessary to accept orders electronically after 4 p.m. and began the process of testing the modifications. The Exchange therefore filed to extend the Extreme Order Imbalance Pilot until the earlier of SEC approval to make such Pilot permanent or June 1, 2010.[6] At the time,

[4] *See* Securities Exchange Act Release No. 59755 (April 13, 2009) 74 FR 18009 (April 20, 2009) (SR–NYSE–2009–18); *see also,* Securities and Exchange Act Release No. 61264 (December 31, 2009) 75 FR 1107 (January 8, 2010) (SR–NYSE–2009–131) (extending the operation of the pilot from December 31, 2009 to March 1, 2010); Securities Exchange Act Release No. 61612, (March 1, 2010), (SR–NYSE–2010–11) (extending the operation of the pilot from March 1, 2010 to June 1, 2010).

[5] The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. *See* SR–NYSEAmex–2010–50.

[6] *See* Securities Exchange Act Release No. 61612, (March 1, 2010), (SR–NYSE–2010–11) (extending

the Exchange anticipated that its quality assurance review process would be completed by June 1, 2010 and it would be able to operate under the new system. The quality assurance review determined that additional testing was required in order to assure the optimal functioning of the system modifications. Given unanticipated market wide initiatives that were [sic] (*i.e.,* short sale and stock-by-stock circuit breakers), which require systemic modifications and a significant allocation of quality assurance resources, additional testing is not feasible at this time.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

NYSE Rule 123C(9) was intended to be and has been invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price. This is evidenced by the fact that since the inception of the pilot in April 2009, the Exchange has invoked the provisions of NYSE Rule 123C(9)(a)(1) on only four occasions.

Given the infrequency of these situations, the Exchange proposes to extend the operation of the Pilot for a six-month period to allow the Exchange to complete systemic modifications required to implement the short sale and stock-by-stock circuit breakers, as well as to upgrade server capacity and an upcoming initiative to incorporate odd-lot orders into the round lot market and decommission its Odd-lot System. During the six-month period, the Exchange will continue to monitor and provide to the Commission information on how often it suspends NYSE Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. At the end of that period, the Exchange will be in a better position to determine the efficacy of providing any additional functionality under this Pilot rule. The Exchange therefore requests an extension from the current expiration date of June 1, 2010, until December 1, 2010.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to determine the efficacy of providing any additional functionality under this Pilot rule. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program was scheduled to expire on June 1, 2010, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested the extension to allow the Exchange time to fully evaluate the Extreme Order Imbalance Pilot. Therefore, the Commission designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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–NYSE–2010–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

the operation of the pilot from March 1, 2010 to June 1, 2010).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give 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.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2010–42. 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,[13] 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 NYSE. 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–NYSE–2010–42 and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14368 Filed 6–14–10; 8:45 am]

BILLING CODE 8011–01–P

[13] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62229; File No. SR–ISE–2010–53]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Outdated References in the Exchange's Schedule of Fees

June 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 24, 2010, International Securities Exchange, LLC ("ISE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to delete outdated references in the ISE Schedule of Fees. The text of the proposed rule change is available on ISE's Web site at *http://www.ise.com,* on the Commission's Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to discontinue the current pilot program related to transaction fees for P/A Orders and P Orders sent to the Exchange via the Plan for the purpose of Creating and Operating an Intermarket Options Linkage ("Old Plan"). The current pilot is set to expire on July 31, 2010.[3] When the Exchange became a participant of the Options Order Protection and Locked/Crossed Market Plan ("New Plan"),[4] it withdrew from the Old Plan. All of the options exchanges have also migrated from the Old Plan to the New Plan. With the New Plan having replaced the Old Plan, there are no longer any participant exchanges to the Old Plan who send P/A Orders or P Orders. As a result, the Exchange proposes to amend its Schedule of Fees to delete references to fees related to the Old Plan, namely transaction fees for P/A Orders and P Orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [5] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) [6] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change simplifies the Exchange's fee schedule by deleting obsolete references to execution fees that were applicable under the Old Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60175 (June 25, 2009), 74 FR 32026 (July 6, 2009).

[4] *See* Securities Exchange Act Release No. 60559 (August 21, 2009), 74 FR 44425 (August 28, 2009).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–53 and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to 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.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62241; File No. SR–BATS–2010–015]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

June 8, 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 28, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to Members [5] of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2010.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange in order to amend the fees for its equity securities market with respect to Modified Destination Specific Orders routed to a dark liquidity venue (referred to by the Exchange as "Dark Scan" orders). In addition, the Exchange proposes to amend the fees for its equity options market to make clear that the Exchange passes through the clearing costs it is charged in connection with options orders that are routed away

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

from the Exchange and executed at another options exchange.

First, the Exchange proposes to change its fee structure for Modified Destination Specific Orders routed to a dark liquidity venue (referred to by the Exchange as "Dark Scan"). In contrast to its "DART" routing strategy, which first checks the Exchange's order book and then routes to one or more dark liquidity venues, Dark Scan orders do not first check the Exchange's order book but instead route to dark liquidity venues first.[6] The Exchange currently provides a rebate of $0.0001 for Dark Scan orders executed at a dark liquidity venue. The Exchange proposes eliminating this rebate, and instead facilitating such executions free of charge. Accordingly, as proposed, the Exchange will neither provide a rebate nor charge a fee for Dark Scan orders executed at a dark liquidity venue. The Exchange proposes moving the reference to "Dark Scan" that is currently contained on the fee schedule to the end of the applicable clause so that it more closely mirrors the manner that the "DART" routing fee is presented. The Exchange believes this change makes the fee schedule less confusing as it relates to the distinction between Dark Scan and DART routing.

Second, the Exchange proposes a clarification to the fees it charges for routing options orders to away markets. Specifically, the Exchange's fee schedule currently states that the Exchange charges $0.05 per contract for its standard options routing service and $0.10 per contract for Directed ISOs routed to away markets, and, in addition, passes through all destination exchange fees for executions at away markets. The Exchange proposes to amend its fee schedule to allow it to pass through to Options Members all destination exchange fees *and* the actual clearing fees billed to the Exchange for the executions of orders routed from the Exchange. The Exchange believes that its options routing fees are inherently competitive, fair and reasonable, and non-discriminatory as they replicate the fees actually charged to the Exchange for routing to away markets, plus an additional fee to the Exchange for providing the routing service.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BATS–2010–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2010–015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2010–015 and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14363 Filed 6–14–10; 8:45 am]

BILLING CODE 8010–01–P

[6] Modified Destination Specific Orders are defined in BATS Rule 11.9(c)(13).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62240; File No. SR–NYSE–2010–41]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Rule 405(4) To Correspond With Rule Changes of the Financial Industry Regulatory Authority, Inc.

June 8, 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 17, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 delete NYSE Rule 405(4) to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[3] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61808 (March 31, 2010), 75 FR 17456 (April 6, 2010) (order approving SR–FINRA–2010–005).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to delete NYSE Rule 405(4) (Diligence as to Accounts) to correspond with rule changes filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.[4]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[5]

Proposed Conforming Amendments to NYSE Rules

FINRA recently deleted FINRA Incorporated NYSE Rule 405(4) (Diligence as to Accounts), which required proper supervision of registered representatives handling common sales accounts in accordance with FINRA Incorporated NYSE Rule 342. FINRA Incorporated NYSE Rule 405(4) provided that a member firm could facilitate the isolated liquidation of securities valued at $1,000 or less registered in the name of an individual who did not have an account with the firm, and which were not part of any distribution, through a common sales account set up for the purpose of handling such sales. NYSE Rule 405(4) further provided that, subject to certain requirements, such sales could be made on behalf of the customer without the member having to send a periodic account statement to the customer pursuant to NYSE Rule 409.[6]

In deleting FINRA Incorporated NYSE Rule 405(4), FINRA noted that the rule as written raised potential investor protection concerns and that certain terms in the rule would benefit from additional clarification. FINRA also noted that, to the extent that the deletion of FINRA Incorporated NYSE Rule 405(4) eliminated the exception for member firms from sending periodic account statements to a customer, proposed FINRA Rule 2231, which relates to customer account statements, would authorize FINRA to exempt members from the provisions of FINRA Rule 2231 including the requirement to deliver periodic account statements.[7]

In order to harmonize the NYSE Rules with the approved, consolidated FINRA Rules, the Exchange proposes to delete NYSE Rule 405(4).[8] Notwithstanding the deletion of NYSE Rule 405(4), NYSE Rules 405(1)–(2) will continue to require member firms to properly supervise all registered representatives handling common sales accounts and any transactions executed therein. Finally, the Exchange believes that removing the exemption for member firms from the requirement to send customer account statements for the types of transactions described in NYSE Rule 405(4) will ensure a harmonized standard among NYSE, NYSE Amex, and FINRA, particularly since all NYSE member organizations with customers are also FINRA members and subject to FINRA rules. To the extent that FINRA Rule 2231 is approved, the Exchange will consider proposing to adopt a similar

[4] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); *and* 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[5] *FINRA's rulebook currently has three sets of rules:* (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[6] *See* Securities Exchange Act Release No. 61808 (March 31, 2010), 75 FR 17456 (April 6, 2010).

[7] *See* Securities Exchange Act Release No. 61808 (March 31, 2010), 75 FR 17456 (April 6, 2010). *See also* Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (SR–FINRA–2009–028) (proposal to adopt FINRA Rule 2231).

[8] NYSE Amex has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSEAmex–2010–48.

rule as part of the rule harmonization process.[9]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[10] in general, and further the objectives of Section 6(b)(5) of the Act,[11] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the Exchange's request.[16] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will maintain the harmonization of NYSE Rules and previously approved FINRA Rules.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–41. 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*). 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSE–2010–41 and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14361 Filed 6–14–10; 8:45 am]

BILLING CODE 8010–01–P

[9] *See also* Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62249; File No. SR–NASDAQ–2010–064]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Members Using the NASDAQ Market Center

June 9, 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 June 1, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2). [sic]

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on June 1, 2010. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, 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, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is making modifications to its pricing schedule for execution and routing of orders in securities priced at $1 or more through the NASDAQ Market Center.[5] First, for securities listed on exchanges other than NASDAQ or the New York Stock Exchange ("NYSE") ("Tape B Securities"), NASDAQ is modifying its liquidity provider rebate so that the levels of the rebate revert to levels in effect prior to April 1, 2010.[6] As a result of the change, the rebate paid with respect to execution of displayed quotes/orders posted by members providing an average of between 20,000,001 and 35 million shares of liquidity per day during the month will decrease from $0.0026 per share executed to $0.0025 per share executed; and the rebate paid with respect to execution of displayed quote/orders posted by members providing an average of 20 million or fewer shares of liquidity per day during the month will decrease from $0.0026 per share executed to $0.0020 per share executed. The change will make the rebate for Tape B Securities consistent with the rebate paid with respect to execution of NASDAQ- and NYSE-listed securities. The rebate with respect to Tape B Securities for non-displayed quotes/orders and for members providing an average of more than 35 million shares of liquidity during the month will remain unchanged.

Second, NASDAQ is increasing the fee for orders using the TFTY routing strategy that execute at the NYSE from $0.0017 per share executed to $0.0020 per share executed. The change reflects the fact that NYSE recently increased the fees it charges for execution of orders routed to it.[7]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the relative availability of liquidity on NASDAQ and other venues, the routing strategies that a member uses, the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.,* its propensity to add or remove liquidity), the types of securities that it trades, and the member's trading volumes.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, if particular market participants object to the proposed fee changes, they can avoid paying the fees by directing orders to other venues. NASDAQ believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily direct orders to NASDAQ's competitors if they object to the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b-4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[5] Fees and credits for execution and routing of orders in securities priced below $1 remain unchanged.

[6] *See* Securities Exchange Act Release No. 61854 (April 6, 2010), 75 FR 18932 (April 13, 2010) (SR–NASDAQ–2010–044).

[7] *See* Securities Exchange Act Release No. 62082 (May 11, 2010), 75 FR 27848 (May 18, 2010) (SR–NYSE–2010–34).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 17 CFR 240.19b–4(f)(2).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–064, and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14357 Filed 6–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62239; File No. SR–NYSEAMEX–2010–4]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Rule 405(4)—NYSE Amex Equities To Correspond With Rule Changes of the Financial Industry Regulatory Authority, Inc.

June 8, 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 17, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 delete Rule 405(4)—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[3] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to delete Rule 405(4)—NYSE Amex Equities (Diligence as to Accounts) to correspond with rule changes filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, the New York Stock Exchange LLC ("NYSE"), NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The Exchange became a party to the Agreement effective December 15, 2008.[4]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[5]

Proposed Conforming Amendments to NYSE Amex Equities Rules

FINRA recently deleted FINRA Incorporated NYSE Rule 405(4) (Diligence as to Accounts), which required proper supervision of registered representatives handling common sales accounts in accordance with FINRA Incorporated NYSE Rule 342. FINRA Incorporated NYSE Rule 405(4) provided that a member firm could facilitate the isolated liquidation of securities valued at $1,000 or less registered in the name of an individual who did not have an account with the firm, and which were not part of any distribution, through a common sales account set up for the purpose of handling such sales. Rule 405(4) further provided that, subject to certain requirements, such sales could be made on behalf of the customer without the member having to send a periodic account statement to the customer pursuant to Rule 409—NYSE Amex Equities.[6]

In deleting FINRA Incorporated NYSE Rule 405(4), FINRA noted that the rule as written raised potential investor protection concerns and that certain terms in the rule would benefit from additional clarification. FINRA also

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61808 (March 31, 2010), 75 FR 17456 (April 6, 2010) (order approving SR–FINRA–2010–005).

[4] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); *and* 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[5] *FINRA's rulebook currently has three sets of rules:* (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[6] *See* Securities Exchange Act Release No. 61808 (March 31, 2010), 75 FR 17456 (April 6, 2010).

noted that, to the extent that the deletion of FINRA Incorporated NYSE Rule 405(4) eliminated the exception for member firms from sending periodic account statements to a customer, proposed FINRA Rule 2231, which relates to customer account statements, would authorize FINRA to exempt members from the provisions of FINRA Rule 2231 including the requirement to deliver periodic account statements.[7]

In order to harmonize the NYSE Amex Equities Rules with the approved consolidated FINRA Rules, the Exchange proposes to delete Rule 405(4)—NYSE Amex Equities.[8] Notwithstanding the deletion of Rule 405(4)—NYSE Amex Equities, Rules 405(1)–(2)—NYSE Amex Equities will continue to require member firms to properly supervise all registered representatives handling common sales accounts and any transactions executed therein. Finally, the Exchange believes that removing the exemption for member firms from the requirement to send customer account statements for the types of transactions described in Rule 405(4)—NYSE Amex Equities will ensure a harmonized standard among NYSE, NYSE Amex, and FINRA, particularly since all NYSE Amex Equities member organizations with customers are also FINRA members and subject to FINRA rules. To the extent that FINRA Rule 2231 is approved, the Exchange will consider proposing to adopt a similar rule as part of the rule harmonization process.[9]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[10] in general, and further the objectives of Section 6(b)(5) of the Act,[11] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the Exchange's request.[16] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will maintain the harmonization of NYSE Rules and previously approved FINRA Rules.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMEX–2010–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMEX–2010–48. 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*). 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEAMEX–2010–48 and should be submitted on or before July 6, 2010.

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[7] *See* Securities Exchange Act Release No. 61808 (March 31, 2010), 75 FR 17456 (April 6, 2010). *See also* Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (SR–FINRA–2009–028) (proposal to adopt FINRA Rule 2231).

[8] The NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. *See* SR–NYSE–2010–41.

[9] *See also* Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78(c)(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14360 Filed 6–14–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62250; File Nos. SR–NYSEAmex–2010–37 and SR–NYSEArca–2010–25]

Self-Regulatory Organizations; NYSE Amex LLC and NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Changes Relating to Listing and Trading Options on the ETFS Palladium Trust and the ETFS Platinum Trust

June 9, 2010.

On April 8, 2010, NYSE Amex LLC ("NYSE Amex") and NYSE Arca, Inc. ("NYSE Arca") (collectively the "Exchanges") each filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule changes (collectively the "Proposals") to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust (collectively "ETFS Options"). The NYSE Amex proposed rule change was published for comment in the **Federal Register** on May 5, 2010[3] and the NYSE Arca rule change was published on May 6, 2010.[4] No comments were received on the proposed rule changes. This order approves the proposed rule changes.

I. Description of Proposal

The Commission previously authorized the Exchanges to list and trade options on the SPDR Gold Trust[5] ("GLD"), the iShares COMEX Gold Trust ("IAU"), the iShares Silver Trust[6] ("SLV"), the ETFS Silver Trust ("SIVR"), and the ETFS Gold Trust[7] ("SGOL"). Now, the Exchanges propose to list and trade options on the ETFS Palladium Trust ("PALL") and the ETFS Platinum Trust ("PPLT").

Under current NYSE Amex Rule 915 and NYSE Arca Rule 5.3, only Exchange-Traded Fund Shares (or "ETFs") that are traded on a national securities exchange and are defined as an "NMS" stock under Rule 600(b)(47) of Regulation NMS,[8] and that: (i) Represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"),[9] and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); or (ii) represent interests in a trust that holds a specified non-U.S. currency or currencies deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust ("Funds"); or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs"); or (iv) represent interests in the GLD, IAU, SLV, SIVR, and SGOL;[10] or (v) represent interests in a registered investment company ("Investment Company") organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share") are eligible as underlying securities for options traded on NYSE Amex and NYSE Arca, respectively.[11] The Proposals would expand the types of ETFs that may be approved for options trading on the Exchanges to include the PALL and the PPLT.

Apart from allowing the PALL and the PPLT to be underlyings for options traded on the Exchanges as described above, the listing standards for ETFs will remain unchanged from those that apply under current rules of both exchanges. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in NYSE Amex Rule 915, Commentary .06 and NYSE Arca Rule 5.3(g).

Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must meet either: (1) The criteria and guidelines under NYSE Amex Rule 915, Commentary .01 and NYSE Arca Rule 5.3(a) and (b); or (2) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue ETFs in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

The respective Exchange's current continued listing standards for options

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61989 (April 27, 2010), 75 FR 24769.

[4] *See* Securities Exchange Act Release No. 61990 (April 27, 2010), 75 FR 25005.

[5] *See* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR–Amex–2008–15 and SR–NYSEArca–2008–52).

[6] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (order approving SR–Amex–2008–68 and SR–NYSEArca–2008–66).

[7] *See* Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (order approving SR–NYSEAmex–2009–86; and SR–NYSEArca–2009–110).

[8] 17 CFR 242.600.

[9] NYSE Amex Rule 915 also includes stock index futures contracts and options on futures within this category.

[10] *See* NYSE Amex Rule 915, Commentary .10 and NYSE Arca 5.3(g).

[11] *See* NYSE Amex Rule 915, Commentary .06 and NYSE Arca Rule 5.3(g).

on ETFs will apply to options on the PALL and the PPLT. Both Exchanges will consider the suspension of opening transactions in PALL or PPLT in any of the following circumstances: (1) Following the initial twelve-month period beginning upon the commencement of trading of the ETFs, there are fewer than 50 record and/or beneficial holders of the ETFs for 30 or more consecutive trading days; (2) the value of the underlying palladium or underlying platinum is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of each Exchange makes further dealing on each Exchange inadvisable.

Additionally, the PALL and the PPLT shall not be deemed to meet the requirements for continued approval, and the Exchanges shall not open for trading any additional series of option contracts of the class covering the PALL and the PPLT, respectively, if the PALL and the PPLT ceases to be an "NMS stock" as provided for in NYSE Amex Rule 916, Commentary .07(2) and NYSE Arca Rule 5.4(b)(5), or if the PALL or the PPLT is halted from trading on its primary market, or, for NYSE Amex, if PALL or PPLT is delisted.

The addition of the PALL and PPLT will not have any effect on the Exchanges' rules pertaining to position and exercise limits [12] or margin.[13]

The Exchanges represent that their surveillance procedures applicable to trading in options on the PALL and PPLT will be similar to those applicable to all other options on other ETFs currently traded on the respective Exchange. Also, the Exchanges may obtain information from the New York Mercantile Exchange, Inc. ("NYMEX") (a member of the Intermarket Surveillance Group) related to any financial instrument traded there that is based, in whole or part, upon an interest in the performance of palladium or platinum.

II. Commission Findings

After careful consideration, the Commission finds that the Proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[14] and, in particular, the requirements of Section 6 of the Act.[15] Specifically, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the general public interest. In accordance with the Memorandum of Understanding entered into between the Commodity Futures Trading Commission ("CFTC") and the Commission on March 11, 2008, and, in particular, the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

As national securities exchanges, NYSE Amex and NYSE Arca are required, under Section 6(b)(1) of the Act,[17] to enforce compliance by their members, and persons associated with their members, with the provisions of the Act, Commission rules and regulations thereunder, and their own rules. In addition, brokers that trade ETFS Options will also be subject to best execution obligations and FINRA rules.[18] Applicable rules of the Exchanges also require that customers receive appropriate disclosure before trading ETFS Options.[19] Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[20]

ETFS Options will trade as options under the trading rules of NYSE Amex and NYSE Arca. These rules, among other things, are designed to avoid trading through better displayed prices for ETFS Options available on other exchanges and, thereby, satisfy NYSE Amex and NYSE Arca's obligations under the Options Order Protection and Locked/Crossed Market Plan.[21] Series of the ETFS Options will be subject to the Exchanges' rules regarding continued listing requirements, including standards applicable to the underlying ETFS Palladium and ETFS Platinum Trusts. Shares of the PALL and PPLT must continue to be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS.[22] In addition, the underlying shares must continue to be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value. If the PALL or PPTL shares fail to meet these requirements, the exchanges will not open for trading any new series of the respective ETFS Options.

NYSE Amex and NYSE Arca have represented that they have surveillance programs in place for the listing and trading of ETFS Options. For example, NYSE Amex and NYSE Arca may obtain trading information via the ISG from the NYMEX, related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, palladium or platinum. Additionally, the listing and trading of ETFS Options will be subject to the Exchanges' rules pertaining to position and exercise limits [23] and margin.[24]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule changes (SR–NYSEAmex–2010–37 and SR–NYSEArca–2010–25) be, and are hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14358 Filed 6–14–10; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* NYSE Amex Rules 904 and 905; NYSE Arca Rules 6.8 and 6.9.

[13] *See* NYSE Amex Rule 462 and NYSE Arca Rules 4.15 and 4.16.

[14] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(1).

[18] *See* NASD Rule 2320.

[19] *See* NYSE Amex Rule 926; and NYSE Arca Rule 9.18(g).

[20] *See* FINRA Rule 2360(b) and NYSE Amex Rule 923; and NYSE Arca Rule 9.18(b)–(c).

[21] *See* NYSE Amex Rule 991NY and NYSE Arca Rule 6.94. Each of the exchanges is a participant in the Options Order Protection and Locked/Crossed Market Plan.

[22] 17 CFR 242.600.

[23] *See* NYSE Amex Rules 904 and 905; NYSE Arca Rules 6.8 and 6.9.

[24] *See* NYSE Amex Rule 462 and NYSE Arca Rules 4.15 and 4.16; *see also* FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7046]

Notice of Extension of Public Comment Period for the Proposed Keystone XL Pipeline Project; Draft Environmental Impact Statement and Notice of Additional Public Comment Meetings

AGENCY: Department of State.

ACTION: Notice—Extension of public comment period and additional public comment meetings.

SUMMARY: The Department of State (DOS) is extending the public comment period for the Keystone XL Pipeline Project Draft Environmental Impact Statement (DEIS) until Friday, July 2, 2010. On April 20, 2010, the DOS provided **Federal Register** notice (75 FR 20653) of the availability of the DEIS and notice of nineteen public comment meetings to be held during three weeks in May, 2010 along the proposed pipeline route in Oklahoma, Kansas, Nebraska, Texas and Montana. That **Federal Register** notice also provided additional information regarding the DEIS and requested the submission of all comments by May 31, 2010. On April 30, 2010, in response to requests from several organizations, the DOS extended the public comment period until Wednesday, June 16, 2010 (75 FR 22890). As noted, the DOS is now extending the public comment period for a second time until Friday, July 2, 2010.

At the request of various stakeholders, DOS will also hold two additional public comment meetings in Houston and Washington, DC. DOS representatives will be present to receive written comments from the public and a court reporter will be present at both locations to transcribe oral comments from the public.

Extended Deadline for Public Comment Period: Comments on the DEIS should be received or postmarked no later than Friday, July 2, 2010.

Dates and Locations for Additional Public Comment Meetings

Houston

June 18, 2010, 7–9 p.m.

Location: Channelview High School, Auditorium in New Campus, 1100 Sheldon Road, Channelview, TX, 77530.

Washington, DC

June 29, 2010, 12:30–2:30 p.m.

Location: U.S. Department of State, Marshall Conference Center, East Auditorium, 2201 C Street, NW., Washington, DC 20520.

Directions: Anyone wishing to attend the public comment meeting in Washington, DC must enter the State Department via the 21st street entrance between Virginia Avenue and C Street. Proceed through the security check point in front of the 21st Street, entrance, enter the building, and then enter the Marshall Conference Center directly to the left. Laws and regulations regarding entering a Federal building will be in effect.

Written Comments: You may submit written comments by the following methods:

- *Electronically, using the online comment form, available on the Keystone XL Project Web site: http://www.keystonepipeline-xl.state.gov.* This is the preferred method for commenting.
- *By mail addressed to:* Elizabeth Orlando, Keystone XL Project Manager, U.S. Department of State, OES/ENV Room 2657, Washington, DC 20520. Please note that DOS mail can be delayed due to security screening.
- *Fax to:* (202) 647–1052, attention Elizabeth Orlando.

FOR FURTHER INFORMATION CONTACT: For information on the proposed Project or the DEIS contact Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, or by telephone (202) 647–4284, or by fax at (202) 647–1052. You may also visit the Project Web site: *http://www.keystonepipeline-xl.state.gov.*

Dated: June 9, 2010.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Bureau of Economic, Energy, and Business Affairs, U.S. Department of State.

[FR Doc. 2010–14377 Filed 6–14–10; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2010 0053]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 16, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila Brown, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; Telephone: (202) 366–5178, FAX: (202) 366–5904; or E–Mail: *sheila.brown@dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title of Collection: Elements of Request for Course Approval.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2133–0535.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Under this proposed voluntary collection, public and private maritime security training course providers may choose to provide the Maritime Administration (MARAD) with information concerning the content and operation of their courses. MARAD will use this information to evaluate whether the course meets the training standards and curriculum promulgated under Section 109 of the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295). Courses found to meet these standards will receive a course approval.

Need and Use of the Information: This information collection is needed to facilitate the approval of maritime security training courses that meet the standards and curriculum developed under the MTSA.

Description of Respondents: Respondents are public and private maritime security course training providers.

Annual Responses: 99.

Annual Burden: 990 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov./search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: June 8, 2010.

Julie P. Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–14390 Filed 6–14–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of International Affairs; Survey of Foreign Ownership of U.S. Securities as of June 30, 2010

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of foreign ownership of U.S. securities as of June 30, 2010. This mandatory survey is conducted under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et. seq.*) This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. Additional copies of the reporting forms SHLA (2010) and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms-sh.html.*

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a state, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The panel for this survey is based primarily on the level of foreign resident holdings of U.S. securities reported on the June 2009 benchmark survey of foreign resident holdings of U.S. securities, and will consist mostly of the largest reporters on that survey. Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What To Report: This report will collect information on foreign resident holdings of U.S. securities, including equities, short-term debt securities (including selected money market instruments), and long-term debt securities.

How To Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300, e-mail: *SHLA.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can also be made to the Federal Reserve Board of Governors, at (202) 452–3476, or to Dwight Wolkow, at (202) 622–1276, or by e-mail: *comments2TIC@do.treas.gov.*

When To Report: Data should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by August 31, 2010.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0123. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 486 hours per report for the largest custodians of securities, and 110 hours per report for the largest issuers of securities that have data to report and are not custodians. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Office of International Affairs, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2010–14285 Filed 6–14–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498, IRA Contribution Information.

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: IRA Contribution Information.

OMB Number: 1545–0747.

Form Number: 5498.

Abstract: Form 5498 is used by trustees and issuers to report contributions to, and the fair market value of, an individual retirement arrangement (IRA). The information on the form will be used by IRS to verify compliance with the reporting rules under regulation section 1.408–5 and to verify that the participant in the IRA has made the contribution for which he or she is taking a deduction.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses: 114,900,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 47,109,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 7, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14265 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5308

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5308, Request for Change in Plan/Trust Year.

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Change in Plan/Trust Year.

OMB Number: 1545–0201.

Form Number: 5308.

Abstract: Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 480.

Estimated Time per Respondent: 42 minutes.

Estimated Total Annual Burden Hours: 339.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14414 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–50–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–50–86 (TD 8110), Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form (§§ 1.65–12 and 1.1287–1).

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue

Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form.

OMB Number: 1545–0786.

Regulation Project Number: INTL–50–86.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting requirements in this regulation are necessary to ensure that persons holding registration-required obligations in bearer form properly report interest income and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 750,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 39,742.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14412 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8612

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8612, Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

OMB Number: 1545–1013.

Form Number: Form 8612.

Abstract: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981 of the Internal Revenue Code. The IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 9 hours, 48 minutes.

Estimated Total Annual Burden Hours: 196.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14409 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 8223, TD 8432, and TD 8657]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final and temporary regulations, TD 8223, Branch Tax; TD 8432, Branch Profits Tax; and TD 8657, Regulations on Effectively Connected Income and the Branch Profits Tax (§§ 1.884–1, 1.884–2, 1.884–2T, 1.884–4, 1.884–5).

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: TD 8223, Branch Tax; TD 8432, Branch Profits Tax; and TD 8657, Regulations on Effectively Connected Income and the Branch Profits Tax.

OMB Number: 1545–1070.

Regulation Project Number: TD 8223, TD 8432, and TD 8657.

Abstract: These regulations provide guidance on how to comply with Internal Revenue Code section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed from the branch and which subjects interest paid by the branch, and certain interest deducted by the foreign corporation, to tax.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 28,500.

Estimated Time per Respondent: 27 minutes.

Estimated Total Annual Burden Hours: 12,694.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14420 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–66–93 and PS–120–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, PS–66–93 (TD 8609), Gasohol; Compressed Natural Gas, and PS–120–90 (TD 8241), Gasoline Excise Tax (§§ 48.4041–21, 48.4081–2(c)(2), 48.4081–3(d)(2)(iii), 48.4081–3(e)(2)(ii), 48.4081–3(f)(3)(ii), 48.4081–4(b)(2)(ii), 48.4081–4(b)(3)(i), 48–4081–4(c), 48.4081–6(c)(1)(ii), 48.4081–7, and 48.4081–9).

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: PS–66–93, Gasohol; Compressed Natural Gas; and PS–120–90, Gasoline Excise Tax.

OMB Number: 1545–1270.

Regulation Project Number: PS–66–93 and PS–120–90.

Abstract: PS–66–93: This regulation relates to gasohol blending and the tax on compressed natural gas (CNG). The sections relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The sections relating to CMG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat. PS–120–90: This regulation relates to the federal excise tax on gasoline. It affects refiners, importers, and distributors of gasoline and provides guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol.

Current Actions: There are no changes being made to this regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions, Farms and State, Local or Tribal Governments.

Estimated Number of Respondents: 3,410.

Estimated Time per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 366.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14418 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–ND

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–ND, Return for Nuclear Decommissioning Funds and Certain Related Persons.

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return for Nuclear Decommissioning Funds and Certain Related Persons.

OMB Number: 1545–0954.

Form Number: 1120–ND.

Abstract: A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash to decommission the nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if an entity related to the fund or the nuclear utility must pay taxes on self-dealing, as required by Internal Revenue Code section 4951.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondents: 32 hours, 35 minutes.

Estimated Total Annual Burden Hours: 3,259.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14416 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–255–81]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–255–81 (T.D. 8002), Substantiation of Charitable Contributions (§ 1.170A–13).

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Substantiation of Charitable Contributions.

OMB Number: 1545–0754.

Regulation Project Number: LR–255–81.

Abstract: This regulation provides guidance relating to substantiation requirements for charitable contributions. Section 1.170A–13 of the regulation requires donors to maintain receipts and other written records to substantiate deductions for charitable contributions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 26,000,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 2,158,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14415 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–10390 (T.D. 8578)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–10390 (T.D.8578), Election Out of Subchapter K for Producers of Natural Gas (§ 1.761–2).

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election Out of Subchapter K for Producers of Natural Gas.

OMB Number: 1545–1338.

Regulation Project Number: PS–10390 (T.D. 8578).

Abstract: This regulation contains certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. Under regulation section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements must file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two permissible accounting methods described in the regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 5.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are Invited On: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14413 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209446–82]

Proposed Collection; Comment Request for REG 209446–82 (TD 8852)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209446–82 (TD 8852), Passthrough of Items of an S Corporation to its Shareholders (§ 1.1366–1).

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pass-through of Items of an S Corporation to its Shareholders.

OMB Number: 1545–1613.

Regulation Project Number: REG–209446–82 (TD 8852).

Abstract: Section 1366 requires shareholders of an S corporation to take into account their pro rata share of separately stated items of the S corporation and non-separately computed income or loss. Section 1.1366–1 of the regulation provides that an S corporation must report, and a shareholder is required to take into account in the shareholder's return, the shareholder's pro rata share, whether or not distributed, of the S corporation's items of income, loss, deduction, or credit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and Individuals or households.

This reporting requirement is reflected in the burden of Form 1040, U.S. Individual Income Tax Return, and Form 1120S, U.S. Income Tax Return for an S Corporation. The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 7, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14280 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[NOTICE–2010–30]

Proposed Collection; Comment Request for NOTICE 2010–30

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the existing proposed and temporary regulations, NOTICE–2010–30—Transitional Guidance for Taxpayers Claiming Relief under the Military Spouses Residency Relief Act for Taxable Year 2009.

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Transitional Guidance for Taxpayers Claiming Relief under the Military Spouses Residency Relief Act for Taxable Year 2009.

OMB Number: 1545–2169.

Regulation Project Number: NOTICE 2010–30.

Abstract: This document contains transitional guidance and provides civilian spouses working in a U.S. territory during 2009 but claiming a tax residence in one of the 50 States or the District of Columbia ("U.S. mainland") under MSRRA with an extension of time through October 15, 2010 for paying the tax due the Internal Revenue Service ("IRS") for 2009. This notice also provides civilian spouses working on the U.S. mainland during 2009 but claiming a tax residence in a U.S.

territory under MSRRA with guidance on filing claims for refund of Federal income taxes that their employers withheld and remitted to the IRS or estimated tax payments the taxpayers paid to the IRS during 2009.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 6,200.

Estimated Time per Respondent: 1 Hour.

Estimated Total Annual Burden Hours: 6,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14281 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 211

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 211, Application for Reward for Original Information.

DATES: Written comments should be received on or before August 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 211, Application for Reward for Original Information.

OMB Number: 1545–0409.

Form Number: Form 211.

Abstract: Form 211 is the official application form used by persons requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code section 7623. The data is used to determine and pay rewards to those persons who voluntarily submit information.

Current Actions: Form 211(SP), the Spanish version of Form 211 is being discontinued. There are no changes being made to form 211 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 20,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 7, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14283 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–120–86]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–120–86 (TD 8584), Capitalization of Interest (§§ 1.263A–8(b)(2)(iii), 1.263A–9(d)(1), 1.263A–9(e)(1), 1.263A–9(f)(1)(ii), 1.63A–9(g)(2)(iv)(C), and 1.263A–9(g)(3)(iv)).

DATES: Written comments should be received on or before August 16, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

Title: Capitalization of Interest.

OMB Number: 1545–1265.

Regulation Project Number: IA–12–120–86 (TD 8584).

Abstract: Internal Revenue Code section 263A(f) requires taxpayers to estimate the length of the production period and total cost of tangible personal property to determine if Interest capitalization is required. This regulation requires taxpayers to maintain contemporaneous written records of production period estimates, to file a ruling request to segregate activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 500,050.

Estimated Time per Respondent: 13.8 Minutes.

Estimated Total Annual Burden Hours: 116,767 Hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 7, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14284 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 22, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be held Thursday, July 22, 2010, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14268 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 14, 2010.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Wednesday, July 14, 2010, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information, please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201,

or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14269 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 8, 2010, Friday, July 9, 2010 and Saturday, July 10, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, July 8, 2010 from 1 p.m. to 4:30 p.m., Friday, July 9, 2010 from 8 a.m. to 4:30 p.m. and Saturday, July 10, 2010 from 8 to 12 p.m. Central Time in Chicago, IL. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14271 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 8, 2010.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee will be held Thursday, July 8, 2010, at 1 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14272 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Wednesday, July 28, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Wednesday, July 28, 2010, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information, please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14273 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 21, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, July 21, 2010, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14275 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 27, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, July 27, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14266 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 13, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be held Tuesday, July 13, 2010, at 2:00 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: *June 9, 2010.*

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14263 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 21, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, July 21, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14262 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, July 12, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, July 12, 2010, at 2:30 p.m. e.t. via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14261 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 20, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, July 20, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated:June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14258 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine).

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 20, 2010.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, July 20, 2010, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14267 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, July 7, 2010, at 1 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information, please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14276 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the states of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 13, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, July 13, 2010, at 11 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 9, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–14279 Filed 6–14–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Terminations: Commercial Alliance Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 16 to the Treasury Department Circular 570, 2009 Revision, published July 1, 2009, at 74 FR 31536.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as acceptable surety on Federal bonds is terminated effective today. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2009 Revision, to reflect this change.

With respect to any bonds currently in force with this company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from this company, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: June 7, 2010.

William J. Erle,

Acting Director, Financial Accounting and Services Division.

[FR Doc. 2010–14260 Filed 6–14–10; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (21–0960a–c)]

Agency Request for Emergency Approval of an Information Collection

AGENCY: Department of Veterans Affairs.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA) will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the PRA. The reason for the emergency clearance is to allow VA to collect information from private physicians in the form of making available standardized disability benefits questionnaires that private physicians can complete at the request and consent of individual veterans applying for VA disability benefits. The medical information provided by the private physicians will be used as supporting medical documentation for veterans' disability claims.

DATES: Comments should be submitted on or before June 29, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (21–0960a–c)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–New (21–0960a–c)'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960A.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960B.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960C.

OMB Control Number: 2900—New (21–0960a–c).

Type of Review: New collection.

Abstract: In connection with The Agent Orange Act of 1991, Public Law No. 102–4, VA will publish a Final Rule establishing presumptive service connection for the following diseases based on herbicide exposure: Hairy cell leukemia and other chronic B-cell leukemias, Parkinson's disease, and ischemic heart disease. In order to more expeditiously process claims related to these three new presumptive diseases, VA has designed three corresponding Disability Benefits Questionnaires for use by private physicians at the request and consent of veterans applying for VA benefits. Veterans will have the option of providing these Disability Benefits Questionnaires to their private physicians for completion and submission to VA in lieu of scheduling a VA medical examination. Given the large number of claims VA anticipates for the three new presumptive diseases, the Disability Benefits Questionnaires will assist in expediting claims processing because veterans who choose to have the Disability Benefits

Questionnaires completed by private physicians will avoid any VA examination scheduling delays.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960A—13,750.

b. Hairy Cell and Other B–Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960B—500.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960C—1,250.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960A—55,000.

b. Hairy Cell and Other B–Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960B—2,000.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960C—5,000.

Dated: June 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–14316 Filed 6–14–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0021]

Agency Information Collection (VA Loan Electronic Reporting Interface (VALERI) System) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0021" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0021."

SUPPLEMENTARY INFORMATION:

Title: VA Loan Electronic Reporting Interface (VALERI) System.

OMB Control Number: 2900–0021.

Type of Review: Revision of a currently approved collection.

Abstract: VA will use the information submitted through the VALERI system to perform supplemental servicing, determination on forbearance, foreclosure, protection of property and initiation of claim payment on loan guaranty homes.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 7, 2010, at page 17832.

Affected Public: Business or other for profit.

Estimated Annual Burden: 70 hours.

Estimated Average Burden per Respondent: 1 second.

Frequency of Response: Daily.

Estimated Number of Respondents: 260.

Estimated Number of Responses: 967.

Dated: June 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–14313 Filed 6–14–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Agency Information Collection (Monthly Certification of Flight Training) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0162" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0162."

SUPPLEMENTARY INFORMATION:

Title: Monthly Certification of Flight Training (under Chapters 30 and 32, Title 38 U.S.C.; Chapters 1606 and 1607, Title 10 U.S.C.; and Section 903 of Public Law 96–342), VA Form 22–6553c.

OMB Control Number: 2900–0162.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans, individuals on active duty training and reservist training, may receive benefits for enrolling in or pursuing approved vocational flight training. VA Form 22–6553c serves as a report of flight training pursued and termination of such training. Payments are based on the number of hours of flight training the veterans completed during each month.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 7, 2010, at pages 17832–17833.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4,017 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,339.

Estimated Total Annual Responses: 8,034.

Dated: June 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–14314 Filed 6–14–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0249]

Proposed Information Collection (Loan Service Report) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to service delinquent home loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 16, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0249" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Loan Service Report, VA Form 26–6808.

OMB Control Number: 2900–0249.

Type of Review: Extension of a currently approved collection.

Abstract: VA personnel complete VA Form 26–6808 during personal contact with delinquent obligors. VA will use the information collected to determine whether a loan default is insoluble or whether the obligor has reasonable prospects for curing the default and maintaining the mortgage obligation in the future. The information will also be used to intercede with the holder of the loan to accept a specially arranged repayment plan or other forbearance aimed at assisting the obligor in retaining his or her home.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,167 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 10,000.

Dated: June 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–14315 Filed 6–14–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; 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 Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held on June 24–25, 2010, in Room 442, Export Import Bank, at 811 Vermont Avenue, NW., Washington, DC. The June 24 session will be from 9 a.m. until 5 p.m., and the June 25 session will be from 8:30 a.m. until 12:30 p.m. The meeting is open to the pubic.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of its facilities.

On June 24, the Committee will review developments in the fields of fire safety and structural design as they relate to impact of natural and manmade hazards on the safety of buildings. On June 25, the Committee will receive appropriate briefings and presentations on current seismic, natural hazards, and fire safety issues that are particularly relevant to facilities owned and leased by the Department. The Committee will also discuss appropriate structural and fire safety recommendations for inclusion in VA's standards.

No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments. Comments should be sent to Krishna K. Banga, Senior Structural Engineer, Facilities Quality Service, Office of Construction & Facilities Management (00CFM1A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *Krishna.banga@va.gov.* Those wishing to attend should contact Mr. Banga at (202) 461–8219.

Dated: June 10, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–14369 Filed 6–14–10; 8:45 am]

BILLING CODE P

Federal Register

Tuesday,
June 15, 2010

Part II

Nuclear Regulatory Commission

10 CFR Parts 30, 32, 33, et al.
Physical Protection of Byproduct Material; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73

[NRC–2008–0120]

RIN 3150–AI12

Physical Protection of Byproduct Material

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to establish security requirements for the use and transport of category 1 and category 2 quantities of radioactive material, which the NRC considers to be risk-significant and therefore to warrant additional protection. Category 1 and category 2 thresholds are based on those established in the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources which NRC endorses. The objective of this proposed rule is to provide reasonable assurance of preventing the theft or diversion of category 1 and category 2 quantities of radioactive material. The proposed regulations would also include security requirements for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The proposed rule would affect any licensee that is authorized to possess category 1 or category 2 quantities of radioactive material, any licensee that transports these materials using ground transportation, and any licensee that transports small quantities of irradiated reactor fuel.

DATES: Submit comments on the proposed rule by October 13, 2010. Submit comments specific to the information collection aspects of this proposed rule by July 15, 2010. Comments received after the above dates will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before these dates.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2008–0120 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0120. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

You can access publicly available documents related to this proposed rule using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Federal Rulemaking Web site: Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0120.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 415–8126, *e-mail: Merri.Horn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
  A. General Applicability
  B. Background Investigation and Access Authorization Program
  C. Physical Protection During Use
  D. Transportation Security
III. Discussion of Proposed Amendments by Section
IV. Criminal Penalties
V. Agreement State Compatibility
VI. Plain Language
VII. Voluntary Consensus Standards
VIII. Finding of No Significant Environmental Impact: Availability
IX. Paperwork Reduction Act Statement
X. Regulatory Analysis
XI. Regulatory Flexibility Certification
XII. Backfit Analysis

I. Background

The NRC has long participated in efforts to address radioactive source protection and security. However, the terrorist attacks of September 11, 2001, heightened concerns about the use of risk-significant radioactive materials in a malevolent act. Such an attack is of particular concern because of the widespread use of radioactive materials in the United States by industrial, medical, and academic institutions. The theft or diversion of risk-significant quantities of radioactive materials could lead to their use in a radiological dispersal device (RDD) or a radiological exposure device (RED).

The NRC's current regulations provide requirements for the safe use, transit, and control of licensed material. Any loss of control of risk-significant radioactive material, whether inadvertent or through a deliberate act, could result in significant adverse impacts that could reasonably constitute a threat to the public health and safety or the common defense and security of the United States. In the changed threat environment after the attacks of September 11, 2001, the Commission determined that certain licensed material should be subject to enhanced security requirements and safeguarded during transport, and that individuals with unescorted access to risk-significant quantities of radioactive material should be subject to background investigations.

As part of the development of the enhanced security measures, the NRC performed vulnerability assessments to identify gaps or vulnerabilities in security and the effectiveness and costs of certain physical protection enhancements at various licensed facilities. The results of the vulnerability assessments were used in the development of security enhancement orders that were issued to licensees using a graded approach based on the relative risk and quantity of material possessed by the licensee. The NRC issued the first series of orders to certain panoramic and underwater irradiator licensees that possessed more than 370 TBq (10,000 Ci) of radioactive material (EA–02–249; June 6, 2003) (68 FR 35458; June 13, 2003). The next series of orders were issued to certain manufacturing and distribution (M&D) licensees (EA–03–225; January 12, 2004) (69 FR 5375; February 4, 2004). These orders require the implementation of additional security measures and the protection of the licensee's physical protection information as Safeguards Information—Modified Handling (SGI–M). The original orders are not publicly available because they contain detailed security requirements that are designated as SGI–M. However, redacted versions of these orders have been made available to the public (73 FR 33859; June 13, 2008, and 73 FR 49714; August 22, 2008). These orders were issued to both NRC and Agreement State licensees under the NRC's authority to protect the common defense and security. Subsequently, the NRC issued Increased Control Orders (EA–05–090; November 14, 2005) (70 FR 72128; December 1, 2005) to other licensees authorized to possess certain risk-significant quantities of radioactive material (category 1 and category 2 quantities). The Increased Control Orders do not contain safeguards information (SGI) or SGI–M and are available on the NRC's public Web site at *http://www.nrc.gov/security/byproduct/orders.html.* These orders were issued under the NRC's authority to protect public health and safety, and require licensees to implement enhanced security measures known as Increased Controls. To effect nationwide implementation of the Increased Control Orders, each Agreement State issued legally binding requirements to put enhanced security measures, identical to the Increased Controls, in place for licensees under that State's regulatory jurisdiction.

These security orders specifically address the security of byproduct material possessed in quantities greater than, or equal to, category 1 and category 2 quantities. The orders provide for enhanced security measures for such things as license verification before transfer, intrusion detection and response, access control, and coordination with local law enforcement authorities (LLEAs). The orders also contain requirements for the licensee to determine the trustworthiness and reliability of individuals permitted unescorted access to risk-significant radioactive materials. The determination involves a background investigation of the individual. The background investigations were originally limited to local criminal history records checks with law enforcement agencies, verification of employment history, education, personal references, and confirmation of employment eligibility (legal immigration status).

In 2005, Congress passed, and the President signed, the Energy Policy Act of 2005 (EPAct). The EPAct amended Section 149 of the Atomic Energy Act (AEA) to authorize the Commission to require to be fingerprinted any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check. With this new authority, the Commission determined that individuals who have access to category 1 and category 2 quantities of radioactive material warrant fingerprinting and FBI criminal history records checks. On October 17, 2006, the NRC issued orders to panoramic and underwater irradiator licensees (EA–06–248) (71 FR 63043; October 27, 2006), manufacturer and distributor licensees (EA–06–250) (71 FR 63046; October 27, 2006), and licensees making shipments of category 1 quantities of radioactive material (EA–06–249) (71 FR 62302; October 24, 2006) to require fingerprinting and FBI criminal history records checks for unescorted access to risk-significant quantities of radioactive material at their facilities. In issuing these orders, NRC noted that a malevolent act by an individual with unescorted access to these materials could result in significant adverse impacts to the public health and safety or the common defense and security and, thus, necessitated expedited implementation of fingerprinting requirements. The orders were issued to both NRC and Agreement State licensees under the NRC's authority to protect the common defense and security. On December 5, 2007, the NRC issued orders to all other NRC licensees that possessed category 1 or category 2 quantities of radioactive material (EA–07–305) (72 FR 70901; December 13, 2007) to require fingerprinting and FBI criminal history records checks for unescorted access to category 1 or category 2 quantities of radioactive material. These orders were issued under the NRC's authority to protect the public health and safety and are available on the NRC public Web site at *http://www.nrc.gov/security/byproduct/orders.html.* To effect nationwide implementation, each Agreement State issued legally binding requirements to licensees under their regulatory jurisdiction.

During the same time period, efforts were underway to enhance transportation security of category 1 and category 2 quantities of radioactive materials. The NRC issued two sets of orders to licensees transporting radioactive material in quantities of concern. The first set of transportation security orders was issued to certain licensees that might be expected to transport radioactive materials in quantities of concern (category 1 quantities) (EA–05–006; July 19, 2005) (70 FR 44407; August 2, 2005). The orders require the implementation of additional security measures and the protection of the licensee's physical protection information as SGI–M. The original orders are not publicly available because they contain detailed security requirements that are designated as SGI–M. However, a redacted version of the order is publicly available (73 FR 51016; August 29, 2008). These orders were issued to both NRC and Agreement State licensees under the NRC's authority to protect the common defense and security. Subsequently, the NRC issued orders (EA–05–090; November 14, 2005) (70 FR 72128; December 1, 2005) to other licensees authorized to possess certain risk-significant quantities of radioactive material (category 2 quantities). The Increased Control Orders mentioned earlier also contain requirements for transporting category 2 quantities of radioactive material.

These security orders specifically address the transportation security of byproduct material transported in quantities greater than, or equal to, category 2. The additional security measures contained in the orders provide for enhanced security measures during transportation that are beyond the current regulations, including enhanced security in preplanning and

coordinating shipments, advance notification of shipments to the NRC and States through which the shipment will pass, control and monitoring of shipments that are underway, trustworthiness and reliability of personnel, information security considerations, and control of mobile or portable devices.

The requirements put in place by the orders supplement the existing regulatory requirements. These additional requirements are primarily intended to provide reasonable assurance of preventing the theft or diversion of this risk-significant material. These requirements provide the Commission with reasonable assurance that public health and safety and the common defense and security continue to be adequately protected.

Although an order, like a rule, is legally binding on the licensee receiving the order, a rule is generally applicable to all licensees. Further, the notice-and-comment rulemaking process allows members of the public to provide comments on the proposed rule. It is Commission policy to implement generally applicable requirements through rulemaking.

If promulgated, this rulemaking would adopt security requirements for category 1 and category 2 quantities of radioactive material into the regulations. New requirements for background investigations and an access authorization program are proposed to ensure that individuals who have access to these materials have gone through background investigations and are determined to be trustworthy and reliable. New requirements are also proposed to establish physical protection systems to detect, assess, and respond to unauthorized access to category 1 and category 2 quantities of radioactive material. For transport of the radioactive materials, new requirements for recipient license verification; preplanning and coordination of shipments; advance notification of shipments; notification of shipment delays, schedule changes, and suspected loss of a shipment; and control and monitoring of shipments are proposed. The proposed amendments would also include security requirements for shipments of irradiated reactor fuel that weighs 100 grams (0.22 pounds (lb)) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 sievert (Sv) (100 rem) per hour at a distance of 0.91 meters (m) (3 feet (ft)) from any accessible surface without intervening shielding.

In developing the proposed rule the NRC considered, among other things, the various security orders, lessons-learned during implementation of the orders, the recommendations of the Independent External Review Panel and the Materials Program Working Group, and stakeholder comments received on the orders and the preliminary rule language that was posted on Regulations.gov. The Commission chartered the Independent External Review Panel to: (1) Identify vulnerabilities in the NRC's materials licensing program with respect to import, export, specific, and general licenses; (2) validate the ongoing byproduct material security efforts; and (3) evaluate the apparent "good faith presumption" that pervades the NRC licensing process. The Panel's March 2008 report is available in ADAMS under accession number ML080700957. The Materials Program Working Group conducted a comprehensive evaluation of the materials program to identify short- and long-term strategies to mitigate security vulnerabilities. The Working Group report contains sensitive information and is not publicly available. However, the Group's comments on the Panel's report are publicly available in ADAMS under accession number ML080660424.

In developing the basis for the transportation security aspects of the rule, NRC held three public meetings to seek public comment on the development of the technical basis. The NRC published information on the requirements being considered along with some background information and a notice of the three meetings (73 FR 826; January 4, 2008). In response the NRC received more than 100 comments from stakeholders that were used to finalize the technical basis for the transportation portion of this rulemaking. The comments addressed a number of issues and concerns. However, most focused on clarifying requirements, adding efficiencies, and improving the processes that licensees follow to comply with the additional security measures currently enforced under security orders.

During the development of the proposed rule, the NRC posted preliminary rule text for public comment on *http://www.regulations.gov* under Docket ID NRC–2008–0120. The posting of the preliminary rule text was noticed in the **Federal Register** and included the portions of the rule that address background investigation and access control aspects (subpart B) (74 FR 17794; April 17, 2009), enhanced security during use (subpart C) (74 FR 20235; May 1, 2009), and transportation security aspects (subpart D) (73 FR 69590; November 19, 2008). The NRC allowed a 45-day comment period for each subpart. In the documents announcing the availability of the preliminary regulatory text, the NRC made it clear that it would not respond to any of the comments received during this pre-rulemaking stage. The NRC did consider the public input on the preliminary rule text in finalizing the proposed rule, and areas where they made a substantive change based on the comments are discussed in this Statement of Considerations. The NRC also made some editorial changes based on the comments; these changes are not discussed further.

PRM–71–13

On July 16, 2008 (73 FR 40767), the NRC published the resolution and closure of a petition for rulemaking (PRM) filed by Christine O. Gregoire, Governor of the State of Washington (PRM–71–13). The NRC indicated that the issues raised by the petitioner would be considered in an ongoing rulemaking on the security requirements for the transportation of radioactive material in quantities of concern.

The petitioner requested that the NRC adopt the use of global positioning system (GPS) tracking as a national requirement for vehicles transporting highly radioactive mobile or portable radioactive devices. The petitioner stated that the Commission could instead grant States the flexibility to impose more stringent requirements than those required under the current increased controls. The petitioner believes that GPS technology is an effective and relatively inexpensive tool that will help when a vehicle with radioactive material is missing, but also acknowledged that requiring a GPS on these vehicles does not ensure that the radiological source will be found. However, the petitioner believes that these suggestions would give law enforcement a significant advantage. The NRC considered the issues identified by the petitioner and the petitioner's suggested approach to address those issues in the development of this proposed rule.

II. Discussion

The NRC believes that a new part of the *Code of Federal Regulations* (CFR) should be established for the security requirements for use of category 1 and category 2 quantities of radioactive material. The concept for using a separate part for safety and physical protection requirements has already been established for special nuclear material (10 CFR part 73). The

establishment of a new part for security-related requirements for byproduct material would be more effective and efficient compared to interspersing the requirements with safety requirements or placing them with the part 73 security requirements for special nuclear material. A new part specifically directed to byproduct material licensees should make applicable requirements easier for both licensees and other stakeholders to locate and understand.

This discussion section has been divided into four subsections to better present information on the proposed rule. Each section presents information on a different aspect of the proposed rule. Section A provides information that is generally applicable to all aspects of this proposed rulemaking. Section B provides information on background investigations and the access authorization program. Section C provides information on the physical protection of the materials during use. Lastly, Section D provides information on transportation security aspects.

A. General Applicability

1. What action is the NRC taking?

The NRC is proposing to amend its regulations to impose security requirements for the use of category 1 and category 2 quantities of radioactive material. The proposed requirements would establish the objectives and minimum requirements that licensees must meet to protect against theft or diversion. These requirements are intended to increase the protection of the public against the unauthorized use of category 1 or category 2 quantities of radioactive material by reducing the risk of the theft or diversion of the material.

2. Why do the requirements need to be revised?

Prior to September 11, 2001, NRC requirements focused on safety and preventing inadvertent or accidental exposure of both workers and the public to these materials. These requirements also indirectly provided security for the material. However, the events of September 11 made the NRC take a broader look at its requirements and reevaluate what a terrorist might do to attain these materials. From this effort, the NRC identified several areas where additional requirements should be implemented to improve security. The security requirements need to be placed in the regulations so that they are generally applicable to all licensees and to provide an opportunity for all stakeholders to comment on the proposed requirements.

3. Why doesn't the NRC just keep the orders in effect?

The orders issued by the NRC could stay in place indefinitely. However, the regulations would not reflect current Commission policy or requirements. Imposing long-term requirements through orders has not traditionally been the agency's preferred method of regulation. Orders, unlike rules, do not apply prospectively to applicants for new licenses. The NRC would have to periodically issue new orders to cover new and amended licenses, and perhaps reissue orders periodically to existing licensees if requirements or administrative practices change. In order to make the requirements generally applicable to all present and future licensees, the security-related requirements need to be placed in the regulations.

Assured that adequate security is in place for these materials (because of existing regulations and orders), the NRC is now planning to formally revise its security requirements and gather public and stakeholder input. The orders would remain in place for NRC licensees until the final rule becomes effective. Once the final rule is effective, the NRC will rescind the orders that were issued to its licensees. For Agreement State licensees that received an NRC order, the order would remain in place until the Agreement State issues compatible requirements. Once the State has issued its requirements, the NRC would rescind the order. Each Agreement State would follow its own process for replacing the increased control legally binding requirements with the requirements contained in the final rule.

4. Who would this action affect?

These requirements would apply to NRC or Agreement State licensees that are authorized to possess category 1 or category 2 quantities of radioactive material. This includes a wide range of licensees, including pool-type irradiator licensees; manufacturer and distributor licensees; medical facilities with gamma knife devices; self-shielded irradiator licensees (including blood irradiators); teletherapy unit licensees; radiographers; well loggers; broad scope users; radioisotope thermoelectric generator licensees; and licensees that ship or prepare for shipment category 1 or category 2 quantities of radioactive material. Nearly 1,400 licensees are implementing the various orders and are the entities that would be impacted by this proposed rule. In addition, some fuel cycle and reactor licensees that possess sources at these levels would be impacted. Licensees whose activities are covered under the physical protection requirements of 10 CFR part 73 would be exempt from the requirements of 10 CFR part 37. For example, a reactor licensed under part 50 that also possesses a radiography source would not need to implement the part 37 provisions if the source is protected under the reactor security program required by part 73.

5. What are category 1 and category 2 quantities of radioactive material?

Category 1 quantities of radioactive material have been called radioactive material in quantities of concern (RAMQC). Category 1 and category 2 quantities of radioactive material have been called risk-significant radioactive material and refer specifically to 16 radioactive materials (14 single radionuclides and 2 combinations). These materials are: americium-241; americium-241/beryllium; californium-252; curium-244; cobalt-60; cesium-137; gadolinium-153; iridium-192; plutonium-238; plutonium-239/beryllium; promethium-147; radium-226; selenium-75; strontium-90 (yttrium-90); thulium-170; and ytterbium-169. Irradiated fuel and mixed oxide fuel are not included even though they may contain category 1 or category 2 quantities of radioactive material; these materials are covered by other regulations. The thresholds for category 1 and category 2 quantities of radioactive material are provided in the following table. Terabecquerels is the official value to be used for determining whether a radioactive material is a category 1 or category 2 quantity. Because many licensees use curies in their activities instead of becquerels, the table provides the curie value at three figures for practical usefulness.

Radioactive Material	Category 1 Threshold		Category 2 Threshold	
	Terabecquerels (TBq)	Curies (Ci)	Terabecquerels (TBq)	Curies (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Beryllium	60	1,620	0.6	16.2

Radioactive Material	Category 1 Threshold		Category 2 Threshold	
	Terabecquerels (TBq)	Curies (Ci)	Terabecquerels (TBq)	Curies (Ci)
Californium-252	20	540	0.2	5.40
Curium-244	50	1,350	0.5	13.5
Cobalt-60	30	810	0.3	8.10
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1000	27,000	10.0	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Beryllium	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2.0	54.0
Strontium-90 (Yttrium-90)	1,000	27,000	10.0	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

These materials and thresholds are based on the IAEA Code of Conduct. The NRC and the international community, led by the IAEA, revised the IAEA Code of Conduct in 2003 to establish common international guidance for safety and security measures for radioactive sources. The IAEA published these results in a document titled "Code of Conduct on the Safety and Security of Radioactive Sources." A link to this document can be found on the NRC Web site at *http://www.nrc.gov/security/byproduct/enhanced-security.html.* In a separate effort, the U.S. Department of Energy (DOE) and the NRC reviewed the chemical, physical, and radiological characteristics of each radioactive material that is licensed in the United States, for its attractiveness to a terrorist. This effort identified 16 radioactive materials that could pose a serious threat to people and the environment. This effort further identified the different quantities or "thresholds" of materials that could be useful to a terrorist. The results of the DOE/NRC effort closely matched the Code of Conduct Category 2 quantities. The NRC adopted the IAEA Code of Conduct Category 1 and Category 2 threshold quantities to provide consistency between domestic and international efforts for security of radioactive materials that are deemed to be attractive targets for malevolent use.

IAEA, Safety Series RS–G–1.9, Categorization of Radioactive Sources, provides the underlying methodology for the development of the Code of Conduct thresholds. Safety guide RS–G–1.9 provides a risk-based ranking of radioactive sources in five categories in terms of their potential to cause severe deterministic effects for a range of scenarios that include both external exposure from an unshielded source and internal exposure following dispersal. The categorization system uses the 'D' values as normalizing factors. The 'D' value is the radionuclide specific activity of a source that, if not under control, could cause severe deterministic effects for a range of scenarios that include both external exposure from an unshielded source and internal exposure following dispersal of the source material.

6. Why are the requirements limited to these 16 radionuclides?

The Radiation Source Protection and Security Task Force, an interagency task force established by the EPAct, concluded in its 2006 report to Congress and the President (ADAMS ML062190349) that the appropriate radioactive sources were being protected and that the IAEA Code of Conduct serves as an appropriate framework for considering which sources warrant additional protection. The Task Force did note that the U.S. Government should periodically reevaluate the list of radionuclides that warrant additional security and protection. Therefore, the radionuclides and thresholds could change in the future and any changes would be addressed in a future rulemaking.

7. What is the sum of fractions methodology or unity rule?

The sum of fractions methodology, also known as the unity rule, is used to determine if a licensee would be required to implement 10 CFR part 37 requirements. A licensee may need to implement the requirements in 10 CFR part 37 even if it does not possess any single source or single radionuclide in excess of the category 2 thresholds. For combinations of materials (to include sealed sources, unsealed sources, and bulk material) and radionuclides, a licensee must include multiple sources (including bulk material) of the same radionuclide and multiple sources (including bulk material) of different radionuclides to determine if the requirements apply. For the purposes of this calculation, licensees would be required to consider all of the radioactive material at a facility. The following formula for the unity rule would be used to determine if a licensee is required to implement the Part 37 requirements: [(total amount of radionuclide A) ÷ (category 2 threshold of radionuclide A)] + [(total amount of radionuclide B) ÷ (category 2 threshold of radionuclide B)] + etc.....≥ 1. If the sum is greater than or equal to 1, the licensee would have at least a category 2 quantity of radioactive material, and the 10 CFR part 37 requirements would apply at that facility.

8. Does the NRC plan to issue guidance on these proposed requirements?

Yes, the NRC plans to issue guidance on the security requirements for category 1 and category 2 quantities of radioactive materials. The guidance will be made available for public comment sometime during the comment period for this proposed rule. The NRC is planning to host at least one public workshop on the guidance documents. A separate document announcing the availability of the guidance and the information on the workshop will be published in the **Federal Register**.

9. Will all of the information considered to be safeguards information under the orders now be made public?

No. The orders issued to some licensees contained detailed security information that could be useful to an adversary. To increase public awareness and participation, the NRC identified the primary security concepts behind each security measure and included these concepts in the proposed rule to allow discussion of the security

measures in a public forum. But the specific measures that a licensee puts in place may be considered SGI–M. The final rule on safeguards information became effective on February 23, 2009 (73 FR 63546; October 24, 2008), and established as SGI–M certain physical protection information related to panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source material, byproduct material, or special nuclear material in greater than category 2 quantities; and transportation of source, byproduct, or special nuclear material in greater than or equal to category 1 quantities. Physical protection information for other facilities that fall under the requirements of 10 CFR part 37 would be considered physical protection information under 10 CFR 2.390(d)(1). Licensees would also be required to protect the security plan and implementing information from unauthorized disclosure. The rule provisions that address SGI–M or include references to the SGI–M requirements in part 73 are reserved for the NRC and are considered compatibility category NRC.

10. What is the authority for this proposed rule?

As noted in the background discussion, the NRC issued some orders under its authority to protect the common defense and security and some orders under its authority to protect the public health and safety. With respect to whether the following regulations are being issued under "public health and safety" or "common defense and security," it should be recognized that almost all regulations relating to the security of materials serve both purposes to some degree. For example, securing radioactive materials with multiple barriers protects the public health and safety by preventing the unknowing theft of radioactive materials—such as someone stealing a vehicle with material stored in the vehicle but whose target is the vehicle—which could result in the unintentional exposure of members of the public to the material. The barriers also protect the common defense and security by preventing the theft of the radioactive material by potential terrorists or others targeting the specific material intending to use it to affect the common defense and security by exposing members of the public to the material. However, the designation of the authority being used for these regulations does have significance in determining whether Agreement States or the NRC will be responsible for overseeing the implementation of these requirements for Agreement State licensees.

Although the NRC relinquishes its regulatory authority to Agreement States for certain materials, under Section 274(m) of the AEA no such agreement will affect the authority of the Commission to take regulatory action to protect the common defense and security. Thus, as evidenced by orders issued to Agreement State licensees after the events of September 11, 2001, the NRC always has the ability to take necessary steps to address particular common defense and security needs. If these regulations were to be issued under the NRC's common defense and security authority, only the NRC would have the authority to impose these requirements on Agreement State licensees and the NRC would be responsible for inspection and enforcement of these requirements for Agreement State licensees.

When regulations such as these complement both the NRC's public health and safety and common defense and security missions, the operative question is whether NRC oversight is necessary to fulfill the common defense and security aspects of the regulations. The NRC believes that the Agreement States can consistently and adequately implement the physical protection requirements on a nationwide basis, and as such, there will be no need for independent NRC action to protect the common defense and security. The NRC has regular oversight of individual Agreement State programs through its Integrated Materials Performance Evaluation Program (IMPEP). As always, the NRC retains the authority under Section 274(m) to take any necessary actions for protection of the common defense and security should individual licensees or State programs develop issues requiring immediate action. The Commission also has the authority under Section 274(j) to terminate or suspend all or part of its agreement with a State and reassert the Commission's licensing and regulatory authority when the Commission determines that doing so is necessary to protect the public health and safety. The failure of an individual Agreement State to implement compatible and adequate legally binding requirements to protect radioactive materials within its jurisdiction disrupts the entire national scheme to protect radioactive materials such that it might raise serious public health and safety or common defense and security concerns that the NRC would have to address. As long as all Agreement States continue to implement compatible and adequate security requirements, there appears to be no benefit to the public health and safety, or common defense and security, that would justify removing oversight of these requirements from an established regulatory program overseeing Agreement State licensees. Implementing these regulations under the NRC's public health and safety authority would avoid potential complications with licensees being subject to dual regulation for a single activity. Thus, the NRC is proposing to issue these regulations under its public health and safety authority, and these requirements will be applicable to Agreement State licensees through the Agreement State Program.

11. When would the rule be effective?

The NRC is recommending that the final rule be effective 270 days after publication in the **Federal Register**. This would provide time for licensees to put in place the necessary programs, develop procedures, and conduct training on the new requirements. While most of the provisions are similar to those contained in the orders, there are differences. The Agreement States would be required to issue compatible requirements within 3 years. Licensees in an Agreement State would continue to operate under the orders or other legally binding requirements until the Agreement State issues compatible requirements. The provisions put in place for the inspection of licensees in Agreement States that received the orders issued under common defense and security would remain in place until the Agreement State implements the requirements. For those States that entered into 274i Agreements, the State would continue inspections under the Agreement. For those States that did not enter into 274i Agreements, the NRC would continue to conduct the inspections until the State puts in place the new requirements. The NRC would rescind the orders as the regulatory requirements become effective.

12. How does the NRC ensure licensees are following these rules?

The NRC and Agreement States conduct inspections to ensure that licensees are following the requirements. The NRC and Agreement State inspectors have received training and follow inspection procedures on how to ascertain whether licensees are meeting security requirements. Potential violations that are identified will be processed in accordance with the NRC Enforcement Policy, and depending on the severity of a violation, licensees could be subject to civil or criminal

penalties. Additionally, the NRC has developed enforcement guidance to ensure consistency in the enforcement process. Agreement State licensees would be subject to the State's enforcement process.

13. What should I consider as I prepare my comments to the NRC?

Tips for preparing your comments—when submitting your comments, remember to:

i. Identify the rulemaking (RIN 3150–AI12, NRC–2008–0120).

ii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iii. Describe any assumptions and provide any technical information and/or data that you used.

iv. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

v. Provide specific examples to illustrate your concerns, and suggest alternatives.

vi. Explain your views as clearly as possible.

vii. Make sure to submit your comments by the comment period deadline identified.

viii. The NRC is particularly interested in your comments concerning the following issues in Section II: (1) Item B5 of this document contains a request for comment on whether the reviewing official should be fingerprinted as part of the trustworthiness and reliability determination; (2) item B8 contains a request for comment on the elements of the background investigation; (3) item C6 contains a request for comment on the protection of information; (4) item C15 contains a request for comment on the need to notify the LLEA before working at a temporary jobsite; (5) item C17 contains a request for comment on vehicle disabling requirements for mobile sources; (6) item C19 contains a request for comment on the reporting requirements; (7) item D4 contains a request for comment on requiring license verification before transferring category 2 quantities of radioactive material; and (8) item D21 contains a request for comment on requiring an NRC-approved monitoring plan for the classification yard for rail shipment. In addition, Section V of this document contains a request for comment on the compatibility designations for the proposed rule; Section VI contains a request for comment on the use of plain language; Section VIII contains a request for comment on the environmental assessment; Section IX contains a request for comment on the information collection requirements; Section X contains a request for comment on the draft regulatory analysis; and Section XI contains a request for comment on the impact of the proposed rule on small businesses.

B. Background Investigations and Access Authorization Program

1. Who would be required to have an access authorization program?

Any licensee that is authorized to possess category 1 or category 2 quantities of radioactive materials at a facility would need to determine whether it needs to have an access authorization program. The licensee would be required to submit information to the NRC concerning its compliance with the access authorization program requirements. The information should include a statement that the licensee is or is not implementing an access authorization program. The statement should not include details of the licensee's access authorization program or implementing procedures. Only those licensees that permit unescorted access to category 1 or category 2 quantities of radioactive material would be required to establish and implement an access authorization program. In addition, any applicant for a license or license amendment to possess category 1 or category 2 quantities of radioactive material at a facility would be required to establish an access authorization program before obtaining the radioactive material.

2. What is the objective of the access authorization program?

The main objective of the access authorization program is to ensure that individuals who have unescorted access to category 1 or category 2 quantities of radioactive material are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety or common defense and security.

3. Who would be subject to the licensee's access authorization program?

The EPAct authorizes the Commission to require fingerprinting of any individual who is permitted unescorted access to "any radioactive material that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks." The Commission has determined that the threshold that warrants fingerprinting and background checks is category 2. Therefore, individuals subject to a licensee's access authorization program would include anyone permitted to have unescorted access to category 1 or category 2 quantities of radioactive material. Unescorted access would be defined as solitary access to category 1 or category 2 quantities of radioactive material granted to an approved individual, and includes solitary access to sufficient quantities of radioactive material such that an individual could successfully accumulate lesser quantities of material into a category 1 or category 2 quantity. This would be an individual at the licensee's facility who has access to various locations within the licensee's facility and does not address the situation where a contractor might have access to the facilities of several licensees.

The access authorization program would also include individuals that have access to SGI–M, such as vehicle drivers and accompanying individuals for road shipments of category 1 quantities of radioactive material, movement control center personnel for shipments of category 1 quantities of radioactive material, and any individual whose assigned duties provide access to shipment information on category 1 quantities of radioactive material. In response to comments on the preliminary rule language, the NRC added text to clarify that "access to shipping information" referred to shipping information that was considered to be SGI–M and not all shipping information.

Those individuals who have unescorted access to certain quantities of byproduct material could pose a threat to the public health and safety or the common defense and security because they could divert or steal risk-significant radioactive material, or could aid others in the commission of such acts. The Radiation Source Protection and Security Task Force encouraged the NRC to require fingerprinting and Federal criminal history checks of any individual with access to category 1 or category 2 quantities of radioactive material.

Certain categories of individuals would be relieved from the background investigation aspect of the access authorization program (see Section II, question B20 and B21). Licensees do have the option to escort an individual and not make a trustworthiness and reliability determination. The escorts would need to be approved for unescorted access.

In response to comments on the preliminary rule language, the NRC removed a restriction that would prohibit a licensee from granting unescorted access to anyone that had been previously denied unescorted

access. The NRC agreed that this was too limiting as information upon which a denial is based could change, and the individual could be unfairly denied access in the future.

4. What are the key access authorization program requirements?

The key components of an access authorization program would be the reviewing official, the informed consent of the subject individual, personal history disclosure by the subject individual, a background investigation, use of procedures, and the individual's right to correct and complete the information on which the decision to grant unescorted access is based. Each of these areas is discussed in more detail in the following questions and answers.

5. What is the role of the reviewing official?

The reviewing official would be the individual that makes the trustworthiness and reliability determinations for the licensee; the reviewing official determines who could be granted unescorted access authorization. Note that the Increased Control Fingerprinting Orders referred to a trustworthiness and reliability official or T&R official as the individual that made determinations on an individual's trustworthiness and reliability. Unlike the reviewing official the T&R official did not have to be fingerprinted and was not reviewed by the regulator. Licensees would need to nominate one or more individuals to be a reviewing official and submit their fingerprints to the NRC. The fingerprints of the nominated individual(s) would need to be taken by either a law enforcement agency, a Federal or State agency that provides fingerprinting services to the public, or a commercial fingerprinting service authorized by a State to take fingerprints. Before sending the nominated individual's fingerprints to the NRC, the licensee would need to conduct the rest of the elements of the background investigation. Reviewing officials must be permitted either access to safeguards information or unescorted access to category 1 or category 2 quantities of radioactive material since Section 149 of the Atomic Energy Act only authorizes the collection of fingerprints for the purposes of unescorted access or access to safeguards information. The Commission has requested statutory changes to the Atomic Energy Act that would permit fingerprints of reviewing officials without requiring access for these purposes. The NRC would then transmit the nominated reviewing official's fingerprints to the FBI and would review the individual's criminal history records and, if appropriate, approve the reviewing official. Reviewing officials would not be able to make trustworthiness and reliability determinations until approved by the NRC. For certain licensees, the NRC may have already approved reviewing officials, either under the October 17, 2006, orders [(EA–06–248, 71 FR 63043; October 27, 2006), (EA–06–250, 71 FR 53046; October 27, 2006), and (EA–06–249; 71 FR 62303; October 24, 2006)], under the August 21, 2006, SGI–M orders, or under other regulatory requirements. In those cases, the reviewing official may continue to act in that capacity for an expanded set of persons. If the reviewing (or T&R) official has not had an FBI criminal records history check, he or she would need to be fingerprinted and receive NRC approval before making additional trustworthiness and reliability determinations. The NRC believes that it is important that the individual who is making the final determination on whether an individual is trustworthy and reliable be trustworthy and reliable themselves and have undergone the same background investigation as individuals who would be granted unescorted access, including fingerprinting and the FBI criminal records check. If the reviewing official is not fingerprinted, a gap could be created in the security program that could potentially be exploited. The NRC is specifically requesting comment on this aspect of the proposed access authorization program. In developing comments on this issue, consider the following questions:

(1) Does the reviewing official need to be fingerprinted and have a FBI criminal records check conducted?

(2) Are the other aspects of the background investigation adequate to determine the trustworthiness and reliability of the reviewing official?

(3) Are there other methods that could be used to ensure that the reviewing official is trustworthy and reliable?

(4) Does the requirement to fingerprint the reviewing official place too large of a burden on the licensee?

(5) Do Agreement States have the necessary authority to conduct reviews of the nominated individual's criminal history record?

6. What is informed consent?

Informed consent is the authorization provided by an individual that allows a background investigation to be conducted to determine whether the individual is trustworthy and reliable. The signed consent would include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. An individual would be able to withdraw his or her consent at any time. After the withdrawal, the licensee would not be able to initiate any elements of the background investigation that were not in process at the time of the withdrawal of consent. The licensee would be required to inform the individual that withdrawal of consent for the background investigation would be sufficient cause for denial or termination of unescorted access authorization.

Licensees do not need to obtain signed consent from individuals that have already undergone a background investigation that included fingerprinting and an FBI criminal history records check, been determined to be trustworthy and reliable, and permitted unescorted access to category 1 or category 2 quantities of radioactive material under the NRC orders or the legally binding requirements issued by the Agreement States. A signed consent would be needed for any reinvestigation.

In response to comments on the preliminary rule language, the NRC removed provisions for retention of background investigation information if the individual withdraws consent. If the individual later seeks unescorted access, the background investigation information collected during the original attempt could no longer be relied on, and the investigation would need to be restarted. Requiring the preservation of this information would place an unnecessary burden on licensees.

7. *What is a personal history disclosure?*

The personal history disclosure is the personal history required to be provided by the individual seeking unescorted access to category 1 or category 2 quantities of radioactive material. The information would include items such as employment history, education, credit history (including bankruptcies), and any arrest record. This information would provide the reviewing official with a starting point for the background investigation. Failure to provide the information or falsification of any information could be grounds for denial of the individual's request for unescorted access authorization or termination of access if the individual already has access. If the individual provides false information, it could be an indication that he or she is not trustworthy or reliable.

8. *What are the components of a background investigation?*

A background investigation includes several components: Fingerprinting and an FBI identification and criminal history records check; verification of true identity; employment history evaluation; verification of education; credit history evaluation; criminal history review; and character and reputation determination.

It is the licensee's responsibility to make a trustworthiness and reliability determination of an employee, contractor, or other individual who would be granted unescorted access to category 1 or category 2 quantities of radioactive material or a device containing such radioactive material. It is expected that licensees will use their best efforts to obtain the information required to conduct a background investigation to determine an individual's trustworthiness and reliability.

The full credit history evaluation reflects the Commission's intent that all financial information available through credit reporting agencies is to be obtained and evaluated as part of the trustworthiness and reliability evaluation. The Commission recognizes that some countries may not have routinely accepted credit reporting mechanisms. Therefore, the Commission allows reviewing officials to use multiple sources of credit history that could potentially provide information about a foreign national's financial record and responsibility.

Fingerprinting an individual for a FBI criminal history records check is an important element of the background investigation. It can provide comprehensive information regarding an individual's recorded criminal activities within the U.S. and its territories and the individual's known affiliations with violent gangs or terrorist organizations.

The background investigation is a tool to determine whether individuals are trustworthy and reliable and could be permitted unescorted access to category 1 or category 2 quantities of radioactive material. It is essential to ensure that individuals seeking unescorted access to radioactive material are dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or common defense and security.

The NRC is specifically inviting comment on the elements of the background investigation. Please consider the following questions in developing comments:

(1) Is a local criminal history review necessary in light of the requirement for a FBI criminal history records check?

(2) Does a credit history check provide valuable information for the determination of trustworthiness and reliability?

(3) Do the Agreement States have the authority to require a credit history check as part of the background investigation?

(4) What are the appropriate elements of a background investigation and why are any suggested elements appropriate?

(5) Are the elements of the background investigation too subjective to be effective?

(6) How much time does a licensee typically spend on conducting the background investigation for an individual?

9. Where does a licensee submit the fingerprints for processing?

Under the EPAct, licensees are required to submit the fingerprints to the NRC, which forwards the fingerprints to the FBI for processing. If an individual comes under one of the relief categories specified in 10 CFR 37.29, the licensee would not need to submit the individual's fingerprints to the NRC.

10. What should a licensee do if an individual or entity contacted as part of a background investigation refuses to respond?

If a previous employer, educational institution, or any other entity fails to provide information or indicates an inability or unwillingness to provide information in a timely manner, the licensee would be required to document the refusal, unwillingness, or inability to respond in the record of investigation. The licensee would then need to obtain confirmation from at least one alternate source that has not been previously used. In response to comments on the preliminary rule language, the NRC revised the rule language to provide more flexibility to licensees as to what would be considered a timely manner.

11. Does an individual have the right to correct his or her criminal history records?

Yes, an individual has the right to correct his or her criminal history records before any final adverse determination is made. If the individual believes that his or her criminal history records are incorrect or incomplete in any respect, he or she can initiate challenge procedures. These procedures would include direct application by the individual challenging the criminal history records to the law enforcement agency that contributed the questioned information.

Before an adverse determination on a request for unescorted access, individuals have the right to provide additional information.

12. Is a licensee required to have procedures for conducting background investigations?

Yes, licensees would be required to develop, implement, and maintain written procedures for conducting the background investigations. Procedures would address notification of individuals denied unescorted access authorization and would also ensure that individuals who have been denied unescorted access authorization are not allowed unescorted access to category 1 or category 2 quantities of radioactive material (these individuals could be escorted by an approved individual.) The NRC agreed with comments on the preliminary rule language that the provision prohibiting even escorted access for those individuals denied unescorted access was too inflexible, licensees should be given the flexibility to escort individuals if they so choose.

The preliminary language also contained a provision that required a licensee to provide an opportunity for an independent management review if the individual was denied unescorted access. Several commenters noted that the requirement was too prescriptive and that a decision on whether and how to conduct a review should be left up to the licensee. The NRC agrees with the commenters and has not included the provision in the proposed rule.

13. What information should the reviewing official use to determine that an individual is trustworthy and reliable?

The reviewing official would use all of the information gathered during the background investigation, including the information received from the FBI, in making a determination that an individual is trustworthy and reliable. The reviewing official may not determine that an individual is trustworthy and reliable and grant them unescorted access until all of the information for the background investigation has been obtained and evaluated. The reviewing official may deny unescorted access to any individual based on any information obtained at any time during the background investigation. However, as required by Section 149.c(2)(c) of the Atomic Energy Act, the licensee may

not base a final determination to deny an individual unescorted access to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving: (1) An arrest more than 1 year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge or an acquittal. If there is no record on the disposition of the case, it may be that information on a dismissal or acquittal was not recorded.

14. How frequently would a reinvestigation be required?

A reinvestigation would be required every 10 years to help maintain the integrity of the access authorization program. This is necessary because an individual's financial situation or criminal history may change over time in a manner that can adversely affect his or her trustworthiness and reliability. The reinvestigation would include the local criminal history review and credit history check, but would not include identification through fingerprinting, employment verification, or the character and reputation determination.

15. Are licensees required to protect information obtained during a background investigation?

Yes, licensees would be required to protect the information obtained during a background investigation. The licensee would be required to establish and maintain a system of files and procedures for protection of the information from unauthorized disclosure. Licensees would only be permitted to disclose the information to the subject individual, the individual's representative, those who have a need-to-know the information to perform their assigned duties to grant or deny unescorted access to category 1 or category 2 quantities of material or safeguards information, or an authorized representative of the NRC.

16. Could a licensee transfer personal information obtained during an investigation to another licensee?

Yes, a licensee would be able to transfer background information on an individual to another licensee if the individual makes a written request to the licensee to transfer the information contained in his or her file.

17. If I receive background investigation information from another licensee, can I rely on that information?

Yes, a licensee would be able to rely on the background investigation information that is transferred from another licensee. However, a licensee would be required to verify information such as name, date of birth, social security number, gender, and other physical characteristics to ensure that the individual is the person whose file has been transferred.

18. What records are required to be maintained?

Licensees would be required to retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for 5 years after the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. Licensees would also be required to retain the written confirmation received from entities concerning a security clearance or favorably adjudicated criminal history records check and any written verifications received from service providers. In response to comments on the preliminary rule language, the NRC revised the record retention requirements so that the language was consistent throughout subpart B of 10 CFR part 37.

19. How would a licensee determine the effectiveness of the access authorization control program?

Licensees would be required to review their program to confirm compliance with the requirements. The review would evaluate all program performance objectives and requirements, would document any findings and corrective actions, and would be conducted annually. Any records would need to be maintained for 5 years. Commenters on the preliminary rule language suggested that the review period should be annual for consistency with the radiation protection program review. The NRC agrees and changed the review frequency from 24 months to 12 months.

20. Would individuals transporting radioactive material be subject to the background investigation requirements?

As part of this rulemaking, the NRC considered what level of responsibility to place on its licensees regarding fingerprinting and criminal history records checks for persons involved in the transportation of category 1 and category 2 quantities of radioactive material. Licensees covered by the fingerprinting and criminal history records check requirements of this proposed rule may decide to transfer radioactive material away from the site or may receive radioactive material from another entity.

Such transfers or receipts may occur either as part of a shipment to or from a domestic company or an international company. Individuals involved in the shipment, in particular those employed by carriers or other organizations handling shipments, may have unescorted access to the material during the shipment process. These persons may not be employees of the licensee and thus may not be under the licensee's direct control. In this regard, proposed § 37.21(c) directs that licensees subject certain classes of individuals to the access authorization program. Specifically, the NRC is proposing that vehicle drivers and accompanying individuals for road shipments of category 1 quantities of radioactive material, movement control center personnel for shipments of category 1 quantities of radioactive material, and any individual whose assigned duties provide access to shipment information on category 1 quantities of radioactive material that is considered to be SGI–M, all be fingerprinted and undergo background investigations. This was discussed in Section II, question B3 of this document.

21. Who would be relieved from the background investigation requirements?

Under section 149.b. of the AEA, the NRC may, by rule, relieve individuals from the fingerprinting, identification, and criminal history records check requirements if it finds that such action is "consistent with its obligations to promote the common defense and security and to protect the health and safety of the public." The NRC issued a final rule, 10 CFR 73.61, relieving certain individuals who are permitted unescorted access to radioactive materials from the fingerprinting, identification, and criminal history records checks required by section 149.a. of the AEA (72 FR 4945; February 2, 2007). The individuals relieved from fingerprinting, identification, and criminal history records checks under that rule include Federal, State, and local officials involved in security planning; Agreement State employees who evaluate licensee compliance with security-related orders; and other government officials who may need unescorted access to radioactive materials or other property subject to regulation by the Commission as part of their oversight function. The categories of individuals relieved by the rule also include the same individuals as those previously relieved in an earlier rulemaking from fingerprinting and criminal history records check requirements applicable to safeguards

information (71 FR 33989; June 13, 2006).

Under this proposed rule, the Commission proposes to use the same listing of categories of individuals with the following modifications. Emergency response personnel who are responding to an emergency would be relieved from the requirements because it is impossible to predict when emergency access might be necessary. Employees of carriers that transport category 2 quantities of radioactive material would also be relieved. The NRC will rely on the U.S. Department of Transportation (DOT) and the Transportation Security Administration programs for background investigations of these personnel.

The individuals that would be relieved from the background investigation requirements are considered trustworthy and reliable by virtue of their occupational status and have either already undergone a background investigation as a condition of their employment, or are subject to direct oversight by government authorities in their day-to-day job functions.

Certain persons, as part of the duties of their specific occupation, may be separately or previously subject to background investigations, either as a result of NRC requirements (as under other requirements for access to SGI or SGI–M) or as a result of requirements of other agencies. These persons would not be subject to separate background investigation requirements under this proposed rule; individuals who have undergone a background investigation, including fingerprinting, and found acceptable for unescorted access under provisions of other such requirements would not need to undergo another background investigation nor would a separate determination of their trustworthiness and reliability need to be made.

This rule would not authorize unescorted access to any radioactive materials or other property subject to regulation by the Commission. Rather, the rule would make clear that a licensee may permit unescorted access to certain categories of individuals otherwise qualified for access without performing a background investigation. Licensees would still need to decide whether to grant or deny an individual unescorted access independently of this proposed provision. Any required training would need to be conducted before granting unescorted access.

C. Physical Protection During Use

1. Who would be affected by the proposed requirements?

Within 30 days of the effective date of the final rule, each licensee that is authorized to possess category 1 or category 2 quantities of radioactive material would need to submit information to the NRC concerning the licensee's compliance with the security requirements. The information should include a statement that the licensee is implementing a security program. The licensee should not submit details of the licensee's security program, implementing procedures, security plan, or other sensitive information.

Any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material would be required to establish, implement, and maintain a security program meeting the requirements of 10 CFR subpart C of the proposed rule. (The NRC would consider material to be "aggregated" if an adversary could gain access to a category 2 or greater quantity by breaching a common physical barrier.)

Any licensee that is authorized to possess at least a category 2 quantity of radioactive material would be required to develop a security program. However, the licensee would not be required to implement the security program unless the licensee aggregated the material into a quantity equal to or exceeding the category 2 threshold. At least 90 days before aggregating the radioactive material to a category 2 quantity or greater, the licensee would be required to notify the NRC in writing and implement its security program. This advance notification would provide time for NRC to inspect the licensee's security program before the licensee actually aggregated the material.

The NRC recognizes that some licensees may not always have quantities of radioactive material that equal or exceed category 2, and may not always have a 90-day notice of the need to cross the threshold for implementing the security program. Accordingly, the proposed rule also includes provisions to cover situations where a licensee may routinely, but not continuously, possess aggregated quantities of radioactive material at or above the category 2 threshold. A licensee whose aggregated quantity of radioactive material fluctuates above and below the category 2 threshold more than once in a 90-day period and thereafter would only need to notify the NRC the first time that the security program is implemented. This notice could then serve to inform the NRC that the licensee will be periodically implementing the security provisions. If the fluctuation in aggregated quantity does not reach the category 2 threshold more than once in a 90-day period, the licensee would need to notify the NRC each time a previously discontinued or new security program is to be implemented. These provisions are intended to cover the situation where a licensee routinely, but not continuously, has aggregated quantities of radioactive material at or above the category 2 threshold so that they do not need to report to NRC each time the material is aggregated. This provides a licensee who may not have 90 days notice an acceptable means to inform the NRC that they will be periodically implementing the security provisions.

To illustrate how aggregation might work, here are two examples of a hospital system with a license to possess materials at different sites. Hospital A is authorized to possess 0.4 TBq (11 Ci) of cesium-137 at location 1, 0.7 TBq (19 Ci) at location 2, and 0.9 TBq (24 Ci) at location 3, each several miles apart. Hospital A would be required to develop a security program because the total authorization of 2 TBq (54 Ci) is more than the category 2 threshold. However, Hospital A would not be required to implement the security program because no single location is authorized to possess a quantity that could be aggregated to the category 2 threshold of 1TBq (27 Ci). Hospital B, on the other hand, is authorized to possess 0.4 TBq (10.8 Ci) of cesium-137 at location 1, 0.5 TBq (13.5 Ci) at location 2, and 1.1 TBq (29.7 Ci) at location 3. Hospital B's total authorization is also 2 TBq (54 Ci), but Hospital B would be required to develop a security program and implement the program for location 3 if all the material at that location is aggregated within a single physical barrier, such as a locked room, because the total quantity possessed is above the category 2 threshold of 1 TBq (27 Ci). Therefore, Hospital B would have to either add another physical barrier to isolate the aggregated material; separate the material into quantities less than category 2 quantities and place each behind at least one independent physical barrier; or develop and implement a security program at location 3.

2. What is the objective of the security program and what are the key security program requirements?

The proposed rule would require affected licensees to establish, implement, and maintain a security program. The objective of the security program would be to monitor, and

without delay detect, assess, and respond to any actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive materials. The objective was slightly revised to address actual or attempted unauthorized access in response to comments on the preliminary rule language. A licensee's security program would include a written security plan, implementing procedures, training, use of security zones, protection of information, coordination with the LLEA, testing and maintenance of security-related equipment, security measures, and a program review. Each of these areas is discussed in more detail in the following questions and answers.

3. What should a licensee's security plan address?

The purpose of a security plan is to establish, in writing, the licensee's overall security strategy to ensure that all of the required security measures work effectively and in an integrated way for all facilities and operations where category 1 or category 2 quantities of radioactive material will be used or stored. The plan would, among other things, include a description of the measures and strategies to implement the security requirements and describe any site-specific conditions that affect how the licensee will implement the requirements.

A licensee would be able to revise its security plan to address changing circumstances. Any changes to the security plan, as well as the original plan, would be approved by the individual with overall responsibility for the security program. The security plan would be retained until the Commission terminates the license, and any superseded portions would be retained for 5 years.

Security plans are important for the implementation of a performance-based regulation. An adequate plan requires a licensee to analyze the particular security needs of its individual facilities and to explain how it will implement its chosen security measures to ensure that they work together to meet the applicable performance objectives.

4. Would a licensee be required to have security procedures?

Yes, licensees would be required to develop and maintain written implementing procedures that document how the security requirements and the security plan would be met. These procedures must be designed to meet the individualized security needs of each site where a category 1 or category 2 quantity of radioactive material is used or stored. Procedures would need to be approved, in writing, by the individual with overall responsibility for the security program. The licensee would be required to keep a copy of the current procedures as a record until the Commission terminates the license. Superseded portions of the procedures would be retained for 5 years. Licensees should not submit procedures to the NRC as part of the license.

5. What training would be required?

As part of its physical protection program, each licensee would be required to conduct training on the security plan to ensure that those individuals responsible for implementation of the plan possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The extent of the training would need to be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material. Individuals would have to be instructed in the licensee's security program and implementing procedures, their responsibilities, and the appropriate response to alarms. In guidance, licensees with dedicated security staff will be encouraged to train their security personnel in the timely notification of affected LLEAs during emergencies. For improved coordination with LLEAs, such licensees will also be encouraged to train their security personnel using drills or table top exercises during integrated tests of their monitoring, detection, and response systems, and to notify affected LLEAs of opportunities to participate in such training.

An individual subject to the training requirements of § 37.43(c) would have to complete them before being permitted unescorted access to category 1 or category 2 quantities of radioactive material. The licensee would have to provide refresher training at least once every 12 months or when significant changes have been made to the security program. The refresher training would address any significant changes; reports on relevant security issues, problems, or lessons learned; relevant results from NRC inspections; and relevant results from the licensee's program review and the testing and maintenance program. Training records would be maintained for 5 years and would need to include training topics, training dates, and the list of personnel that attended the training. The rule language was revised to address comments on the preliminary rule language to clarify that refresher training would be necessary and to clarify what training records need to be maintained.

Training is essential if the licensee is to be adequately prepared for an effective and coordinated response to any effort to steal or divert category 1 or category 2 quantities of radioactive material. Adequate training is indispensable for an appropriate licensee response to an unauthorized intrusion.

6. Would licensees be required to protect information concerning their security program?

Yes. To prevent unauthorized disclosure, licensees would be required to limit access to their security plans and implementing procedures. These efforts would include measures to allow access to these documents only to those individuals who have a need to know the information to perform their duties and have been determined to be trustworthy and reliable based on the background investigation requirements set forth in proposed § 37.25(a)(2) through (a)(10). Licensees would be required to store security information in a manner to prevent removal, such as storage in a locked office or desk drawer.

To ensure that only trustworthy and reliable individuals with a need to know are allowed access to security plans and procedures, licensees would have to develop, implement, and maintain, written policies and procedures to control access to their security plan and security procedures. The licensee's information protection policies and procedures would have to ensure the proper handling and protection of security plans and implementing procedures against unauthorized disclosure. Licensees would be required to retain copies of the policies and procedures.

For the purposes of this proposed requirement, licensees cannot fingerprint individuals or subject them to an FBI background investigation to permit them access to security plans or procedures, unless those individuals are also permitted unescorted access to Category 1 or 2 radioactive materials. Information previously obtained during the hiring process may be used to support a licensee's determination of an individual's trustworthiness and reliability without having to reverify that information. Licensees that have SGI or SGI–M would remain subject to the more stringent information protection requirements of 10 CFR 73.21, including fingerprinting and an FBI criminal records check.

The NRC is specifically inviting comment on the requirement to protect security-related information. Please consider the following questions in developing comments:

(1) Do the Agreement States have adequate authority to impose the information protection requirements in this proposed rule?

(2) Can the Agreement States protect the information from disclosure in the event of a request under a State's Freedom of Information Act, or comparable State law?

(3) Is the proposed rule adequate to protect the licensees' security plan and implementing procedures from unauthorized disclosure, are additional or different provisions necessary, or are the proposed requirements unnecessarily strict?

(4) Should other information beyond the security plan and implementing procedures be protected under this proposed requirement?

(5) Should the background investigation elements for determining whether an individual is trustworthy and reliable for access to the security information be the same as for determining access to category 1 and category 2 quantities of radioactive material (with the exception of fingerprinting)?

7. What is the purpose of a security zone?

A security zone would be any area established by a licensee to provide physical protection for category 1 or category 2 quantities of radioactive material at a licensed facility. All category 1 and category 2 quantities of radioactive material at the facility would have to be used and stored within a security zone.

The purpose of security zones is to isolate and control access to the material to protect it more effectively and deter theft or diversion by providing, among other things, more time for licensees and LLEAs to respond. Isolation measures would protect category 1 or category 2 quantities of radioactive material by allowing access to security zones only through established access control points. Access control measures would allow only approved individuals to have unescorted access to the security zone, and ensure that other individuals with a need for access are escorted by approved individuals. A security zone effectively defines where the licensee will apply these isolation and access control measures.

To limit unescorted access to only approved individuals, licensees could isolate the radioactive materials using continuous physical barriers that allow access to the security zone only through established access control points; or licensees could exercise direct control of the security zone by approved individuals at all times.

Security zones may be permanent or temporary. Temporary security zones would need to be established to meet transitory or intermittent operating requirements such as periods of maintenance, source delivery, and source replacement. A licensee could meet the proposed requirement for a security zone at some temporary job sites (such as those involving onsite operations lasting less than a day) simply by keeping the area under "direct supervision" by authorized personnel. Similarly, when work is being done inside a temporary zone, a licensee could meet the requirements for controlling unescorted access by having the material, persons, and area within the zone under direct control of approved individuals at all times.

Because the purpose of security zones is different from the radiation safety purposes of the restricted areas and controlled areas defined in 10 CFR part 20, the security zone does not have to be the same as either of these areas. Because measures to control access are required for both radiation protection and security, however, a licensee does have the flexibility to use an area required for radiation protection purposes to fulfill the required functions of a security zone. Thus, for a temporary well-logging operation within which the licensee is required by 10 CFR 39.71 to have a "restricted area" to "maintain direct surveillance * * * to prevent unauthorized entry into a restricted area," a licensee could define a security zone with the same boundaries as this "restricted area," which is defined in 10 CFR 20.1003 as "an area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials." Similarly, a radiographer could choose to define a security zone with the same boundaries as the "high radiation area" over which radiography licensees are required by 10 CFR 34.51 to "maintain direct visual surveillance * * * to protect against unauthorized entry." (As defined in 10 CFR 20.1003, a "high radiation area" is "an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of a 0.1 rem (1 mSv) in 1 hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.")

Because materials licensees are differently configured and do not lend themselves to generically defined physical areas, the security zone concept permits significant flexibility for licensees to account for a range of site-specific concerns. It also provides regulators with a well-defined and enforceable requirement keyed to performance objectives of isolation and access control.

8. When would special additional measures for category 1 quantities of radioactive material be required?

One provision of the proposed rule would apply to category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange. Licensees would be required to provide, at a minimum, an approved individual to maintain continous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow the specified activities. The rule language was clarified in response to comments on the preliminary rule language.

Due to the natural decay of their radioactivity, sources lose their effectiveness as they get older and have to be replaced or replenished periodically with new sources to maintain a device's expected performance. Tamper-indicating devices and other intrusion detection equipment typically must be disabled to permit the source to be opened without tripping alarms. The new sources are typically shipped by an offsite supplier, who also often performs removal and exchange or reinstallation. After replacement, the removed older sources must be prepared onsite for shipment back to the manufacturer or for storage and eventual disposal. These nonroutine operations by nonlicensee employees at the licensee's site, during a time when devices for detecting theft or diversion are disabled, call for additional measures to compensate for the temporary increase in vulnerability.

9. What would be required to monitor and detect an unauthorized entry into a security zone?

A licensee would be required to establish and maintain the capability to continuously monitor and detect all unauthorized entries into its security zone(s). Monitoring and detection would be performed by either a monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility; electronic devices for intrusion detection alarms

that would alert nearby facility personnel; visual monitoring by video surveillance cameras; or visual inspection by approved individuals. The rule language was clarified in response to comments on the preliminary rule language.

A licensee would also need the capability to detect unauthorized removal of the radioactive material. For category 1 quantities of radioactive material, a licensee would need to immediately detect any attempted unauthorized removal through the use of electronic sensors linked to an alarm or continuous visual surveillance. For category 2 quantities of radioactive material, a licensee would need to verify the presence of the radioactive material through weekly physical checks, tamper indicating devices, actual usage of the material, or other means.

10. What are the requirements for personnel communications and data transmission?

Licensees would be required to maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems for any personnel and automated or electronic systems used to support the site security systems. Licensees would be required to have alternative capability for any system in the event of loss of the primary means of communication or data transmission and processing. The alternative means could not be subject to the same failure mode as the primary systems.

11. What would a licensee need to do when it detects an intrusion into its security zone?

A licensee's response to an intrusion would depend on the licensee's assessment of the purpose of the intrusion, but a response would be required without delay. If the unauthorized access appeared to the licensee to be an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee would have to immediately notify and request an armed response from the appropriate LLEA. An immediate response by the licensee would permit a more timely response from law enforcement, thereby reducing the risk that the material could be used for malevolent purposes. Immediate notification would also allow for early warning to other possible targets of a simultaneous attempt to divert material from multiple locations.

A licensee's decision to call the LLEA and the NRC would depend not only on the licensee's assessment of the intent of the unauthorized access but also on whether the area where the breach occurred is an area the licensee had previously determined needed to be monitored in order to meet the NRC physical protection requirements. Thus, a licensee's assessment and response to an intrusion alarm in the business office section of its facility could be entirely different from its assessment and response to an intrusion alarm in a radioactive materials storage area.

12. Can a licensee use automated devices to assess an intrusion and alert an LLEA?

Depending on the security system, the layout of controlled areas, and the design capabilities of the sensors, automated devices or systems may be programmed to automatically summon LLEA assistance in response to an intrusion alarm.

13. What coordination would be required with local law enforcement agencies?

Licensees would be required to coordinate, to the extent practicable, with the LLEA to discuss the LLEA response to threats to the licensee's facility. An LLEA would be defined as a government entity that has the authority to make arrests and the capability to provide an armed response. In the event of an actual or attempted theft, sabotage, or diversion of radioactive material, an armed response is likely to be necessary. Adversaries could be well armed, and the small unarmed or lightly-armed private security guard service typically used at byproduct material licensee sites would not be an adequate substitute for an LLEA. However, the LLEA need not be a municipal or county police force. If a hospital or university campus police force is the nearest law enforcement agency to the licensee's operation capable of providing an armed response and making arrests, that police force would meet the proposed definition of an LLEA.

A licensee would also have to consider whether the LLEA could provide the needed armed response at all times. Some LLEAs are on duty only during specified hours, and in such cases, the licensee would have to identify and coordinate with the closest LLEA able to provide an armed response and arrest perpetrators when the primary LLEA is off-duty.

Coordination activities include providing a description of the facility, radioactive materials, and security measures and notification that the licensee will request a timely and armed response to any actual or attempted theft, sabotage, or diversion of the licensee's radioactive materials. Coordination activities also include requesting information from the LLEA concerning the LLEA's capabilities to provide a timely armed response and to participate in drills or exercises, and requesting a contact in order to establish a means of direct communication. The licensee would be required to request that the LLEA enter into a written agreement with the licensee that describes the LLEA's commitments to provide a response. The licensee would be required to document its coordination efforts, including the dates, times, and locations of meetings and a list of licensee and LLEA staff present at the meetings. Licensees would be required to update their security plans with affected LLEAs every 12 months. At the suggestion of a commenter on the preliminary rule language, the NRC has added a new provision for the licensee to request that the LLEA notify the licensee when the LLEA's response capabilities become degraded. This is not intended to address a short-term situation where the LLEA may be responding to another emergency, but to address conditions that would last for a longer timeframe, such as a severe shortage of law enforcement personnel during a recovery from a natural disaster.

Coordination with an LLEA is essential in developing an effective and efficient physical protection program. Because certain situations may necessitate an armed response, a strategy that is consistent in scope and timing with realistic potential vulnerabilities of the subject radioactive material should be coordinated well in advance with the LLEA. Another purpose of coordination is to provide the responsible LLEA with an understanding of the potential consequences associated with unauthorized use of the radioactive material of concern, so that the LLEA can determine the appropriate priority of its response. The LLEA response would be needed not only to interdict and disrupt an attempted theft or sabotage onsite, but possibly for offsite coordination to protect public health and safety, and to mitigate the potential consequences of unauthorized use of radioactive material.

14. What if the LLEA declines to coordinate with a licensee?

The NRC recognizes that it cannot exercise authority over LLEAs, or any party, over which a licensee has no control and the NRC has no legal jurisdiction. The NRC also recognizes that an LLEA may have good reasons,

including resource limitations and possibly other coinciding events within its jurisdiction, for not entering into a formal agreement with a licensee.

An LLEA's refusal to coordinate with a licensee would not by itself render a licensee's security plan inadequate, however. In making its determination on the adequacy of the plan, the NRC will recognize that in an actual emergency, State and local government officials will respond to protect the health and safety of the public. A licensee would also be required under § 37.45(a)(2) to notify the appropriate NRC regional office within three business days if the LLEA has not responded to a request for coordination within 60 days of the coordination request; or if the LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities. The purpose of this notification would be to allow NRC time to notify the Department of Homeland Security (DHS), or where necessary, contact the LLEA directly, to ensure that the LLEA understands the importance of adequate coordination. Through these interactions, the NRC would obtain confidence that the LLEA would respond in the event of an actual emergency. Thus, if the LLEA refuses to coordinate beforehand, the licensee could still comply by making and documenting periodic good-faith efforts to elicit the LLEA's participation in planning for a timely and effective response. The licensee would be required to notify the NRC if the LLEA declines to engage in coordination activities.

15. What are the LLEA notification requirements for work at a temporary job site?

For temporary job sites (*i.e.,* locations not specifically identified by the license for possession of radioactive materials), the proposed rule would require licensees to provide advance written notification to the appropriate LLEA(s) at least 3 business days in advance if the licensee plans to use or store category 1 or category 2 quantities of radioactive material at the temporary job site for more than 7 consecutive calendar days. This requirement is intended to ensure that local law enforcement officers who might be summoned to such a job site in the event of a security incident are aware that they might be summoned, will know the potentially affected location, and are able to reach responsible licensee representatives before the operations begin if the officers want additional information.

The NRC is proposing 7 consecutive calendar days as a threshold for the LLEA notification requirement in an effort to balance the need for timely LLEA awareness with the need to avoid licensee notification requirements that may be out of proportion to the security risks. The NRC is aware that some temporary job sites may only be in use by a licensee for several days a year on short notice and at unpredictable intervals. These circumstances make it difficult for individuals or groups to plan and execute theft, sabotage, or diversion even with the help of an insider.

The notification would need to include such things as the purpose of the notification, timeframe and location for the temporary work, information on the quantities of radioactive material to be used or stored at the site, and contact information.

The proposed notification requirement would not preclude a licensee from coordinating with an LLEA at a temporary job site, if the LLEA and licensee believe it would be beneficial to do so. Notification would give the LLEA essential information about the time, location, and nature of the activity so that the LLEA could be prepared to respond if necessary, and would provide the LLEA with an opportunity to request more information if needed.

The NRC is specifically inviting comment on the requirement to contact the LLEA for work at a temporary jobsite. Please consider the following questions in developing comments:

(1) Is there any benefit in requiring that the LLEA be notified of work at a temporary jobsite?

(2) Should notifications be made by licensees for work at every temporary jobsite or only those where the licensee will be working for longer periods, such as the 7 day timeframe proposed in the rule?

(3) If notifications are required, is 7 days the appropriate threshold for notification of the LLEA or should there be a different threshold?

(4) Will licensees be able to easily identify the LLEA with jurisdiction for temporary jobsites or does this impose an undue burden?

(5) Are LLEAs interested in receiving these notifications?

16. Would a licensee be prohibited from working at a temporary job site if the licensee couldn't notify the affected LLEA(s) 3 business days in advance?

No. The proposed LLEA notification requirement for temporary job site operations provides for unforeseen circumstances under which a licensee might not be able to provide 3 business days written advance notice to the LLEA. If, due to an emergency or other unforeseen circumstances, a licensee is required to work at a temporary job site for more than 7 consecutive calendar days and is unable to provide the 3 days advance written notice to the LLEA before the licensee's trip to the site, the licensee would be required to provide as much advance notice as possible by telephone, facsimile, or e-mail.

17. What are the proposed special requirements for mobile sources?

The proposed rule would require licensees using mobile devices containing a category 1 or category 2 quantity of radioactive material to have two independent physical controls that form tangible barriers to prevent unauthorized removal of devices. For devices in or on a vehicle or trailer, a licensee would be required to use a method to disable the vehicle or trailer when it is not under direct control and constant surveillance by the licensee. Licensees would not be allowed to rely on the removal of an ignition key to meet this requirement. These provisions are in addition to the other requirements in subpart C.

Mobile devices, particularly portable ones, are likely to be more vulnerable to attempted theft or diversion because an adversary could more easily remove these devices before the licensee or LLEA has an opportunity to respond. The objective of this requirement is to delay intruders long enough for a timely licensee and LLEA response.

A mobile device is defined in the proposed rule as a piece of equipment containing licensed radioactive material that is either: (1) Mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or (2) designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location, such as an irradiator, but the proposed definition would include radiography cameras, source changers, well logging equipment, gauges or controllers, storage containers, lead pigs for holding sources during a source exchange, and onsite or offsite transportation packages.

Commenters on the preliminary rule language requested that the requirement to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee be modified to provide an exception for oil and gas field service vehicles that may have to evacuate a work area quickly due to extreme hazard. The extra time needed to overcome a vehicle disabling feature could delay timely evacuation and result in bodily harm or death under certain operating conditions, such as

fire or loss of well head pressure control. The NRC recognizes the need to balance security measures against health and safety concerns and is willing to consider some form of relief from the proposed vehicle disabling requirements. The NRC is specifically requesting comment on this issue. Please consider the following questions when developing comments on this issue:

(1) Should relief from the vehicle disabling provisions be provided?

(2) Have licensees experienced any problems in implementing this aspect of the Increased Controls?

(3) Should there be an exemption written into the regulations or should licensees with overriding safety concerns be required to request an exemption from the regulations to obtain relief from the provision?

(4) If an exemption is included in the regulations, should it be a blanket exemption or a specific exemption for the oil and gas industry?

(5) Does the disabling provision conflict with any Occupational Safety and Health Administration requirements or any State requirements?

18. What maintenance, testing, and calibration requirements would apply to the security systems?

Licensees would be required to test intrusion alarms, physical barriers, and other systems used for securing and monitoring access to radioactive material, and these would have to be maintained in operable condition. Each intrusion alarm and associated communication system subject to the proposed rule's requirements for monitoring, detection, and assessment would have to be inspected and tested for performance as described in the licensee's security plan, but no less frequently than once every quarter. In guidance, licensees will also be encouraged to conduct periodic testing of the integrated functioning of their monitoring, detection, and response systems as a whole, including systems for notifying affected LLEAs. Licensees with dedicated security staff will also be encouraged to notify affected LLEAs of each opportunity to participate in drills or table top exercises when licensees conduct integrated tests of their monitoring, detection, and response systems. Licensees would be required to maintain records of the maintenance, testing, and calibration activities for 5 years.

19. What events would a licensee need to report to the NRC?

A licensee would be required to report any actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material as soon as possible after initiating a response, which includes notification of the LLEA. The licensee would be required to submit a written report to the NRC within 30 days after the initial notification. A licensee would also be required to report any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material to both the LLEA and the NRC. The NRC is specifically requesting comment on the reporting requirements. Please consider the following questions when developing comments on this issue.

(1) Are these the appropriate items and thresholds to be reported to the LLEA?

(2) Are these the appropriate items and thresholds to be reported to the NRC?

(3) Should suspicious activities be reported? If they are reported, what type of activities should be considered suspicious?

(4) Is the timeframe for reporting appropriate?

20. How would a licensee determine the effectiveness of the security program?

Licensees would be required to review the security program every 12 months to confirm compliance with the requirements. The review would evaluate the security program content and implementation. The licensee would be required to document any review findings and corrective actions and the records would need to be maintained for 5 years.

D. Transportation Security

1. What is the NRC authority to issue these transportation security requirements?

Sections 53, 81, and 161 of the AEA, as amended, provide the NRC with the statutory authority to issue these transportation security requirements. The NRC shares overlapping jurisdiction over the transport of radioactive material over public roadways and by rail with DOT and the Department of Homeland Security.

2. Why is this material being shipped?

In general, category 1 and category 2 quantities of radioactive material are shipped to medical institutions, companies that support medical and academic institutions, and companies that manufacture and distribute radioactive material for various industrial applications. As radioactive sources get older, radioactive decay decreases the sources' strength and the sources lose their effectiveness and have to be replaced or replenished with new sources. The older sources must be transported for disposal or back to the manufacturer.

In addition, commercial power plants will occasionally transport large scale plant equipment that may contain radioactive material (*e.g.,* steam generators and reactor vessels) for disposal.

3. What are the new transportation security requirements?

In general, the proposed rule includes requirements for pretransfer checks, preplanning and coordination of shipments, advance notification of shipments, control, monitoring, and communications during shipments, procedures and training, investigations of missing shipments, and reporting of missing material. Each of these areas is discussed in more detail in the following questions and answers.

These requirements would apply to ground transport of category 1 or category 2 quantities of radioactive material shipped in a single package or in multiple packages in a single conveyance. Per proposed § 73.35, the category 1 requirements would also apply to shipments of irradiated reactor fuel weighing 100 grams or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation does rate in excess of 1 Sv (100 rem) per hour at a distance of 0.91 m (3 ft) from any accessible surface without intervening shielding. Note that a licensee is not responsible for complying with these requirements when a carrier aggregates radioactive material, during transport or storage incidental to transport, for two or more conveyances from separate licensees that individually do not exceed the limits. As provided in proposed § 37.73(c), the shipping licensee would be responsible for meeting the requirements unless the receiving licensee agrees in writing to arrange for the in-transit physical protection. At the suggestion of commenters on the preliminary rule text, the proposed rule text was revised to clarify that the requirements would only apply to the domestic portion of the transportation for imports and exports.

4. Is verification of the transferee's license necessary?

Yes, proposed § 37.71 would require any licensee transferring category 1 and category 2 quantities of radioactive material to a licensee of the NRC or an Agreement State to verify that the

transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. For transfers of category 1 quantities of radioactive material, the transferring licensee would also be required to verify that the licensee is authorized to receive radioactive material at the address requested for delivery. These verifications would be conducted with the license issuing authority, *i.e.,* the NRC or the appropriate Agreement State or by using the license verification system. The license verification system is a new web-based system that NRC is developing that may be used to verify the validity of a license issued by either NRC or an Agreement State. Although this system is in the early stages of development, it will be available before the effective date of the final rule. If the system is not available licensees would need to contact the appropriate licensing agency. Licensees should contact the appropriate NRC regional office to verify the validity of NRC licensees. Information on Agreement State contacts is provided on the NRC web page at *http://nrc.stp.ornl.gov/asdirectory.html.* Licensees exporting material would need to meet the requirements in 10 CFR part 110 for checking the documentation that the recipient has the necessary authorization under the laws and regulations of the importing country. These actions are intended to mitigate the risk that the material could be shipped to an unauthorized recipient.

The NRC is considering subjecting the transfers of category 2 quantities of radioactive material to the license address verification requirement. If category 2 transfers are made subject to the license address verification requirement, the transferring licensee would be required to verify with the license issuing authority that the transferee licensee is authorized to receive radioactive material at the address requested for delivery. We are specifically inviting public comment on several aspects of license and address verification. In developing comments on this aspect, consider the following:

(1) Should there be a requirement for verification of the license for transfers of category 2 quantities of radioactive material or would it be acceptable to wait for the system being developed before requiring license verification for transfers of category 2 quantities of radioactive material?

(2) We are interested in how address verification might work for shipments to temporary job sites and the ability of both licensees and the Agreement States to comply with such a requirement. For example, would States be able to accommodate such requests with their current record systems?

(3) We are also seeking comment on the frequency of the license verification. For example, should a licensee be required to check with the licensing agency for every transfer or would an annual check (or some other frequency) of the license be sufficient?

(4) If an annual check is allowed, how would the transferring licensee know if a license has been modified since the last check and that the licensee is still authorized to receive the material?

5. Is preplanning and coordination of the shipments necessary?

Yes, § 37.75(a) of the proposed rule would require preplanning and coordination of shipment information for shipments of category 1 quantities of radioactive material. The shipping licensee (licensee sending the licensed material) would be required to coordinate the departure and arrival times, including the no-later-than arrival time, with the receiving licensee (licensee receiving the licensed material). This coordination would reduce the risk that theft or diversion of the material would go unnoticed or unreported. The licensee would also need to preplan and coordinate the shipment information with the State(s) through which the shipment will pass. As part of the coordination activities, the licensee would be required to discuss the State's intention to provide law enforcement escorts for the shipments, identify highway route control quantity shipments, identify safe havens, and arrange for any positional information sharing. The purpose of the information sharing is to ensure minimal delay of the shipment.

For shipments of category 2 quantities of radioactive material, § 37.75(b) of the proposed rule would require that the shipping licensee verify the shipment no-later-than arrival time and the actual arrival time with the receiving licensee.

The definitions section of the proposed rule would define the term "no-later-than arrival time" as the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than-arrival time may not be more than 2 hours after the estimated arrival time for category 1 shipments and not more than 4 hours after the estimated arrival time for category 2 shipments. Verifying that the shipment arrives on time provides the licensee with the means to identify and immediately report an unusual occurrence that could lead to the theft or diversion of the material.

Commenters on the preliminary draft rule text suggested that a timeframe be added to the definition and suggested 24 hours as the appropriate timeframe. The NRC agrees that the definition would be strengthened by adding a timeframe; however, the NRC believes that 2 hours for category 1 shipments and 4 hours for category 2 shipments are the appropriate timeframes. The NRC believes that 24 hours is too long before starting an investigation. The sooner an investigation is started, the better chance there is of recovering the material.

6. What does the NRC consider to be a safe haven?

A definition for the term "safe haven" has been added to the definitions section of the proposed rule text at the request of commenters on the preliminary rule text. A safe haven would be defined as "[a] readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities." The NRC expects safe havens to be identified and designated by the licensee.

Licensees should use the following criteria in identifying safe havens for shipments: Close proximity to the route, *i.e.,* readily available to the transport vehicle; security from local, State, or Federal assets is present or is accessible for timely response; the site is well lit, has adequate parking, and can be used for emergency repair or to wait for LLEA response on a 24-hour a day basis; and additional telephone facilities are available should the communications system of the transport vehicle not function properly. Possible safe haven sites include: Federal sites having significant security assets; secure company terminals; State weigh stations; truck stops with secure areas; and LLEA sites, including State police barracks.

In addition, in response to comments on the preliminary rule text, the NRC revised the proposed § 37.75(a)(2) to clarify that the preplanning and coordination of all category 1 shipments with the governor or designee of each state that the shipment will pass through will require the identification of safe havens.

7. Is the shipping licensee required to notify the receiving licensee if the no-later-than arrival time changes?

Yes. If the no-later-than arrival time will not be met, then under § 37.75(d) of

the proposed rule, the shipping licensee must inform the receiving licensee of the new no-later-than arrival time for shipments of category 1 or category 2 quantities of radioactive material. This provision allows licensees the ability to modify departure and arrival time due to unforeseen events and was added at the suggestion of commenters on the preliminary rule text.

8. Whom would the licensee notify when the shipment arrives?

Proposed § 37.75(c) would require that the receiving licensee notify the shipping licensee when the shipment of a category 1 or category 2 quantity of radioactive material arrives at its destination. The notification must be no later than 4 hours after the package arrives. A timeframe was added to the proposed rule at the suggestion of commenters on the preliminary rule text.

9. What does State refer to in the requirements?

As used in the definitions section of the proposed rule, the term "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. A list of the contact information for the governor's designees is published annually in the **Federal Register,** most recently on July 14, 2009 (74 FR 34053). An updated list is posted on the NRC Web site at *http://nrc-stp.ornl.gov/special/designee.pdf.* Copies may also be obtained by contacting the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, Nuclear Regulatory Commission. If the final rule is approved, the NRC will work with the States to include a separate column for contacts for 10 CFR part 37.

10. What advance notifications would be required?

Proposed § 37.77 would require advance written notifications for shipments containing category 1 quantities of radioactive material. The advance notifications would be made to the NRC and to any State through which a shipment was being transported. The State notification would be made to the governor or the governor's designee.

Advance notification provides States and the NRC with knowledge of shipments so that in the event there is an increase in the risk of theft or diversion of the material, the regulator could delay or reroute the shipment to minimize the risk. This advance notification also allows States with escort requirements to engage in planning to support the shipment.

Advance notifications would not be required for shipments of category 2 quantities of radioactive material, unless the shipment falls within the scope of 10 CFR 71.97(b).

11. What information would be included in an advance notification?

Proposed § 37.77(b) would require the following information be included in an advance notification for a category 1 shipment of radioactive material, if available at the time of notification: (1) The name, address, and telephone number of the shipper, carrier, and receiver of the shipment; (2) the license number of the shipper and receiver; (3) a description of the radioactive material contained in the shipment, including the radionuclides and quantity; (4) the point of origin of the shipment and the estimated time and date that shipment will commence; (5) the estimated time and date that the shipment is expected to enter each State along the route; (6) the estimated time and date of arrival of the shipment at the destination; and (7) the contact and telephone number for the point of contact. For the purpose of coordination only, the actual information in the advance notification would not be considered to be SGI–M. Any information that is not available at the time of the initial notification would be provided in a revised notification once the information becomes available.

12. What should a licensee do if the shipment schedule is revised or the shipment cancelled?

If the shipment schedule is revised or cancelled, §§ 37.77(c) and (d), respectively, of the proposed rule would require the shipping licensee to notify the appropriate States and the NRC. The preliminary rule text required that the licensee would telephone the governor's designees when it discovered that the schedule would not be met. In response to comments on the preliminary rule text, the NRC has modified the proposed rule text to require that the governor's designee be notified without specifying a specific means for the notification.

13. What should a licensee do if the shipment does not arrive by the no-later-than arrival time?

Proposed § 37.79(d) would require a licensee that has shipped category 1 or category 2 quantities of radioactive material to initiate an investigation for any shipment that has not arrived at the receiving licensee's facility by the designated no-later-than arrival time. The no-later-than arrival time would be defined as the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than-arrival time may not be longer than 2 hours after the estimated arrival time for a shipment of category 1 quantities of radioactive material and 4 hours after the estimated arrival time for a shipment of category 2 quantities of radioactive material. Commenters on the preliminary draft rule text suggested that a timeframe be added to the definition and suggested 24 hours as the appropriate timeframe. The NRC agrees that the definition would be strengthened by adding a timeframe; however, the NRC believes that 2 hours for category 1 shipments and 4 hours for category 2 shipments are the appropriate timeframes. The NRC believes that 24 hours is too long before starting an investigation. The sooner an investigation is started, the better chance there is of recovering the material.

14. When must a licensee make notification that a shipment is lost or missing?

When a licensee determines that a shipment of a category 1 quantity of radioactive material is lost or missing, § 37.81(a) of the proposed rule would require the licensee to notify the LLEA in the area of the shipment's last confirmed location within 1 hour and then to notify the NRC Operations Center. Notification to the NRC should be as prompt as possible, but not at the expense of causing delay or interference with the LLEA response to the event.

When a licensee determines that a shipment of category 2 quantities of radioactive material is lost or missing, § 37.81(b) of the proposed rule would require the licensee to notify the NRC Operations Center within 4 hours of such determination. The licensee would also be required to immediately notify the NRC Operations Center if, after 24 hours from its determination that the shipment was lost or missing, the location of the material still cannot be determined.

Early notification provides for a more timely response from law enforcement, thereby reducing the risk of the misuse of the material.

15. Should licensees make notification that a lost or missing shipment has been found?

Yes, proposed §§ 37.81(e) and (f), for category 1 shipments and category 2 shipments respectively, require the

licensee to notify the NRC Operations Center when a lost or missing shipment has been located. This notification would be considered an update on the initial notification. Without this notification, regulatory authorities and LLEA would waste resources continuing any search for the material.

16. What would a licensee be required to do if there is an attempt to steal or divert a shipment?

For shipments of category 1 quantities of radioactive material, proposed § 37.81(c) would require a licensee who discovers an actual or attempted theft or diversion of a shipment, or any suspicious activity related to a shipment, to notify the designated LLEA along the shipment route as soon as possible. After notifying the LLEA, the licensee would be required to notify the NRC Operations Center. The NRC Operations Center would notify other affected States and the agency's Federal partners. For shipments of category 2 quantities of radioactive material, proposed § 37.81(d) would require a licensee who discovers an actual or attempted theft or diversion of a shipment, or any suspicious activity related to a shipment, to notify the NRC Operations Center as soon as possible. These security measures enhance the likelihood that the material will be successfully protected or recovered and allows for early warning of other possible victims of a simultaneous attempt to divert material from multiple locations.

17. What types of procedures and training are necessary for shipping category 1 quantities of radioactive material?

Proposed § 37.79(c)(1) would require licensees shipping category 1 quantities of radioactive material to ensure that normal and contingency procedures are developed to cover notifications; communication protocols; loss of communication; and response to an actual or attempted theft or diversion of a shipment, or any suspicious activity related to a shipment. The licensee would be required to ensure that drivers, accompanying personnel, railroad personnel, and movement control center personnel are appropriately trained in the normal and contingency procedures. Procedures and training provide reasonable assurance that these individuals are prepared for most situations and are able to act without delay to prevent the theft or diversion of shipments.

18. What would be included in the communication protocols?

Proposed § 37.79(c)(1)(ii) would require that the communication protocols include a strategy for the use of authentication and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost.

19. What are the physical protection requirements for road shipments of category 1 quantities of radioactive material?

Proposed § 37.79(a)(1)(i) would require that any licensee that ships category 1 quantities of radioactive material by road either establish or use a carrier that has established, movement control centers that maintain position information from a location remote from the activity of the transport vehicle or trailer. The control centers would be required to monitor shipments on a continuous and active monitoring basis (24 hours a day, 7 days a week), and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

Proposed § 37.79(a)(1)(ii) would require that the licensee ensure that redundant communications are in place that would allow the transport to contact an escort vehicle (if used) and the movement control center at all times. The redundant communication must not be subject to the same interference factors as the primary communication method. The same interference factors mean any two systems that rely on the same hardware or software to transmit their signal (*e.g.,* cell tower or proprietary network).

Redundant communications provide drivers with the means to immediately report an unusual occurrence that could lead to the theft or diversion of the material. Early notification would permit a more timely response from law enforcement, thereby reducing the risk of the misuse of the material.

Proposed § 37.79(a)(1)(iii) would require that the licensee ensure that the shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. The movement control center would be required to provide positive confirmation of the location, status, and control over the shipment and be prepared to implement preplanned procedures in response to deviations from the authorized route or to a notification of actual or attempted theft or diversion or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures would include the identification of, and contact information for, the appropriate LLEA along the shipment route.

A telemetric position monitoring system is a data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations. The gathering of this information permits remote monitoring and reporting of the location of a transport vehicle or package. GPS and radiofrequency identification (RFID) are examples of telemetric position monitoring systems.

If the driving time period is greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the DOT Federal Motor Carrier Safety Administration, proposed § 37.79(a)(1)(iv) would require that the licensee ensure that an accompanying individual is provided for the entire shipment. The accompanying individual may be another driver. This security measure provides reasonable assurance that the material will be protected from theft or diversion when it is stationary, as well as in emergency situations where it becomes necessary for the driver to stop or leave the vehicle.

20. Would GPS be required?

No, GPS would not be required. For category 1 material, the NRC is proposing to require continuous and active monitoring for shipments. Continuous and active monitoring means that at any time while the shipment is enroute, the licensee must be knowledgeable of the shipment's whereabouts. Not specifying a particular technology provides licensees with flexibility to design a continuous and active monitoring system that meets their unique circumstances. However, GPS would be considered an acceptable method.

21. What are the physical protection requirements for rail shipments of category 1 quantities of radioactive material?

Proposed § 37.79(b)(1)(i) would require each licensee that ships category 1 quantities of radioactive material by rail to ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to a licensee, third-party, or railroad communications center which meets certain criteria. The communications center would need to provide positive confirmation of the location of the shipment and its status.

The communications center would also need to be prepared to implement preplanned procedures in response to deviations from the authorized route or to a notification of an actual or attempted theft or diversion of a shipment, or any suspicious activity related to a shipment. These procedures include the identification of, and contact information for, the appropriate LLEA along the shipment route. Rail shipment tracking provides the means for a communications center to immediately report an unusual occurrence that could lead to the theft or diversion of the material. Early notification provides for a more timely response from LLEAs, thereby reducing the risk of the misuse of the material.

Proposed § 37.79(b)(1)(ii) would require that the licensee have an NRC-approved monitoring plan to ensure that no unauthorized access to the shipment takes place while the shipment is in a railroad classification yard. The NRC is specifically seeking comment on the feasibility of this requirement. In developing comments on this aspect, consider the following questions:

(1) How could surveillance of the shipment be accomplished while in the classification yard?

(2) Would the classification yard allow an individual to accompany a shipment while the shipment is held in the classification yard?

(3) What precautions might be necessary from a personal safety standpoint?

22. What are the physical protection requirements for shipments of category 2 quantities of radioactive material?

Proposed § 37.79(a)(2) would require that a licensee shipping category 2 quantities of radioactive material by road maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance. Proposed § 37.79(a)(3) (for category 2 road shipments) and proposed § 37.79(b)(2) (for category 2 rail shipments), in the case of the licensee using a common carrier, would require that licensees use a carrier that has an established package tracking system. An established package tracking system means a documented, proven, and reliable system routinely used to transport objects of value. The package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control. The licensee would be required to use a carrier that maintains constant control and surveillance during transit and has the capability for immediate communication to summon appropriate response or assistance. The carrier must also require an authorized signature prior to releasing the package for delivery or return.

In general, the licensee must be able to contact the shipping carrier and determine the approximate location of the shipment. Package tracking systems, such as common overnight delivery service with standard tracking would be acceptable. These requirements mitigate with reasonable assurance the risk of loss, theft or diversion of the material.

23. How long do records related to a shipment need to be maintained?

Proposed § 37.71 would require licensees to retain records documenting the verification for license authorization for category 1 quantities of radioactive material transfers for 5 years. Proposed § 37.75(e) would require that licensees retain records related to preplanning and coordination for 5 years. Proposed § 37.77(e) would require that licensees retain records related to the advance notification for shipments of category 1 quantities of radioactive material for 5 years. The requirement for documentation and record retention related to the preplanning and coordination of shipments was added at the suggestion of commenters on the preliminary rule language.

24. How is the public protected from loss, theft, or diversion of these shipments?

Regulating transport of radioactive material is a joint responsibility of the NRC and DOT. The quantities of radioactive materials being considered as part of this rulemaking, in general, are transported in packages (casks) that meet rigorous NRC safety standards. The packages are referred to as "Type B" packages in both NRC and DOT regulations. The NRC fact sheet on transportation of radioactive materials can be found at *http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/transport-spenfuel-radiomats-bg.html.*

The carrier transporting radioactive material must also meet the DOT's requirements for shipment of the radioactive material. A link to the DOT's Web site is provided on the NRC's Web site at *http://www.nrc.gov/materials/transportation.html.*

25. What are the requirements for small quantities or irradiated reactor fuel?

The proposed rule would add a new § 73.35 to Part 73, which would provide that the requirements for shipments of irradiated reactor fuel weighing 100 g (0.22 lb) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Sv (100 rem) per hour at a distance of 0.91 m (3 ft) from any accessible surface without intervening shielding, would be the same as the requirements for shipments of category 1 quantities of radioactive material.

26. What doesn't this proposed rule cover?

The proposed rule does not address air or water transport. Transport of radioactive material within airports and by air is regulated by the Federal Aviation Administration. Transport of radioactive material within ports and by waterway is regulated by the U.S. Coast Guard.

The proposed rule also does not address transshipments of category 1 or category 2 quantities of radioactive material through the United States. Transshipments are shipments that are originated by a foreign company in one country, pass through the United States, and then continue on to a company in another country. Transshipments are regulated by the DOT and DHS.

Finally, this rulemaking does not address transport of spent fuel, except irradiated reactor fuel weighing 100 g (0.22 lb) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Sv (100 rem) per hour at a distance of 3 ft from any accessible surface without intervening shielding.

III. Discussion of Proposed Rule by Section

Section 30.6 Communications

This section would be revised to include a reference to the new 10 CFR part 37.

Section 30.13 Carriers

This section would be revised to include 10 CFR part 37 in the list of regulations that exempt common carriers.

Section 30.32 Application for Specific Licenses

Paragraph (l) would be added to require that an application under 10 CFR part 30 include information concerning whether the applicant's proposed security program meets the requirements of 10 CFR part 37.

Section 30.33 General Requirements for Issuance of Specific Licenses

Paragraph (a)(4) would be revised to include a reference to the new 10 CFR part 37.

Section 32.1 Purpose and Scope

10 CFR part 37 would be added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 33.1 Purpose and Scope

10 CFR Part 37 would be added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 34.1 Purpose and Scope

10 CFR Part 37 would be added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 35.1 Purpose and Scope

10 CFR Part 37 would be added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 36.1 Purpose and Scope

10 CFR Part 37 would be added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 37.1 Purpose

This section would establish the purpose for the proposed new 10 CFR part 37.

Section 37.3 Scope

This section would establish the scope of the proposed new 10 CFR part 37. These regulations would apply to any person licensed by the NRC, who possesses, uses, or transports category 1 or category 2 quantities of radioactive material. Paragraph (a) would establish the applicability for subpart B. Paragraph (b) would establish the applicability for subpart C. Paragraph (c) would establish the applicability for subpart D.

Section 37.5 Definitions

Definitions of the following terms that would be included in this part are identical to the definition of the term in other parts of this chapter: Act, Agreement State, Becquerel, Byproduct material, Commission, Curie, Government agency, License, Lost or missing material, Person, State, and United States. In addition, definitions for the following terms are included in this part: Approved individuals, Access control, Aggregated, Background investigation, Category 1 quantity of radioactive material, Category 2 quantity of radioactive material, Diversion, Escorted access, Fingerprint Orders, Isolation, License issuing authority, Local law enforcement agency, Mobile device, Movement control center, No-later-than arrival time, Reviewing official, Sabotage, Safe haven, Security zone, Telemetric position monitoring system, Temporary job site, Trustworthiness and reliability, and Unescorted access.

Section 37.7 Communications

This section would specify where all communications and reports concerning 10 CFR part 37 would be sent.

Section 37.9 Interpretations

This section would establish that no interpretations of the meaning of the regulations in 10 CFR part 37 by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized as binding upon the Commission, unless specifically authorized by the Commission in writing.

Section 37.11 Specific Exemptions

This section would establish that the Commission may grant exemptions from the requirements of the regulations in 10 CFR part 37 that it determines are authorized by law and that will not endanger life or property or the common defense and security, and are otherwise in the public interest. Paragraph (b) would exempt a licensee's activities from 10 CFR part 37 to the extent that the activities are covered under the physical protection requirements of 10 CFR part 73.

Section 37.13 Information Collection Requirements: OMB Approval

Paragraph (a) would specify that the NRC 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. Paragraph (b) would list those sections in 10 CFR part 37 that have approved information collection requirements.

Section 37.21 Personnel Access Authorization Requirements for Category 1 or Category 2 Quantities of Radioactive Material

Paragraph (a) of this section would establish which licensees would need to comply with the requirements of the proposed subpart B of 10 CFR part 37.

Paragraph (b) would establish the general performance objective to ensure that the individuals subject to the access authorization program are trustworthy and reliable.

Paragraph (c)(1) would establish the individuals that would be subject to the access authorization program. Paragraph (c)(2) would allow licensees to not subject those individuals listed in 10 CFR 37.29(a) through (l) to the investigation elements of the access authorization program. Paragraph (c)(3) would require that licensees only approve those individuals whose job duties permit unescorted access to category 1 or category 2 quantities of radioactive material.

Section 37.23 Access Authorization Program Requirements

This section would establish the general requirements for the access authorization program.

Section 37.25 Background Investigations

This section would establish the elements of the background investigation that is necessary before granting an individual unescorted access to category 1 or category 2 quantities of radioactive material. The scope of the initial investigation would be the past 10 years.

Section 37.27 Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to Category 1 or Category 2 Quantities of Radioactive Material

Paragraph (a) would establish the general requirements for criminal history records checks of individuals to be granted unescorted access to category 1 or category 2 quantities of radioactive material.

Paragraph (b) would prohibit a licensee from basing a final determination to deny an individual unescorted access authorization solely on the basis of certain information received from the FBI.

Paragraph (c) would establish the procedure for submitting fingerprint records to the NRC.

Section 37.29 Relief From Fingerprinting, Identification, and Criminal History Records Checks and Other Elements of Background Investigations for Designated Categories of Individuals Permitted Unescorted Access to Certain Radioactive Materials or Other Property

This section would provide relief from the fingerprinting and criminal history records check requirements and the background investigation requirements of this subpart for the certain categories of individuals.

Section 37.31 Protection of Information

This section would outline the proposed requirements for the protection and release to authorized personnel of personal information collected by a licensee during a background investigation.

Section 37.33 Access Authorization Program Review

This section would outline the requirements for an annual access authorization program review to confirm compliance with the requirements of subpart B of 10 CFR part 37 and for comprehensive corrective actions to be taken in response to any nonconformance identified by the review.

Section 37.41 Security Program

Paragraph (a) would establish the applicability of the security program. Paragraph (a)(1) would require licensees that possess an aggregated quantity of category 1 or category 2 quantities of radioactive material to develop, establish, implement, and maintain a security program. Paragraph (a)(2) would require those licensees that are authorized to possess but don't actually possess an aggregated quantity to develop a security program. Paragraph (a)(2) would also require a licensee to implement the security program at least 90 days before aggregating radioactive material to the category 2 threshold and to notify the NRC of the implementation.

Paragraph (b) would establish the general performance objective of the security program.

Paragraph (c) would establish the program features that must be addressed in the security program.

Paragraph (d) would require licensees that possess a category 1 or category 2 quantity of radioactive material to submit information concerning the licensee's compliance with the security program requirements within 30 days of the final rule's effective date.

Section 37.43 General Security Program Requirements

Paragraph (a)(1) would require licensees to develop a written security plan that addresses how the licensee will implement the security program requirements. Paragraph (a)(2) would require the security plan to be reviewed and approved by the individual with overall responsibility for the security program. Paragraph (a)(3) would allow a licensee to revise its security plan to ensure effective implementation of the plan. Paragraph (a)(4) would require the licensee to retain a copy of the current security plan until the license is terminated and any security plan revisions for 5 years.

Paragraph (b)(1) would require licensees to develop and maintain written procedures for implementation of the security plan. Paragraph (b)(2) would require the procedures to be approved by the individual with overall responsibility for the security program. Paragraph (b)(3) would require the licensee to retain a copy of the procedures until the license is terminated and any revisions for 5 years.

Paragraph (c) would require licensees to conduct training and annual refresher training on the security plan. Licensees would be required to maintain training records for 5 years from the date of the training.

Paragraph (d) would require licensees to protect the security plan and implementing procedures from unauthorized disclosure. Licensees would be required to develop, maintain and implement written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures. Only individuals with a need-to-know and that have been determined to be trustworthy and reliable would be able to have access to the protected information. The information protection procedures would be retained for 5 years after the document is no longer needed.

Section 37.45 LLEA Coordination and Notification

Paragraph (a) would require that a licensee attempt to coordinate with an LLEA and would specify the types of information to be shared with the LLEA.

Paragraph (b) would establish when the licensee must notify the LLEA about planned work at a temporary job site and the information to be shared in the notification.

Paragraph (c) would require the licensee to maintain records of its coordination activities with any LLEA.

Section 37.47 Security Zones

Paragraph (a) would require licensees to establish security zones for the use of category 1 or category 2 quantities of radioactive material.

Paragraph (b) would require the establishment of temporary security zones, as necessary, to meet transitory or intermittent business activities.

Paragraph (c) would require that security zones use physical barriers or direct control of the security zone to allow unescorted access only to approved individuals.

Paragraph (d) would require licensees to provide an approved individual to maintain constant surveillance of sources in temporary security zones or in a security zone in which a physical barrier or intrusion detection system has been disabled to allow maintenance, source receipt, preparation for shipment, source installation, or removal or exchange of category 1 quantities of radioactive material.

Section 37.49 Monitoring, Detection, and Assessment

Paragraph (a) would require the licensee to establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into the security zones.

Paragraph (b) would require the licensee to assess without delay each actual or attempted unauthorized entry into the security zone.

Paragraph (c)(1) would require the licensee to maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems. Paragraph (c)(2) would require the licensee to provide alternative capabilities for personnel communication and data transmission and processing.

Paragraph (d) would require the licensee to respond without delay to any actual or attempted unauthorized access to the security zone.

Section 37.51 Maintenance, Testing, and Calibration

This section would require licensees to implement a maintenance, testing, and calibration program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure and detect unauthorized access to radioactive material are maintained in operable condition, are capable of performing their intended function when needed, and are inspected and tested for operability and performance every 3 months. Licensees would be required to maintain the maintenance, testing, and calibration records for 5 years.

Section 37.53 Requirements for Mobile Devices

This section would require licensees that possess mobile devices containing category 1 or category 2 quantities of radioactive materials to have two independent physical controls to secure the radioactive material from unauthorized removal and to use a method to disable the vehicle or trailer when the device is on a vehicle or trailer.

Section 37.55 Security Program Review

This section would require licensees to conduct a review of the security program every 12 months. The licensee would be required to document the

results of the review and any findings and keep the records for 5 years.

Section 37.57 Reporting of Events

Paragraph (a) would require licensees to immediately notify the LLEA of any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and to then notify the NRC.

Paragraph (b) would require licensees to notify the LLEA upon discovery of any suspicious activity related to the theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and to then notify the NRC.

Paragraph (c) would require licensees to submit a written report to the NRC within 30 days of any report of actual or attempted theft, sabotage, or diversion of radioactive material.

Section 37.71 Additional Requirements for Transfer of Category 1 and Category 2 Quantities of Radioactive Material

This section would establish new requirements for licensees transferring category 1 and category 2 quantities of radioactive material.

Section 37.73 Applicability of Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material During Transit

This section would establish which requirements apply to licensees shipping category 1 or category 2 quantities of radioactive material and what requirements apply during the domestic portion of a shipment that is imported from another country. This section would also allow the receiving licensee to arrange for the in-transit physical protection of a shipment instead of the shipping licensee as long as the agreement is in writing.

Section 37.75 Preplanning and Coordination of Shipment of Category 1 or Category 2 Quantities of Radioactive Material

This section would establish the preplanning and coordination necessary for a shipment of category 1 or category 2 quantities of radioactive material.

Section 37.77 Advance Notification of Shipment of Category 1 Quantities of Radioactive Material.

This section would establish the requirements for advance notification to the NRC and the governor of a State, or the governor's designee, of the shipment of category 1 quantities of radioactive material that will pass through or across the State.

Section 37.79 Requirements for Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material During Shipment

This section would establish the physical protection requirements for shipments of category 1 and category 2 quantities of radioactive material. Paragraph (a)(1) would establish the requirements for shipping a category 1 quantity of radioactive material by road. Paragraph (a)(2) would establish the requirements for a licensee that transports category 2 quantities of radioactive material by road. Paragraph (a)(3) would establish the requirements for a licensee that uses a carrier for shipping category 2 quantities of radioactive material.

Paragraph (b)(1) would establish the requirements for shipping category 1 quantities of radioactive material by rail. Paragraph (b)(2) would establish the security requirements for shipping category 2 quantities of radioactive material by rail.

Paragraph (c)(1) would require licensees who make arrangements for the shipment of category 1 quantities of radioactive material to develop written normal and contingency procedures to address notifications, communication protocols, loss of communication, and response to actual or attempted theft or diversion of a shipment, or any suspicious activity related to a shipment. Paragraph (c)(2) would require licensees to ensure that drivers, accompanying personnel, train crew, and movement control center personnel are trained in and understand both the normal and contingency procedures.

Paragraph (d) would require the shipping licensee to immediately conduct an investigation of any shipment of category 1 or category 2 quantities of radioactive material that is lost or unaccounted for after the designated no-later-than arrival time in the advance notification.

Section 37.81 Reporting of Events

This section would establish requirements for the shipping licensee to make notifications upon the discovery that a shipment is lost or missing and upon discovery of any actual or attempted theft or diversion of a shipment, or suspicious activities related to the theft or diversion of a shipment of either a category 1 or category 2 quantity of radioactive material. This section would also establish requirements for notification upon recovery of a lost or missing shipment. Written follow-up reports would be required for all notifications.

Section 37.101 Form of Records

This section would establish the requirements for the storage and protection of records required by this part.

Section 37.103 Record Retention

This section would establish the Commission's termination of the license as the end point of the retention period for any record where a specific retention period is not specified.

Section 37.105 Inspections

Paragraph (a) would require licensees to allow the Commission the opportunity to inspect the materials and facilities subject to 10 CFR part 37.

Paragraph (b) would require the licensee to make available for inspection any records subject to 10 CFR part 37.

Section 37.107 Violations

Paragraph (a) of this section would establish that the Commission may obtain an injunction or other court order to prevent a violation of the AEA, Title II of the Energy Reorganization Act of 1974, as amended; or a regulation or order issued under those Acts.

Paragraph (b) of this section would establish the violations for which the Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the AEA.

Section 37.109 Criminal Penalties

This section would establish the sections in 10 CFR part 37 that are issued under one or more of sections 161b, 161i, or 161o and are therefore subject to criminal sanctions for willful violations of, attempted violation of, or conspiracy to violate the regulation.

Appendix A to 10 CFR Part 37—Category 1 and Category 2 Radioactive Materials

Table 1 of this appendix would establish the radionuclides and associated thresholds for category 1 and category 2 quantities of radioactive material. The appendix would also provide the methodology for calculating the sum of fractions for evaluating combinations of multiple radionuclides.

Section 39.1 Purpose and Scope

10 CFR part 37 would be added to the list of 10 CFR parts that apply to applications and licenses subject to this part.

Section 51.22 Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise Not Requiring Environmental Review

Paragraph (c)(3) would be revised to include 10 CFR part 37.

Section 71.97 Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste

Paragraph (b) would be revised to delete the reference to shipments of irradiated reactor fuel in quantities less than that subject to the advance notification requirements of § 73.37(f). Proposed § 73.35 would provide that such irradiated reactor fuel shipments be subject to the same requirements that apply to shipments of category 1 radioactive material, including the advance notification requirements.

Section 73.35 Requirements for Physical Protection of Irradiated Reactor Fuel (100 Grams or Less) in Transit

A new section would be added to 10 CFR part 73 to address the physical protection requirements for shipments of irradiated reactor fuel weighing 100 g (0.22 lb) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Sv (100 rem) per hour at a distance of 0.91 m (3 ft) from any accessible surface without intervening shielding. The material would be subject to the same transportation security requirements as category 1 quantities of radioactive material.

IV. Criminal Penalties

For the purpose of Section 223 of the AEA, the Commission is proposing to amend 10 CFR parts 30, 32, 33, 34, 35, 36, 39, 51, 71, and 73 and add new part 37 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

V. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this proposed rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the proposed rule in accordance with the procedure established within Part III, "Categorization Process for NRC Program Elements," of Handbook 5.9 to Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" (a copy of which may be viewed at *http://www.nrc.gov/reading-rm/doc-collections/management-directives/).*

The NRC program elements (including regulations) are placed into four compatibility categories (See the Draft Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) are program elements that are not required for compatibility, but are identified as having a particular health and safety role (*i.e.,* adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the AEA or provisions of Title 10 of the *Code of Federal Regulations.* These program elements are not adopted by Agreement States. The following table lists the Parts and Sections that would be created or revised and their corresponding categorization under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs." A bracket around a category means that the section may have been adopted elsewhere, and it is not necessary to adopt it again.

The NRC invites comment on the compatibility category designations in the proposed rule and suggests that commenters refer to Handbook 5.9 of Management Directive 5.9 for more information. The NRC notes that, like the rule text, the compatibility category designations can change between the proposed rule and final rule, based on comments received and Commission decisions regarding the final rule. The NRC encourages anyone interested in commenting on the compatibility category designations in any manner to do so during the comment period.

DRAFT COMPATIBILITY TABLE FOR PROPOSED RULE

Section	Change	Subject	Compatibility	
			Existing	New
Part 30				
30.6	Amend	Communications	D	D
30.13	Amend	Carriers	B	B
30.32(l)	New	Application of specific licenses		C
30.33(a)(4)	Amend	General requirements for issuance of specific licenses ..	D	D

DRAFT COMPATIBILITY TABLE FOR PROPOSED RULE—Continued

Section	Change	Subject	Compatibility	
			Existing	New
		Part 32		
32.1(b)	Amend	Purpose and scope	D	D
		Part 33		
33.1	Amend	Purpose and scope	D	D
		Part 34		
34.1	Amend	Purpose and scope	D	D
		Part 35		
35.1	Amend	Purpose and scope	D	D
		Part 36		
36.1	Amend	Purpose and scope	D	D
		Part 37		
37.1	New	Purpose		D
37.3	New	Scope		D
37.5	New	Definition Access control		C
37.5	New	Definition Act		D
37.5	New	Definition Aggregated		C
37.5	New	Definition Agreement State		[B]
37.5	New	Definition Approved individual		B
37.5	New	Definition Background Investigation		C
37.5	New	Definition Becquerel		[A]
37.5	New	Definition Byproduct Material		[H&S]
37.5	New	Definition Category 1 quantities of radioactive material		B
37.5	New	Definition Category 2 quantities of radioactive material		B
37.5	New	Definition Commission		D
37.5	New	Definition Curie		[A]
37.5	New	Definition Diversion		C
37.5	New	Definition Escorted access		B
37.5	New	Definition Fingerprint Orders		C
37.5	New	Definition Government agency		D
37.5	New	Definition Isolation		C
37.5	New	Definition License		D
37.5	New	Definition License issuing agency		D
37.5	New	Definition Local law enforcement agency		C
37.5	New	Definition Lost or missing material		[B]
37.5	New	Definition Mobile device		B
37.5	New	Definition Movement control center		B
37.5	New	Definition No-later-than arrival time		B
37.5	New	Definition Person		[C]
37.5	New	Definition Reviewing official		C
37.5	New	Definition Sabotage		C
37.5	New	Definition Safe haven		B
37.5	New	Definition Security zone		C
37.5	New	Definition State		D
37.5	New	Definition Telemetric position monitoring system		B
37.5	New	Definition Temporary job site		B
37.5	New	Definition Trustworthiness and reliability		B
37.5	New	Definition Unescorted access		B
37.5	New	Definition United States		D
37.7	New	Communications		D
37.9	New	Interpretations		D
37.11(a)	New	Specific exemptions		D
37.11(b)	New	Specific exemptions		NRC
37.13	New	Information collection requirements: OMB approval		D
37.21(a)	New	General		C
37.21(b)	New	General performance objective		B
37.21(c)	New	Applicability		B
37.23(a)	New	Granting unescorted access authorization		B
37.23(b)	New	Reviewing officials		B
37.23(c)	New	Informed consent		B
37.23(d)	New	Personal history disclosure		B

DRAFT COMPATIBILITY TABLE FOR PROPOSED RULE—Continued

Section	Change	Subject	Compatibility	
			Existing	New
37.23(e)	New	Determination basis		B
37.23(f)	New	Procedures		C
37.23(g)	New	Right to correct and complete information		B
37.23(h)	New	Records		C
37.25(a)	New	Initial investigation		B
37.25(b)	New	Grandfathering		C
37.25(c)	New	Reinvestigations		B
37.27(a)	New	General performance objective and requirements		B
37.27(b)	New	Prohibitions		B
37.27(c)	New	Procedures for processing fingerprint checks		B
37.29	New	Relief from fingerprinting, identification, and criminal history records checks and other elements of a background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials or other property.		B
37.31(a)–(d)	New	Protection of information		B
37.31(e)	New	Protection of information		C
37.33(a), (b), (c)	New	Access authorization program review		C
37.41(a)	New	Applicability		B
37.41(b)	New	General performance objective		B
37.41(c)	New	Program features		C
37.41(d)	New	Information submittal and notification		C
37.43(a)	New	Security plan		B
37.43(b)	New	Implementing procedures		C
37.43(c)(1)–(c)(3)	New	Training		B
37.43(c)(4)	New	Training		C
37.43(d)(1)–(d)(7)	New	Protection of Information		C
37.43(d)(8)	New	Protection of Information		NRC
37.45(a)	New	LLEA coordination		B
37.45(b)	New	LLEA notification for temporary job sites		B
37.45(c)	New	Records		C
37.47(a)–(d)	New	Security Zones		B
37.49(a)	New	Monitoring and detection		B
37.49(b)	New	Assessment		B
37.49(c)	New	Personnel communications and data transmission		B
37.49(d)	New	Response		B
37.51	New	Maintenance, testing, and calibration		C
37.53	New	Requirements for mobile devices		B
37.55(a), (b), (c)	New	Security program review		C
37.57(a)	New	Reporting of events		C
37.57(b)	New	Reporting of events		C
37.71(a), (b)	New	Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.		B
37.71(c)	New	Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.		C
37.73(a), (b), (d), (e)	New	Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit.		D
37.73(c)	New	Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit.		B
37.75(a)–(d)	New	Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.		B
37.75(e)	New	Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.		C
37.77	New	Advance notification for shipments of category 1 quantities of radioactive material.		B
37.77(a)	New	Procedures for submitting advance notification		B
37.77(b)	New	Information to be furnished in advance notification of shipment.		B
37.77(c)	New	Revision notice		B
37.77(d)	New	Cancellation notice		B
37.77(e)	New	Records		C
37.77(f)	New	Protection of information		NRC
37.79(a)	New	Shipments by road		B
37.79(b)	New	Shipments by rail		B
37.79(c)	New	Procedures		B
37.79(d)	New	Investigations		B
37.81(a)	New	Reporting of events		B
37.81(b)	New	Reporting of events		B

DRAFT COMPATIBILITY TABLE FOR PROPOSED RULE—Continued

Section	Change	Subject	Compatibility	
			Existing	New
37.81(c)	New	Reporting of events		B
37.81(d)	New	Reporting of events		B
37.81(e)	New	Reporting of events		B
37.81(f)	New	Reporting of events		B
37.81(g)	New	Reporting of events		C
37.81(h)	New	Reporting of events		C
37.101	New	Form of records		C
37.103	New	Record retention		C
37.105	New	Inspections		D
37.107	New	Violations		D
37.109	New	Criminal penalties		D
Appendix A	New	Category 1 and 2 thresholds		B
Part 39				
39.1	Amend	Purpose and scope	D	D
Part 51				
51.22(c)(3)	Amend	Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.	NRC	NRC
Part 71				
71.97(b)	Amend	Advance notification of shipment of irradiated reactor fuel and nuclear waste.	B	B
Part 73				
73.35	New	Requirements for physical protection of irradiated reactor fuel (100 grams or less) in transit.		NRC

VI. Plain Language

The Presidential Memorandum, "Plain Language in Government Writing" published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading.

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would establish security requirements for the use of category 1 and category 2 quantities of radioactive materials. The NRC is not aware of any voluntary consensus standards that address the proposed subject matter of this proposed rule. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain why the standard should be used.

VIII. Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required for this rulemaking. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact.

The implementation of the proposed rule's security requirements would not result in significant changes to the licensee's facilities, nor would such implementation result in any significant increase in effluents released to the environment. Similarly the implementation of the proposed rule's security requirements would not affect occupational exposure requirements. No major construction or other earth disturbing activities, on the part of the affected licensees, is anticipated in connection with licensee's implementation of the proposed rule's requirements. The Commission has determined that the implementation of this proposed rule would be procedural and administrative in nature.

The determination of this environmental assessment is that there will be no significant impact to the public from this action. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading in this document.

The NRC has sent a copy of the Environmental Assessment and this proposed rule to every State Liaison Officer and requested their comments on the Environmental Assessment. The Environmental Assessment may be examined at the NRC Public Document, Room O–1F23, 11555 Rockville Pike, Rockville, MD 20852. The Environmental Assessment may also be

viewed and downloaded electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* by searching for Docket Number ID NRC–2008–0120.

IX. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

Type of submission, new or revision: New.

The title of the information collection: "10 CFR Parts 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73, Physical Protection of Byproduct Material"

The form number if applicable: NA.

How often the collection is required: One time for initial compliance notifications and fingerprints for the reviewing officials; and as needed for implementation notifications, event notifications, notifications of shipments of radioactive material, and fingerprinting of new employees.

Who will be required or asked to report: Licensees that are authorized to possess and use category 1 or category 2 quantities of radioactive material.

An estimate of the number of annual responses: 83,666 (88,066 responses plus 1,400 record keepers).

The estimated number of annual respondents: 1,917 (2,950 the first year, 1,400 in subsequent years)

An estimate of the total number of hours needed annually to complete the requirement or request: 63,446 (5,125 one-time reporting hours, annualized to 1,708 hours plus 12,387 reporting hours plus 21,694 recordkeeping hours plus 27,657 third-party hours).

Abstract: The NRC is proposing to amend its regulations to put in place security requirements for the use of category 1 and category 2 quantities of radioactive material. Licensees would be required to: (1) Develop procedures for implementation of the security provisions; (2) develop a security plan that describes how security is being implemented; (3) conduct training on the procedures and security plan; (4) conduct background investigations for those individuals permitted access to category 1 or category 2 quantities of radioactive material; (5) coordinate with LLEAs so the LLEAs would be better prepared to respond in an emergency; (6) conduct preplanning and coordination activities before shipping radioactive material; and (7) implement security measures for the protection of the radioactive material. Licensees would be required to promptly report any attempted or actual theft or diversion of the radioactive material. Licensees would be required to keep copies of the security plan, procedures, background investigation records, training records, and documentation that certain activities have occurred.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the above issues, by July 15, 2010 to the Records and FOIA/Privacy Services Branch (T–5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *Infocollects.Resource@NRC.gov* and to the Christine Kymm (202–395–4638, *ckymn@omb.eop.gov*), Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–xxxx), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov,* Docket Number ID NRC–2008–0120. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852. The analysis may also be viewed and downloaded electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* by searching for Docket Number NRC–2008–0120.

XI. Regulatory Flexibility Certification

The NRC has prepared an initial regulatory analysis of the impact of this proposed rule on small entities. The proposed rule would affect about 300 NRC licensees and an additional 1,100 Agreement State licensees. Affected licensees include laboratories, reactors, universities, colleges, medical clinics, hospitals, irradiators, well loggers, and radiographers, some of which may qualify as small business entities as defined by 10 CFR 2.810. Based on the draft regulatory analysis conducted for this action, the costs of the proposed rule for affected licensees are estimated to be between $541 million and $743 million (7-percent and 3-percent discount rate, respectively) total. The average licensee would have a one-time cost of approximately $27,000 and an annual cost of approximately $25,700 to fully implement the proposed rule. An additional 1,550 licensees would experience a one-time cost of about $3,500 to develop a security program but would not need to implement the program. The NRC believes that the selected alternative reflected in the proposed rule is the least burdensome, most flexible alternative that would accomplish the NRC's regulatory objective. The draft Regulatory Flexibility Analysis is included as Appendix to this proposed rule.

The NRC is seeking public comment on the potential impact of the proposed rule on small entities. The NRC particularly desires comment from licensees who qualify as small businesses, specifically as to how the proposed regulation will affect them and how the regulation may be tiered or otherwise modified to impose less

stringent requirements on small entities while still adequately protecting the public health and safety and common defense and security. *Comments on how the regulation could be modified to take into account the differing needs of small entities should specifically discuss–*

(a) The size of the business and how the proposed regulation would result in a significant economic burden upon it as compared to a larger organization in the same business community;

(b) How the proposed regulation could be further modified to take into account the business's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation was modified as suggested by the commenter;

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations as opposed to providing special advantages to any individuals or groups; and

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety and common defense and security.

Comments should be submitted as indicated under the **ADDRESSES** heading.

XII. Backfit Analysis

The NRC has determined that the backfit rule, which is found in the regulations at §§ 50.109, 70.76, 72.62, 76.76, and in 10 CFR part 52, does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR chapter I. Therefore, a backfit analysis is not required.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 33

Byproduct material, Criminal penalties, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 36

Byproduct material, Criminal penalties, Nuclear materials, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 37

Byproduct material, Criminal penalties, Export, Hazardous materials transportation, Import, Licensed material, Nuclear materials, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Import, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, 73, and 150.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.6, the introductory text of paragraph (a) is revised to read as follows:

§ 30.6 Communications.

(a) Unless otherwise specified or covered under the regional licensing program as provided in paragraph (b) of this section, any communication or report concerning the regulations in parts 30 through 37 and 39 of this chapter and any application filed under these regulations may be submitted to the Commission as follows:

* * * * *

3. Section 30.13 is revised to read as follows:

§ 30.13 Carriers.

Common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from the regulations in this part and parts 31 through 37 and 39 of this chapter and the requirements for a license set forth in section 81 of the Act to the extent that they transport or store byproduct material in the regular course of carriage for another or storage incident thereto.

4. In § 30.32 a new paragraph (l) is added to read as follows:

§ 30.32 Application for specific licenses.

* * * * *

(l) An application for a specific license to use, store, or transport category 1 or category 2 quantities of radioactive material must include information concerning whether the applicant's proposed security program meets the requirements in part 37 of this chapter.

5. In § 30.33, paragraph (a)(4) is revised to read as follows:

§ 30.33 General requirements for issuance of specific licenses.

(a) * * *

(4) The applicant satisfies any special requirements contained in parts 32 through 37 and 39; and

* * * * *

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

6. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. No. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

7. In § 32.1, paragraph (b) is revised to read as follows:

§ 32.1 Purpose and scope.

* * * * *

(b) The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of part 30 of this chapter apply to applications, licenses and certificates of registration subject to this part, and the provisions of part 37 of this chapter apply to applications and licenses subject to this part.

* * * * *

PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

8. The authority citation for Part 33 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. No. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

9. Section 33.1 is revised to read as follows:

§ 33.1 Purpose and scope.

This part prescribes requirements for the issuance of specific licenses of broad scope for byproduct material ("broad licenses") and certain regulations governing holders of such licenses. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of parts 30 and 37 of this chapter apply to applications and licenses subject to this part.

PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

10. The authority citation for Part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 34.45 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

11. Section 34.1 is revised to read as follows:

§ 34.1 Purpose and scope.

This part prescribes requirements for the issuance of licenses for the use of sealed sources containing byproduct material and radiation safety requirements for persons using these sealed sources in industrial radiography. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the requirements and provisions of parts 19, 20, 21, 30, 37, 71, 150, 170, and 171 of this chapter apply to applications and licenses subject to this part. This rule does not apply to medical uses of byproduct material.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

12. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. No. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

13. Section 35.1 is revised to read as follows:

§ 35.1 Purpose and scope.

This part contains the requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects. The requirements and provisions of this part are in addition to, and not in substitution for, others in this chapter. The requirements and provisions of parts 19, 20, 21, 30, 37, 71, 170, and 171 of this chapter apply to applicants and licensees subject to this part unless specifically exempted.

PART 36—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

14. The authority citation for Part 36 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

15. In § 36.1, paragraph (a) is revised to read as follows:

§ 36.1 Purpose and scope.

(a) This part contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation. This part also contains radiation safety requirements for operating irradiators. The requirements of this part are in addition to other requirements of this chapter. In particular, the provisions of parts 19, 20, 21, 30, 37, 71, 170, and 171 of this chapter apply to applications and licenses subject to this part. Nothing in this part relieves the licensee from complying with other applicable Federal, State and local regulations governing the siting, zoning, land use, and building code requirements for industrial facilities.

* * * * *

16. Part 37 is added to read as follows:

PART 37—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

Subpart A—General Provisions

Sec.

37.1 Purpose.
37.3 Scope.
37.5 Definitions.
37.7 Communications.
37.9 Interpretations.
37.11 Specific exemptions.
37.13 Information collection requirements: OMB approval.

Subpart B—Background Investigations and Access Control Program

37.21 Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.
37.23 Access authorization program requirements.
37.25 Background investigations.
37.27 Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.
37.29 Relief from fingerprinting, identification, and criminal history records checks and other elements of

background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials or other property.
37.31 Protection of information.
37.33 Access authorization program review.

Subpart C—Physical Protection Requirements During Use

37.41 Security program.
37.43 General security program requirements.
37.45 LLEA coordination and notification.
37.47 Security zones.
37.49 Monitoring, detection, and assessment.
37.51 Maintenance, testing, and calibration.
37.53 Requirements for mobile devices.
37.55 Security program review.
37.57 Reporting of events.

Subpart D—Physical Protection in Transit

37.71 Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.
37.73 Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit.
37.75 Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.
37.77 Advance notification of shipment of category 1 quantities of radioactive material.
37.79 Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.
37.81 Reporting of events.

Subpart E—[Reserved]

Subpart F—Records

37.101 Form of records.
37.103 Record retention.

Subpart G—Enforcement

37.105 Inspections.
37.107 Violations.
37.109 Criminal penalties.
Appendix A to Part 37—Category 1 and Category 2 Radioactive Materials

Authority: Secs. 53, 81, 161, 182, 183, 68 Stat. 935, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 223 (42 U.S.C. 2273); sec 234, 83 Stat. 445, as amended; sec. 147, 149 (42 U.S.C. 2133, 2134, 2167, 2168, 2169)

Subpart A—General Provisions

§ 37.1 Purpose.

This part has been established to provide the requirements for the physical protection program for any licensee that is authorized to possess category 1 or category 2 quantities of radioactive material listed in Appendix A to this part. These requirements provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, use of material, transfer of material, and transport of material are included. No provision of this part authorizes possession of licensed material.

§ 37.3 Scope.

(a) Subpart B to this part applies to any person who, under the regulations in this chapter, is authorized to possess or use at any site or contiguous sites subject to the control by the licensee, category 1 or category 2 quantities of radioactive material.

(b) Subpart C to this part applies to any person who, under the regulations in this chapter, is authorized to possess or use at any site or contiguous sites subject to the control by the licensee, category 1 or category 2 quantities of radioactive material.

(c) Subpart D applies to any person who, under the regulations of this chapter, imports, exports, transports, or delivers to a carrier for transport in a single shipment, category 1 or category 2 quantities of radioactive material.

§ 37.5 Definitions.

As used in this part:

Access control means a system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

Act means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

Aggregated means accessible by the breach of a common physical barrier, whether the material made accessible is a single sealed source, multiple sealed sources, or multiple sources of bulk radioactive material.

Agreement State means any state with which the Atomic Energy Commission or the Nuclear Regulatory Commission has entered into an effective agreement under subsection 274b. of the Act. *Non-agreement State* means any other State.

Approved individual means an individual whom the licensee has determined to be trustworthy and reliable in accordance with subpart B of this part and who has completed the training required by § 37.43(c).

Background investigation means the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

Becquerel (Bq) means one disintegration per second.

Byproduct material means—(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(2) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

(3)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that—

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(4) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

Category 1 quantity of radioactive material means a quantity of radioactive material meeting or exceeding the category 1 threshold in Table 1 of Appendix A to this part. The quantity is calculated by adding the sum of ratios of the total activity of each radionuclide to the category 1 threshold for that radionuclide. If the ratio is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radionuclides contained in irradiated or mixed oxide fuel.

Category 2 quantity of radioactive material means a quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in Table 1 of Appendix A to this part. The quantity is calculated by adding the sum of ratios of the total activity of each radionuclide to the category 2 threshold for that radionuclide. If the ratio is equal to or exceeds 1, the quantity would be considered a category 2 quantity. Category 2 quantities of radioactive

material do not include the radionuclides contained in irradiated or mixed oxide fuel.

Commission means the Nuclear Regulatory Commission or its duly authorized representatives.

Curie means that amount of radioactive material which disintegrates at the rate of 37 billion atoms per second.

Diversion means the unauthorized movement of radioactive material subject to this part to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

Escorted access means accompaniment while in a security zone by an approved individual who maintains line-of-sight surveillance at all times over an individual who is not approved for unescorted access.

Fingerprint orders means the orders issued by the U.S. Nuclear Regulatory Commission or the legally binding requirements issued by Agreement States that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or Safeguards Information.

Government agency means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

Isolation means protection of category 1 or category 2 quantities of radioactive material by allowing access to security zones only through established access control points.

License, except where otherwise specified, means a license for byproduct material issued pursuant to the regulations in parts 30 through 36 and 39 of this chapter;

License issuing authority means the licensing agency that issued the license, *i.e.* the U.S. Nuclear Regulatory Commission or the appropriate agency of an Agreement State;

Local law enforcement agency (LLEA) means a government entity that has authority to make arrests and the capability to provide an armed response in locations where licensed category 1 or category 2 quantities of radioactive material are used, stored, or transported.

Lost or missing licensed material means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

Mobile device means a piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

Movement control center means an operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

No-later-than arrival time means the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than-arrival time may not be more than 2 hours after the estimated arrival time for shipments of category 1 quantities of radioactive material. The no-later-than-arrival time may not be more than 4 hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

Person means—

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department of Energy (except that the Department shall be considered a person within the meaning of the regulations in 10 CFR chapter I to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission under section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), the Nuclear Waste Policy Act of 1982 (96 Stat. 2201), and section 3(b)(2) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (99 Stat. 1842)), any State or any political subdivision of or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Reviewing official means the individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

Sabotage means deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

Safe haven means a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

Security zone means any temporary or permanent area determined and established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Telemetric position monitoring system means a data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

Temporary job site means, for the purposes of this part, a location where category 1 or category 2 quantities of radioactive material may be used or stored other than a location of use that is specifically identified on the license.

Trustworthiness and reliability are characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or common defense and security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

Unescorted access means solitary access to category 1 or category 2 quantities of radioactive material granted to an approved individual. Unescorted access includes solitary access to sufficient quantities of radioactive material such that an individual could successfully accumulate lesser quantities of material into a category 1 or category 2 quantity.

United States, when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States.

§ 37.7 Communications.

Except where otherwise specified or covered under the regional licensing program as provided in § 30.6(b), all communications and reports concerning the regulations in this part may be sent as follows:

(a) By mail addressed to: *Attn:* Document Control Desk; Director, Office of Nuclear Reactor Regulation; Director, Office of New Reactors; Director, Office of Nuclear Material Safety and Safeguards; Director, Office of Federal and State Materials and Environmental Management Programs; or Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, as appropriate, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

(b) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland;

(c) Where practicable, by electronic submission, for example, Electronic Information Exchange, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail to *MSHD.Resource@nrc.gov;* or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

§ 37.9 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretations of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized as binding upon the Commission.

§ 37.11 Specific exemptions.

(a) The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

(b) Any licensee's activities are exempt from the requirements of this part to the extent that its activities are covered under the physical protection requirements of part 73 of this chapter.

§ 37.13 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. *3501 et seq.*). The NRC 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. OMB has approved the information collection requirements contained in this part under control number 3150–xxxx.

(b) The approved information collection requirements contained in this part appear in §§ 37.21, 37.23, 37.25, 37.27, 37.29, 37.31, 37.33, 37.41, 37.43, 37.45, 37.49, 37.55, 37.57, 37.71, 37.75, 37.77, 37.79, and 37.81.

Subpart B—Background Investigations and Access Authorization Program

§ 37.21 Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(a) *General.*

(1) Each licensee that is authorized to possess category 1 or category 2 quantities of radioactive material at a facility shall comply with the requirements of this subpart, as appropriate.

(2) Each licensee shall establish, implement, and maintain its access authorization program in accordance with the requirements of this subpart.

(3) By (30 days after the final rule is published in the **Federal Register**), each licensee that is authorized to possess a category 1 or category 2 quantity of radioactive material on (effective date of this rule) shall submit information concerning the licensee's compliance with the requirements of this subpart to the appropriate NRC regional office specified in § 30.6.

(4) Each licensee that would become newly subject to the requirements of this subpart upon application for modification of its license shall implement the requirements of this subpart, as appropriate, before taking possession of category 1 or category 2 quantities of radioactive material.

(b) *General performance objective.* The licensee's access authorization program must ensure that the individuals specified in paragraph (c)(1) of this section are trustworthy and reliable such that they do not constitute an unreasonable risk to public health and safety or the common defense and security.

(c) *Applicability.*

(1) Licensees shall subject the following individuals to an access authorization program:

(i) Any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material;

(ii) Vehicle drivers and accompanying individuals for road shipments of category 1 quantities of radioactive material;

(iii) Movement control center personnel for shipments of category 1 quantities of radioactive material;

(iv) Any individual whose assigned duties provide access to shipment information that is considered to be Safeguards Information-Modified Handling related to category 1 quantities of radioactive material; and

(v) Reviewing officials.

(2) Licensees need not subject the categories of individuals listed in § 37.29(a) through (m) to the investigation elements of the access authorization program.

(3) Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

§ 37.23 Access authorization program requirements.

(a) *Granting unescorted access authorization.*

(1) Licensees shall implement the requirements of this subpart for granting initial or reinstated unescorted access authorization.

(2) Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by § 37.43(c) before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(b) *Reviewing officials.*

(1) Each licensee shall nominate one or more individuals to be reviewing officials and shall submit the names of these individuals and their fingerprints to the NRC for a criminal history records check. The nominated individuals shall undergo the background investigation aspects that are required by § 37.25(a)(2) through (a)(9) before their names and fingerprints are submitted to the NRC. The fingerprints of the nominated reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide finger printing services to the public, or commercial fingerprinting services

authorized by a State to take fingerprints.

(2) Reviewing officials must be required to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information, if the licensee possesses safeguards information, as part of their job duties.

(3) Reviewing officials cannot approve other individuals to act as reviewing officials.

(4) Reviewing officials nominated by the licensee and approved by the NRC are the only individuals who may make trustworthiness and reliability determinations and permit unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

(5) Reviewing officials may not make any trustworthiness and reliability determinations or permit any individual to have unescorted access until they have been approved as a reviewing official by the NRC.

(6) Individuals nominated as reviewing officials who receive a preliminary denial from the NRC have the right to complete, correct, and explain information obtained through the background investigation prior to a final adverse determination.

(c) *Informed consent.*

(1) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that have undergone a background investigation under the Fingerprint Orders. A signed consent must be obtained prior to any reinvestigation.

(2) The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

(i) If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

(ii) The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(d) *Personal history disclosure.* Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by this subpart is sufficient cause for denial or termination of unescorted access.

(e) *Determination basis.*

(1) The reviewing official shall determine whether to grant, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information required by this subpart. The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(2) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information required by this subpart and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on disqualifying information obtained at any time during the background investigation.

(3) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual granted unescorted access to category 1 or category 2 quantities of radioactive material is trustworthy and reliable. Licensees shall maintain a list of persons currently approved for unescorted access authorization and a list of those individuals that have been denied unescorted access authorization. When a licensee determines that a person no longer requires unescorted access, the licensee shall immediately remove the person from the approved list and take measures to ensure that the individual is unable to obtain unescorted access.

(f) *Procedures.*

(1) Licensees shall develop, implement, and maintain written procedures for conducting background investigations for persons who are applying for unescorted access authorization to category 1 or category 2 quantities of radioactive material.

(2) Licensees shall develop, implement, and maintain written procedures for updating background investigations for persons who are applying for reinstatement of unescorted access authorization.

(3) Licensees shall develop, implement, and maintain written procedures to ensure that persons who have been denied unescorted access authorization are not allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(4) Licensees shall develop, implement, and maintain written procedures for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedure must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(g) *Right to correct and complete information.*

(1) Prior to any final adverse determination, licensees shall provide each individual subject to this subpart with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 1 year from the date of the notification.

(2) If after reviewing their criminal history record an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, *Attn:* SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation (FBI) will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary

in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(h) *Records.*

(1) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 5 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(2) The licensee shall retain a copy of the current access authorization program procedures as a record for 5 years after the procedure is no longer needed or until the Commission terminates the license, if the license is terminated before the end of the retention period. If any portion of the procedure is superseded, the licensee shall retain the superseded material for 5 years after the record is superseded.

(3) The licensee shall retain the list of persons approved for unescorted access authorization and the list of those individuals that have been denied unescorted access authorization for 5 years after the list is superseded or replaced.

§ 37.25 Background investigations.

(a) *Initial Investigation.* Before granting an individual unescorted access to category 1 or category 2 quantities of radioactive material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the 10 years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(1) Fingerprinting and an FBI identification and criminal history records check in accordance with § 37.27 or part 73 of this chapter;

(2) Verification of true identity. Licensees shall verify the true identity of the individual who is applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (*e.g.,* driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with § 37.31. Licensees shall certify in writing that the identification was properly reviewed, and shall maintain the certification and all related documents for review upon inspection;

(3) Employment history evaluation. Licensees shall complete an employment history evaluation. Licensees shall verify the individual's employment with each previous employer for the most recent 10 years before the date of application;

(4) Verification of education. Licensees shall verify that the individual participated in the education process during the claimed period;

(5) Military history verification. Licensees shall verify that the individual was in the military during the claimed period;

(6) Credit history evaluation. Licensees shall evaluate the full credit history of the individual who is applying for unescorted access authorization. A full credit history evaluation must include, but is not limited to, a review and evaluation of all of the information that is provided by a national credit-reporting agency about the individual's credit history. For individuals including foreign nationals and United States citizens who have resided outside the United States and do not have established credit history that covers at least the most recent 7 years in the United States, the licensee must document all attempts to obtain information regarding the individual's credit history and financial responsibility from some relevant entity located in that other country or countries;

(7) Criminal history review. Reviewing officials shall obtain from local criminal justice resources the criminal history records of the individual who is applying for unescorted access authorization and evaluate the information to determine whether the individual has a record of local criminal activity that may adversely impact his or her trustworthiness and reliability. The scope of the applicant's local criminal history review must cover all residences of record for the 10-year period preceding the date of the application for unescorted access authorization;

(8) Character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under this subpart must be limited to whether the individual has been and continues to be trustworthy and reliable;

(9) The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (*e.g.,* seek references not supplied by the individual); and

(10) If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee but at least after 10 business days of the request, the licensee shall:

(i) Document the refusal, unwillingness, or inability in the record of investigation; and

(ii) Obtain a confirmation of employment, educational enrollment and attendance, or other form of engagement claimed by the individual from at least one alternate source that has not been previously used.

(b) *Grandfathering.* Individuals who have been determined trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders do not need to meet the background investigation elements in this subpart until the 10-year re-investigation.

(c) *Reinvestigations.* Licensees shall conduct a criminal history update and credit history reevaluation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigations must be completed within 10 years of the date on which these elements were last completed and must address the 10 years following the previous investigation.

§ 37.27 Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(a) *General performance objective and requirements.*

(1) Except for those individuals listed in § 37.29, each licensee subject to the

provisions of this subpart shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the Commission for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(2) The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of their criminal history record, and shall inform him or her of the procedures for revising the record or adding explanations to the record.

(3) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(i) The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(ii) The previous access was terminated under favorable conditions.

(4) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material or access to safeguards information by another licensee, based upon a background investigation conducted under this subpart, the Fingerprint Orders, or part 73 of this chapter. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of § 37.31(c).

(5) Licensees shall review the criminal history records as part of the trustworthiness and reliability evaluation for each individual seeking unescorted access authorization to category 1 or category 2 quantities of radioactive material.

(6) Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials or access to Safeguards Information.

(b) *Prohibitions.*

(1) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) An arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) An arrest that resulted in dismissal of the charge or an acquittal.

(2) Licensees may not use information received from a criminal history records check obtained under this subpart in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(c) *Procedures for processing of fingerprint checks.*

(1) For the purpose of complying with this subpart, licensees shall use an appropriate method listed in § 37.7 to submit to the Office of Administration, Division of Facilities and Security, Mail Stop TWB–05 B32M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–7232, or by e-mail to FORMS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at *http://www.nrc.gov/site-help/e-submittals.html.*

(2) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at (301) 492–3531). Combined payment for multiple applications is acceptable. The Commission publishes the amount of the fingerprint check application fee on the NRC public Web site. (To find the current fee amount, go to the Electronic Submittals page at *http://www.nrc.gov/site-help/e-submittals.html* and select the link for the Criminal History Program.)

(3) The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

§ 37.29 Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials or other property.

Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(a) An employee of the Commission or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(b) A Member of Congress;

(c) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(d) The Governor of a State or his or her designated State employee representative;

(e) Federal, State, or local law enforcement personnel;

(f) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(g) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the Atomic Energy Act;

(h) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(i) Emergency response personnel who are responding to an emergency;

(j) Commercial vehicle drivers for road shipments of category 2 quantities of radioactive material;

(k) An individual who has had a favorably adjudicated U.S. Government criminal history records check within the last 5 years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (*e.g.* National Agency Check, Transportation Worker Identification Credentials

(TWIC) under 49 CFR 1572, Bureau of Alcohol Tobacco Firearms and Explosives background check and clearances under 27 CFR 555, Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license under 49 CFR 1572, Customs and Border Patrol's Free and Secure Trade (FAST) Program) provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 5 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material;

(l) Any individual who has an active Federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 5 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(m) Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of 5 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

§ 37.31 Protection of information.

(a) Each licensee who obtains background information on an individual under this subpart shall establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

(b) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material or Safeguards Information. No individual authorized to have access to the information may redisseminate the information to any other individual who does not have a need to know.

(c) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(1) Upon the individual's written request to the licensee holding the data to redisseminate the information contained in his or her file; and

(2) The recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(d) The licensee shall make background investigation records obtained under this subpart available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

(e) The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI, or a copy of these records if the individual's file has been transferred, on an individual for 5 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

§ 37.33 Access authorization program review.

(a) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of this subpart and that comprehensive actions are taken to correct any noncompliance that is identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall ensure that its entire access program is reviewed at a frequency not to exceed 12 months.

(b) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(c) Review records must be maintained for 5 years.

Subpart C—Physical Protection Requirements During Use

§ 37.41 Security program.

(a) *Applicability.*

(1) Each licensee that possesses an aggregated quantity of category 1 or category 2 radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this subpart.

(2) A licensee that is authorized to possess at least a category 2 quantity of radioactive material but does not possess an aggregated quantity that equals or exceeds the category 2 threshold shall develop a security program in accordance with the requirements of this subpart. At least 90 days before a licensee aggregates radioactive material to a quantity that equals or exceeds the category 2 threshold, the licensee shall implement its security program. The licensee shall provide written notification to the NRC regional office specified in § 30.6 of this chapter that the licensee is now implementing its security program as follows:

(i) If the aggregated quantity of radioactive material fluctuates above and below the category 2 threshold more than once in a 90-day period and will continue to do so indefinitely, the licensee need only notify the NRC the first time the security program is to be implemented. This notification must inform the NRC that the licensee aggregates material at or above the category 2 threshold from time to time and that the licensee will implement the security program whenever the material is aggregated at or above the category 2 threshold. If the security program is discontinued for more than 90 days, then the licensee shall notify the NRC the next time the security program is to be implemented.

(ii) If the aggregated quantity of radioactive material does not fluctuate above and below the category 2 threshold more than once in a 90-day period, the licensee shall notify the NRC each time a previously discontinued or new security program is to be implemented.

(b) *General performance objective.* Each licensee shall establish, implement, and maintain a security program that is designed to monitor, and without delay detect, assess, and respond to an actual or attempted unauthorized access to category 1 or

category 2 quantities of radioactive material.

(c) *Program features.* Each licensee's security program must include the program features, as appropriate, described in §§ 37.43, 37.45, 37.47, 37.49, 37.51, 37.53, and 37.55.

(d) *Information submittal and notification.* By (30 days after the final rule is published in the Federal Register), each licensee that is authorized to possess a category 1 or category 2 quantity of radioactive material on the effective date of this regulation shall submit information concerning the licensee's compliance with the requirements of this subpart to the appropriate Regional Administrator.

§ 37.43 General security program requirements.

(a) *Security plan.*

(1) Each licensee subject to the requirements of this subpart shall develop a written security plan. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this subpart. The security plan must at a minimum:

(i) Describe the measures and strategies used to implement the requirements of this subpart;

(ii) Identify the security resources, equipment, and technology used to satisfy the requirements of this subpart;

(iii) Describe any site-specific conditions that affect implementation of Commission requirements; and

(iv) Describe the training by which individuals implementing the security program will be informed of their responsibilities and of any changes that may affect their ability to implement the security program.

(2) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(3) A licensee shall revise its security plan as necessary to ensure the effective implementation of Commission requirements. The licensee shall ensure that:

(i) The revision has been reviewed and approved by the individual with overall responsibility for the security program and licensee management; and

(ii) The affected individuals are instructed on the revised plan before the changes are implemented.

(4) The licensee shall retain a copy of the current security plan as a record until the Commission terminates the license and, if any portion of the plan is superseded, retain the superseded material for 5 years after the record is superseded.

(b) *Implementing procedures.*

(1) The licensee shall develop and maintain written procedures that document how the requirements of this subpart and the security plan will be met.

(2) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(3) The licensee shall retain a copy of the current procedure as a record until the Commission terminates the license and, if any portion of the procedure is superseded, retain the superseded material for 5 years after the record is superseded.

(c) *Training.*

(1) Each licensee shall conduct training on the security plan to ensure that those individuals responsible for implementing the security plan possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(i) The licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

(ii) The responsibility to report promptly to the licensee any condition that causes or may cause a violation of Commission requirements;

(iii) The responsibility to report promptly to the local law enforcement agency and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

(iv) The appropriate response to security alarms.

(2) In determining those individuals who shall be trained on the security plan, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material as detailed in the licensee's security plan.

(3) Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

(i) Review of the training requirements of paragraph (c) of this section, and any changes made since the last training;

(ii) Reports on any relevant security issues, problems, and lessons learned;

(iii) Relevant results of NRC inspections; and

(iv) Relevant results of the licensee's program review and testing and maintenance.

(4) The licensee shall maintain records of the initial and refresher training for 5 years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(d) *Protection of information.*

(1) Except as provided in paragraph (d)(8) of this section, licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan and implementing procedures.

(2) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

(3) Before granting an individual access to the security plan or implementing procedures, licensees shall:

(i) Evaluate an individual's need to know the security plan or implementing procedures; and

(ii) Complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthy and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in § 37.25(a)(2) through (a)(10). The § 37.25(a)(1) fingerprinting and criminal history records check requirements shall not be applied to those individuals who do not require unescorted access to category 1 or category 2 quantities of radioactive material.

(4) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) The categories of individuals listed in § 37.29(a) through (m); or

(ii) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable by the required background investigation in § 37.25(a)(2) through (a)(10) has been provided by the security service provider.

(5) The licensee shall document the basis for concluding that an individual

is trustworthy and reliable and should be granted access to the security plan or implementing procedures. Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures, the licensee shall immediately remove the person from the approved list and take measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

(6) When not in use, the licensee shall store their security plan and implementing procedures in a manner to prevent removal. Information stored in non-removable electronic form must be password protected.

(7) The licensee shall retain as a record for 5 years after the document is no longer needed:

(i) A copy of the information protection procedures; and

(ii) The list of individuals approved for access to the security plan or implementing procedures.

(8) Licensees that possess safeguards information or safeguards information-modified handling are subject to the requirements of § 73.21 of this chapter, and shall protect any safeguards information or safeguards information-modified handling in accordance with the requirements of that section.

§ 37.45 LLEA coordination and notification.

(a) *LLEA coordination.*

(1) A licensee subject to this subpart shall provide information to and coordinate to the extent practicable with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(i) A description of the facilities and radioactive materials subject to this subpart;

(ii) A description of the licensee's security measures that have been implemented to comply with this subpart;

(iii) A notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material;

(iv) A request for information about the LLEA's capabilities to provide a timely armed response taking into consideration the description of the security measures provided in paragraph (a)(1)(ii) of this section;

(v) A request to establish a written agreement with the LLEA that describes the LLEA's commitments to provide a response in accordance with this section;

(vi) A request to establish a means of direct communication with an LLEA-designated point of contact for security emergencies involving actual or attempted theft or sabotage of licensee materials;

(vii) A request that the LLEA notify the licensee whenever the LLEA's contact information changes;

(viii) A request that the LLEA notify the licensee whenever the LLEA's response capabilities become degraded or it becomes incapable of providing a timely armed response; and

(ix) A request for information about the LLEA's willingness to participate in drills and exercises.

(2) The licensee shall notify the appropriate NRC regional office listed in § 30.6(a)(2) of this chapter within three business days if:

(i) The LLEA has not responded to the request for coordination within 60 days of the coordination request; or

(ii) The LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(3) The licensee shall document its efforts to coordinate with the LLEA to provide a response to threats to the licensee's facility. The licensee's documentation must include:

(i) Dates, times, and locations of meetings with the LLEA;

(ii) Licensee personnel present;

(iii) LLEA personnel present; and

(iv) Copies of any correspondence between the licensee and LLEA.

(4) The licensee shall coordinate with the LLEA at a frequency no greater than 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion. The coordination activities shall include verification of contact information and response capabilities.

(5) The licensee shall notify the appropriate NRC regional office listed in § 30.6(a)(2) of this chapter within three business days after the licensee becomes aware of any applicable state or local agency requirement that an initial response to an emergency involving radioactive materials must be provided by other than armed LLEA personnel.

(b) *LLEA notification for temporary job sites.*

(1) At least three business days prior to beginning work at temporary job sites where the licensee will use or store category 1 or category 2 quantities of radioactive material for more than seven consecutive calendar days, the licensee shall provide advance written notification to the appropriate LLEA. Advance notification must include:

(i) An explanation that the licensee is required to provide this notification to the LLEA in accordance with this section;

(ii) An explanation that the licensee will request an armed response from the LLEA in the event of an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at the temporary job site;

(iii) Information on the quantities of radioactive material involved and the potential hazards associated with loss of control of the material;

(iv) Scheduled start date and expected duration of the licensee's work requiring the use or storage of category 1 or category 2 quantities of radioactive materials at the temporary job site for which this notice is provided;

(v) Address of the temporary job site, if available, or sufficient directions to allow the LLEA to determine the location of the temporary job site;

(vi) Names and contact information for licensee personnel expected to be present at the temporary job site and responsible for the security of category 1 or category 2 quantities of radioactive material;

(vii) Names and contact information for other licensee personnel to be contacted in an emergency or for additional information;

(viii) Names and contact information for the NRC Region responsible for oversight of the licensee's activities at the temporary job site that the LLEA may contact for information; and

(ix) A request that the LLEA confirm receipt of the notification.

(2) If an emergency or other unforeseen circumstance does not allow the licensee to provide three business days written advance notice to the LLEA, the licensee shall notify the LLEA as soon as possible via telephone, facsimile, or e-mail.

(3) The licensee shall maintain documentation of all temporary job site notifications sent to the LLEA and any confirmations provided by the LLEA.

(c) *Records.* The licensee shall maintain records of its coordination activities with any LLEA in the development of the licensee's security plan, and copies of all documents and correspondence provided to or received from any LLEA in accordance with this section. Records of coordination activities at a temporary job site must be maintained for a period of 5 years.

§ 37.47 Security zones.

(a) Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee-

established security zones. Security zones may be permanent or temporary.

(b) Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(c) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(1) Isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points; or

(2) Direct control of the security zone by approved individuals at all times; or

(3) A combination of continuous physical barriers and direct control.

(d) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide an approved individual to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

§ 37.49 Monitoring, detection, and assessment.

(a) *Monitoring and detection.*

(1) Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source, or provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries.

(2) Monitoring and detection must be performed by:

(i) A monitored intrusion detection system that is linked to an on-site or off-site central monitoring facility;

(ii) Electronic devices for intrusion detection alarms that will alert nearby facility personnel;

(iii) Visual monitoring by video surveillance cameras; or

(iv) Visual inspection by approved individuals.

(3) A licensee subject to this subpart shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(i) For category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(A) Electronic sensors linked to an alarm;

(B) Continuous monitored video surveillance; or

(C) Direct visual surveillance.

(ii) For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(b) *Assessment.* Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(c) *Personnel communications and data transmission.* For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

(1) Maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(2) Provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(d) *Response.* Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

§ 37.51 Maintenance, testing, and calibration.

(a) Each licensee subject to this subpart shall implement a maintenance, testing, and calibration program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition, are capable of performing their intended function when needed, and are inspected and tested for operability and performance at intervals not to exceed 3 months.

(b) The licensee shall maintain records on the maintenance, testing, and calibration activities for 5 years.

§ 37.53 Requirements for mobile devices.

Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material must:

(a) Have two independent physical controls to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(b) For devices in or on a vehicle or trailer, utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

§ 37.55 Security program review.

(a) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of this subpart and that comprehensive actions are taken to correct any noncompliance that is identified. The review must include the radioactive material security program content and implementation. Each licensee shall ensure that the security program is reviewed at a frequency not to exceed 12 months.

(b) The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(c) The licensee shall maintain the review documentation for 5 years.

§ 37.57 Reporting of events.

(a) The licensee shall immediately notify the LLEA after initiating an appropriate response to any actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering

with the LLEA response to the event, the licensee shall notify the NRC Operations Center ((301) 816–5100). In no case shall the notification to the NRC be later than 4 hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(b) The licensee shall notify the LLEA upon discovery of any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material. As soon as possible but not later than 4 hours after notifying the LLEA, the licensee shall notify the NRC Operations Center ((301) 816–5100).

(c) The initial telephonic notification required by paragraph (a) of this section must be followed within a period of 30 days by a written report submitted to the NRC by an appropriate method listed in § 37.7. The report must include sufficient information for NRC analysis and evaluation, including identification of any necessary corrective actions to prevent future instances of such unauthorized access.

Subpart D—Physical Protection in Transit

§ 37.71 Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.

(a) Notwithstanding the requirements of any other regulation in this chapter, any licensee transferring category 1 quantities of radioactive material to a licensee of the Commission or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the address requested for delivery. The transferor shall document the verification.

(b) Notwithstanding the requirements of any other regulation in this chapter, any licensee transferring category 2 quantities of radioactive material to a licensee of the Commission or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. The transferor shall document the verification.

(c) The transferor shall keep a copy of the verification documentation as a record for 5 years.

§ 37.73 Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit.

(a) For shipments of category 1 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in §§ 37.75(a) and (c) through (e); 37.77; 37.79(a)(1), (b)(1), (c) and (d); and 37.81(a), (c), (e), (g), and (h).

(b) For shipments of category 2 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in §§ 37.75(b) through (e); 37.79(a)(2), (a)(3), (b)(2), and (d); and 37.81(b), (d), (f), (g), and (h). For those shipments of category 2 quantities of radioactive material that meet the criteria of § 71.97(b) of this chapter, the shipping licensee shall also comply with the advance notification provisions of § 71.97 of this chapter.

(c) The shipping licensee shall be responsible for meeting the requirements of this subpart unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under this subpart.

(d) Each licensee that imports category 1 quantities of radioactive material shall comply with the requirements for physical protection contained in §§ 37.75(a)(2) and (c) through (e); 37.77; 37.79(a)(1), (b)(1), (c), and (d); and 37.81(a), (c), (e), (g), and (h) during the domestic portion of the shipment.

(e) Each licensee that imports category 2 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in §§ 37.75(c) through (e); 37.79(a)(2), (a)(3), (b)(2), and (d); and 37.81(b), (d), (f), (g), and (h) during the domestic portion of the shipment.

§ 37.75 Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.

(a) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

(1) Preplan and coordinate shipment arrival, including the no-later-than arrival time, and departure times with the receiving licensee;

(2) Preplan and coordinate shipment information with the governor or the governor's designee of any State through which the shipment will pass to:

(i) Ensure minimal delays;

(ii) Discuss the State's intention to provide law enforcement escorts;

(iii) Arrange for positional information sharing when requested;

(iv) Identify Highway Route Control Quantity shipments (as the term "Highway Route Control Quantity" is defined in 49 CFR 173.403); and

(v) Identify safe havens; and

(3) Document the preplanning and coordination activities.

(b) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall verify and document the shipment no-later-than arrival time and the actual shipment arrival with the receiving licensee. Verification may be made by e-mail, fax, or written documentation of a verbal conversation.

(c) Each licensee who receives a shipment of a category 1 or category 2 quantity of radioactive material shall notify the shipping licensee within 4 hours when the shipment arrives at its destination.

(d) Each licensee, who transports or plans to transport a shipment of a category 1 or category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to paragraph (a)(1) of this section, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(e) The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof, as a record for 5 years.

§ 37.77 Advance notification of shipment of category 1 quantities of radioactive material.

As specified in paragraphs (a) and (b) of this section, each licensee shall provide advance notification to the NRC and the governor of a State, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the State, before the transport, or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC Web site at http://nrc-stp.ornl.gov/special/designee.pdf. A list of the contact information is also available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(a) *Procedures for submitting advance notification.* (1) The notification must be made in writing to the office of each appropriate governor or governor's designee and to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) A notification delivered by mail must be postmarked at least 7 days before transport of the shipment commences at the shipping facility.

(3) A notification delivered by any other means than mail must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the State.

(b) *Information to be furnished in advance notification of shipment.* Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(2) The license numbers of the shipper and receiver;

(3) A description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(4) The point of origin of the shipment and the estimated time and date that shipment will commence;

(5) The estimated time and date that the shipment is expected to enter each State along the route;

(6) The estimated time and date of arrival of the shipment at the destination; and

(7) A point of contact, with a telephone number, for current shipment information.

(c) *Revision notice.*

(1) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available, to the governor of the State or the governor's designee and to the NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) A licensee shall promptly notify the governor of the State or the governor's designee of any changes to the information provided in accordance with paragraphs (b) and (c)(1) of this section. The licensee shall also notify the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555 of any such changes.

(d) *Cancellation notice.* Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified and to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

(e) *Records.* The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for 5 years.

(f) *Protection of information.* State officials, State employees, and other individuals, whether or not licensees of the Commission or an Agreement State, who receive schedule information of the kind specified in § 37.77(b) shall protect that information against unauthorized disclosure as specified in § 73.21 of this chapter.

§ 37.79 Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.

(a) *Shipments by road.*

(1) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments 24 hours a day, 7 days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

(ii) Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

(iii) Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(iv) Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

(2) Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(3) Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(b) *Shipments by rail.*

(1) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These

procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(ii) Implement an NRC-approved monitoring plan that is designed to prevent the use of the shipment for malevolent purposes while the shipment is in the classification yard.

(iii) Ensure that periodic reports to the communications center are made at preset intervals.

(2) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(c) *Procedures.*

(1) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall develop written normal and contingency procedures to address:

(i) Notifications to the communication center and law enforcement agencies;

(ii) Communication protocols. Communication protocols must include a strategy for the use of authentication and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(iii) Loss of communications; and

(iv) Responses to an actual or attempted theft or diversion of a shipment, or any suspicious activities related to a shipment.

(2) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, train crew, and movement control center personnel are appropriately trained in normal and contingency procedures.

(d) *Investigations.* Each licensee who makes arrangements for the shipment of category 1 or category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that is lost or unaccounted for after the designated no-later-than arrival time in the advance notification.

§ 37.81 Reporting of events.

(a) The shipping licensee shall notify the appropriate LLEA and the NRC Operations Center ((301) 816–5100), within 1 hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by 37.79(d), the shipping licensee will provide agreed upon updates to the NRC Operations Center on the status of the investigation.

(b) The shipping licensee shall notify the NRC Operations Center ((301) 816–5100) within 4 hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the NRC Operations Center.

(c) The shipping licensee shall notify the designated LLEA along the shipment route, as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the NRC Operations Center ((301) 816–5100) upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of category 1 radioactive material.

(d) The shipping licensee shall notify the NRC Operations Center ((301) 816–5100), as soon as possible, upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(e) The shipping licensee shall notify the NRC Operations Center ((301) 816–5100) and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(f) The shipping licensee shall notify the NRC Operations Center ((301) 816–5100) as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(g) The initial telephonic notification required by paragraphs (a) through (d) must be followed within a period of 30 days by a written report submitted to the NRC by an appropriate method listed in § 37.7. In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response. The report must include sufficient information for NRC analysis and evaluation.

(h) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

Subpart E—[Reserved]

Subpart F—Records

§ 37.101 Form of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 37.103 Record retention.

Licensees shall maintain the records that are required by the regulations in this part for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility's license.

Subpart G—Enforcement

§ 37.105 Inspections.

(a) Each licensee shall afford to the Commission at all reasonable times opportunity to inspect category 1 or category 2 quantities of radioactive material and the premises and facilities wherein the nuclear material is used, produced, or stored.

(b) Each licensee shall make available to the Commission for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, use, acquisition, import, export, or transfer of category 1 or category 2 quantities of radioactive material.

§ 37.107 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended:

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

§ 37.109 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 37 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 37 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 37.1, 37.3, 37.5, 37.7, 37.9, 37.11, 37.13, 37.107, and 37.109.

Appendix A to Part 37—Category 1 and Category 2 Radioactive Materials

The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only.

TABLE 1—CATEGORY 1 AND CATEGORY 2 THRESHOLD [1]

Radioactive material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

[1] *Calculations Concerning Multiple Sources or Multiple Radionuclides.*

The "sum of fractions" methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a facility or activity meets or exceeds the threshold and is thus subject to the physical protection requirements of this part.

I. If multiple sources and/or multiple radionuclides are present in a facility or activity, the sum of the ratios of the activity of each of the radionuclides must be determined to verify the facility or activity is less than the category 1 or category 2 thresholds of Table 1, as appropriate. Otherwise, if the calculated sum of the ratio, using the following equation, is greater than or equal to 1.0, then the facility or activity meets or exceeds the thresholds of Table 1, and the applicable physical provisions of this part apply.

II. Use the equation below to calculate the sum of the ratios by inserting the actual activity of the applicable radionuclides from Table 1 or of the individual sources (of the same radionuclides from Table 1) in the numerator of the equation and the corresponding threshold activity from the Table 1 in the denominator of the equation. Calculations must be performed in metric values (*i.e.,* TBq) and the numerator and denominator values must be in the same units.

R_1 = activity for radionuclides or source number 1

R_2 = activity for radionuclides or source number 2

R_N = activity for radionuclides or source number n

AR_1 = activity threshold for radionuclides or source number 1

AR_2 = activity threshold for radionuclides or source number 2

AR_N = activity threshold for radionuclides or source number n

$$\sum_{1}^{n}\left[\frac{R_1}{AR_1}+\frac{R_2}{AR_2}+\frac{R_n}{AR_n}\right]\geq 1.0$$

Part 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

17. The authority citation for Part 39 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

18. In § 39.1, paragraph (a) is revised to read as follows:

§ 39.1 Purpose and scope.

(a) This part prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well logging in a single well.

This part also prescribes radiation safety requirements for persons using licensed materials in these operations. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of parts 19, 20, 21, 30, 37, 40, 70, 71, and 150 of this chapter apply to applicants and licensees subject to this part.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

19. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141).

Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

20. In § 51.22, the introductory text in paragraph (c)(3) is revised to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(3) Amendments to parts 20, 30, 31, 32, 33, 34, 35, 37, 39, 40, 50, 51, 52, 54, 60, 61, 63, 70, 71, 72, 73, 74, 81, and 100 of this chapter which relate to—

* * * * *

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

21. The authority citation for part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201,2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

22. In § 71.97, the introductory text of paragraph (b) is revised to read as follows:

§ 71.97 Advance notification of shipment of irradiated reactor fuel and nuclear waste.

* * * * *

(b) Advance notification is also required under this section for the shipment of licensed material, other than irradiated fuel, meeting the following three conditions:

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42.U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

24. A new § 73.35 is added to read as follows:

§ 73.35 Requirements for physical protection of irradiated reactor fuel (100 grams or less) in transit.

Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a quantity of irradiated reactor fuel weighing 100 grams (0.22 pounds) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 sievert (100 rem) per hour at a distance of 0.91 meters (3 feet) from any accessible surface without intervening shielding, shall follow the physical protection requirements for category 1 quantities of radioactive material in Subpart D of Part 37 of this chapter.

Dated at Rockville, Maryland, this 26th day of May, 2010.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

Note: This Appendix Will Not Appear in the Code of Federal Regulations.

Appendix A to This Proposed Rule—Regulatory Flexibility Analysis for the Proposed Amendments to 10 CFR Parts 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, 73, and 150 (Physical Protection of Byproduct Material)

I. Background

The Regulatory Flexibility Act (RFA), as amended 5 U.S.C. 601 *et seq.,* requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities.

Description of the Reasons That Action by the Agency Is Being Considered

The NRC has long participated in efforts to address radioactive source protection and security. However, the terrorist attacks of September 11, 2001, heightened concerns about the use of risk-significant radioactive materials in a malevolent act. Such an attack is of particular concern because of the widespread use of radioactive materials in the United States by industrial, medical, and academic institutions. The theft or diversion of risk-significant radioactive materials could lead to their malicious use in a radiological dispersal device or a radiological exposure device.

Commission regulations provide requirements for the safe use, transit, and control of licensed material. A licensee's loss of control of risk-significant radioactive material, whether it is inadvertent or through a deliberate act, could result in significant adverse impacts that could reasonably constitute a threat to the public health and safety or the common defense and security of the United States. After the attacks of September 11, 2001, the Commission determined that certain licensed material should be subject to enhanced security provisions and safeguarded during transport, and that individuals with unescorted access to risk-significant radioactive material should be subject to background investigations. For additional information see the Discussion portion of the Statements of Consideration (SOC).

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The regulatory objective of this rulemaking is to establish generically applicable security requirements similar to those previously imposed by the NRC orders. Although an order is legally binding on the licensee

receiving the order, a rule makes the requirements generally applicable to all affected licensees. In addition, notice and comment rulemaking is an open process that allows for public participation. This proposed rulemaking would place security requirements for category 1 and category 2 quantities of radioactive material into the regulations. In developing the proposed rule, the NRC considered, among other things, the various security orders, lessons-learned during implementation, the recommendations from the Independent Review Panel and the Materials Working Group, and stakeholder comments. The proposed rule also considered a petition for rulemaking submitted by the State of Washington. For additional information see the Discussion portion of the SOC. The authority citation sections of the proposed rule contain the statutory authority for the proposed rule.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed rule would affect about 300 NRC licensees and about 1,100 Agreement State licensees. This includes a wide range of licensees, including pool-type irradiator licensees; manufacturer and distributor licensees; medical facilities with gamma knife devices; self-shielded irradiator licensees (including blood irradiators); teletherapy unit licensees; radiographers; well loggers; broad scope users; radioisotope thermoelectric generator licensees; and licensees that ship or prepare for shipment category 1 or category 2 quantities of radioactive material. Some of these licensees would be considered small entities. In fiscal year 2008, about 26 percent of materials licensees qualified as small entities. Using the same percentage, 364 of the licensees that would be affected by the proposed rule would be considered small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements, and the Type of Professional Skills Necessary for Preparation of Reports and Records

Licensees would be required to: (1) Develop procedures for implementation of the security provisions; (2) develop a security plan that describes how security is being implemented; (3) conduct training on the procedures and security plan: (4) conduct background investigations for those individuals permitted access to category 1 or category 2 quantities of radioactive material; (5) coordinate with LLEAs so the LLEAs would be better prepared to respond in an emergency; (6) conduct preplanning and coordination activities before shipping radioactive material; and (7) implement security measures for the protection of the radioactive material. Licensees would be required to promptly report any attempted or actual theft or diversion of the radioactive material. Licensees would be required to keep copies of the security plan, procedures, background investigation records, training records, and documentation that certain activities have occurred. For additional information on the requirements, see the SOC or the proposed rule text. No special skills are necessary for the preparation of reports or records.

The average licensee would have a one-time cost of approximately $27,000 and an annual cost of approximately $25,700 to fully implement the proposed rule. Much of this cost would result from the requirements to have procedures, conduct training, and to develop a security plan. Although not required by the various security orders, many licensees have already developed procedures and conducted training and may only require minor revisions; therefore, the actual cost for some licensees may be lower. Additional large costs are the weekly physical check of the category 2 sources and the annual program review. The NRC views that the weekly check is a vital part of the security program, particularly for materials that are used infrequently. The program review is important for licensees to review the effectiveness of the program and to ensure that requirements are being implemented. More information on the cost of the proposed rule is contained in the Regulatory Analysis.

Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

Several U.S. Government programs involve fingerprinting and an FBI identification and criminal history records check. These include the National Agency Check; Transportation Worker Identification Credentials in accordance with 49 CFR 1572; Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances in accordance with 27 CFR 555; Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR 73; Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR 1572; and Customs and Border Patrol's Free and Secure Trade Program. Any individual that has favorably undergone the background investigation required by these programs would be relieved from the background investigation elements of the proposed rule as long as the licensee has appropriate documentation. Any individual who has an active Federal security clearance would also be relieved assuming appropriate documentation is provided.

The Department of Transportation requires security plans for the transport of highway route control quantities of radioactive material in accordance with 49 CFR 172.800. This provision covers only a small portion of the category 1 and category 2 quantities of radioactive material covered by the proposed rule.

The NRC is not aware of any other relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including alternatives considered, such as: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) use of performance rather than design standards; and (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

As noted earlier, some of the licensees that would be impacted by the proposed rule are small businesses. The proposed rule would impose the minimum requirements that the NRC believes is necessary to adequately protect the public health and safety and the common defense and security. Therefore, the NRC could not grant relief to small entities to allow them to implement less effective measures. The proposed rule would provide some flexibility in the particular measures that a licensee could choose to employ. Licensees affected by the proposed rule have already implemented the bulk of the requirements in response to various security orders.

[FR Doc. 2010–13319 Filed 6–14–10; 8:45 am]

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June 15, 2010

Part III

Environmental Protection Agency

40 CFR Parts 86 and 98
Mandatory Reporting of Greenhouse Gases; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 98

[EPA–HQ–OAR–2010–0109; FRL–9158–6]

RIN 2060–A079

Mandatory Reporting of Greenhouse Gases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend specific provisions in the 2009 Final Mandatory Greenhouse Gas Reporting rule (2009 Final MRR) to correct certain technical and editorial errors that have been identified since promulgation and to clarify or propose minor updates to certain provisions that have been the subject of questions from reporting entities. These proposed changes include additional information to better or more fully understand compliance obligations, corrections to data reporting elements so they more closely conform to the information used to perform emission calculations and other corrections and amendments. EPA has received six petitions for reconsideration on the 2009 Final MRR. EPA is still considering these petitions, and the issues raised in the petitions are not discusssed or addressed in today's action.

DATES: *Comments.* Comments must be received on or before July 30, 2010.

Public Hearing. EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by June 22, 2010. If requested, the hearing will be conducted on June 30, 2010, in the Washington, DC area. EPA will provide further information about the hearing on its webpage if a hearing is requested.

ADDRESSES: You may submit your comments, identified by docket ID No. EPA–HQ–OAR–2010–0109 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: MRR_Corrections@epa.gov.* Include docket ID No. EPA–HQ–OAR–2010–0109 [and/or RIN number] in the subject line of the message.
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. OAR–2010–0109, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0109, Technical Corrections, Clarifying and Other Amendments to Certain Provisions of the Mandatory Greenhouse Gas Reporting Rule. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.* For technical information contact the Greenhouse Gas Reporting Rule Hotline at telephone number: (877) 444–1188; or e-mail: *ghgmrr@epa.gov.* To obtain information about the public hearings or to register to speak at the hearings, please go to *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* Alternatively, contact Carole Cook at 202–343–9263.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION:

Additional Information on Submitting Comments: To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, e-mail address: *GHGReportingRule@epa.gov.*

Regulated Entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). *See* CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to "such other actions as the Administrator may determine"). These are proposed amendments to existing regulations. If finalized, these amended regulations would affect owners or operators of certain fossil fuel suppliers, direct emitters of GHGs, and manufacturers of highway heavy-duty vehicles. Regulated categories and entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Cement Production	327310	Portland cement manufacturing plants.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lime Production	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Nitric Acid Production	325311	Nitric acid manufacturing facilities.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills	562212	Solid Waste Landfills.
	221320	Sewage Treatment Facilities.
Suppliers of Coal Based Liquids Fuels.	211111	Coal liquefaction at mine sites.
Suppliers of Natural Gas and NGLs.	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Table 1 of this preamble lists the types of facilities that EPA is now aware could be potentially affected by the reporting requirements. Other types of facilities than those listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in the sections related to fossil fuel suppliers, direct emitters of GHGs, and manufacturers of highway heavy-duty vehicles. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER GENERAL INFORMATION CONTACT** section.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

AFPC Association of Fertilizer and Phosphate Chemists
AOD argon-oxygen decarburization
API American Petroleum Institute
ASTM American Society for Testing and Materials
CAA Clean Air Act
CaO calcium oxide
CBI confidential business information
CEMS continuous emission monitoring system
CFR Code of Federal Regulations
CH_4 methane
CO_2 carbon dioxide
DE destruction efficiency
EAF electric arc furnace
EF emission factor
EIA Energy Information Administration
EO Executive Order
EPA U.S. Environmental Protection Agency
FR **Federal Register**
GHG greenhouse gas
HHV higher heating value
ID identification
kg kilograms
LNG liquefied natural gas
MgO magnesium oxide
Mscf thousand standard cubic feet
MRR mandatory GHG reporting rule
N_2O nitrous oxide
NAICS North American Industry Classification System
NGLs natural gas liquids
NO_X nitrogen oxides
OMB Office of Management and Budget
QA/QC quality assurance/quality control
RFA Regulatory Flexibility Act
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995

Table of Contents

I. Background
A. How is this preamble organized?
B. Background on Today's Action
C. Legal Authority
D. How would these amendments apply to 2011 reports?
II. Technical Corrections and Other Amendments
A. Mobile Sources
B. Subpart A—General Provisions
C. Subpart E—Adipic Acid Production
D. Subpart H—Cement Production
E. Subpart K—Ferroalloy Production
F. Subpart N—Glass Production
G. Subpart O—HCFC–22 Production and HFC–23 Destruction
H. Subpart P—Hydrogen Production
I. Subpart Q—Iron and Steel Production
J. Subpart S—Lime Manufacturing
K. Subpart V—Nitric Acid Production
L. Subpart Z—Phosphoric Acid Production
M. Subpart CC—Soda Ash Manufacturing
N. Subpart EE—Titanium Dioxide Production
O. Subpart GG—Zinc Production
P. Subpart HH—Municipal Solid Waste Landfills
Q. Subpart LL—Suppliers of Coal-based Liquid Fuels
R. Subpart MM—Suppliers of Petroleum Products
S. Subpart NN—Suppliers of Natural Gas and Natural Gas Liquids
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Background

A. How is this preamble organized?

The first section of this preamble contains the basic background information about the origin of these proposed rule amendments and request for public comment. This section also discusses EPA's use of our legal authority under the Clean Air Act to collect data under the mandatory GHG reporting rule.

The second section of this preamble describes in detail the changes that are being proposed to correct technical errors, to provide clarification, or propose amendments to address implementation issues identified by EPA and others. This section also presents EPA's rationale for the proposed changes and identifies issues on which EPA is particularly interested in receiving public comments.

Finally, the last (third) section of the preamble discusses the various statutory and executive order requirements applicable to this proposed rulemaking.

B. Background on Today's Action

The 2009 Final MRR was signed by EPA Administrator Lisa Jackson on September 22, 2009 and published in the **Federal Register** on October 30, 2009 (74 FR 56260–56519, October 30, 2009). The 2009 Final MRR, which became effective on December 29, 2009, included reporting of GHGs from various facilities and suppliers, consistent with the 2008 Consolidated Appropriations Act.[1] The source categories in the 2009 Final MRR cover approximately 85 percent of U.S. GHG emissions through reporting by direct emitters as well as suppliers of fossil fuels and industrial gases.

C. Legal Authority

EPA is proposing these rule amendments under its existing CAA authority, specifically authorities provided in section 114 and section 208 of the CAA.

As stated in the preamble to the 2009 Final MRR (74 FR 56260, October 30, 2009), CAA section 114 provides EPA broad authority to require the information proposed to be gathered by this rule because such data would inform and are relevant to EPA's carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed rule (74 FR 16448, April 10, 2009), section 114(a)(1) of the CAA authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about EPA's legal authority, *see* the preambles to the proposed and 2009 Final MRR.[2]

D. How would these amendments apply to 2011 reports?

EPA is planning to address the comments on these proposed amendments and publish the final amendments before the end of 2010. Therefore, reporters would be expected to calculate emissions and other relevant data for the reports that are submitted in 2011 using the 2009 Final MRR as amended. We have determined that it is feasible for the sources to implement these changes for the 2010 reporting year since the revisions primarily provide additional clarifications regarding the existing regulatory requirements, generally do not affect the type of information that must be collected and do not substantially affect how emissions are calculated.

For example, many proposed revisions simply provide additional information to provide additional clarity on existing requirements. For example, in subpart E (Adipic Acid Production) we are proposing to clarify that the location of the testing point for determining the emission factor can occur before or after N_2O abatement technology as long as the destruction efficiency of the N_2O abatement technology is properly accounted for. This proposed clarification is consistent with clarifications EPA has issued in response to industry questions and would not change how facilities collected data during 2010. In subpart K, clarifying text is proposed in § 98.112 to ensure that facilities calculate CH_4 emissions for all ferroalloys included in Table K–1. Again, this clarification does not change the rule requirements for facilities collecting data in 2010 as the requirement was already clear in § 98.113(d).

Some proposed amendments are to the data reporting requirements to provide additional clarity on the level of reporting for a specific parameter (*e.g.,* unit level or facility level). For example, in subpart CC (Soda Ash Manufacturing) we are proposing to clarify that reporting is by soda ash manufacturing line. While the data reporting requirements in the 2009 Final MRR could have been misinterpreted, the calculation methods in § 98.293 are very clear that emissions calculations are by manufacturing line. EPA has concluded that amendments such as these can be implemented for the reports submitted to EPA in 2011 because the proposed changes are consistent with the calculation methodologies in the 2009 Final MRR and the owners or operators are not required to actually report until March 2011, several months after we expect this proposal to be finalized.

For some subparts, we propose amendments to address issues identified as a result of working with the affected sources during rule implementation. These proposed revisions provide additional flexibility to the sources. Thus, while they would be free to use the amended regulations once final, facilities are not required to follow the amendments for 2010 data collection. For example, in subpart H, cement production, facilities are provided an additional approach for calculating the weight fraction of total calcium oxide and total magnesium oxide in clinker. Some facilities were already determining their weight fraction following this method. In some cases, these facilities may have been following both their current practice during 2010 data collection, as well as the method required by the 2009 Final MRR. With these proposed amendments, these facilities would have the option, but not be required, to use the newly proposed option for the reports submitted to EPA in 2011.

EPA is also proposing corrections to terms and definitions in certain equations. For example, in subpart NN, Suppliers of Natural Gas and Natural Gas Liquids, we are proposing to clarify in an equation that the fuel-specific emission factor should be developed for NGL product "g". It was clear from the rest of the equation that the mass emissions should be developed for each NGL product "g", but this phrase was omitted from the definition of EF_g. Other examples are found in similar clarifications made in subpart P (Hydrogen Production) and subpart S (Lime Production). These clarifications do not result in additional requirements therefore EPA has concluded that reporters can follow the 2009 Final MRR, as amended, in submitting their first reports in 2011.

Finally, EPA is proposing other technical corrections (example correcting cross references) that have no impact on facility's data collection efforts in 2010.

[1] Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 2128.

[2] 74 FR 16448 (April 10, 2009) and 74 FR 56260 (October 30, 2009).

In summary, these amendments would not require any additional monitoring or information collection above what was already included in the 2009 Final MRR. Therefore, we expect that sources can use the same information that they have been collecting under the 2009 Final MRR for each subpart to calculate and report GHG emissions for 2010 and submit reports in 2011 under the amended subparts.

EPA generally seeks comment on the conclusion that it is appropriate to implement these amendments and incorporate the requirements in the data reported to EPA by March 31, 2011. Further, we seek comment on whether there are specific subparts for example, subpart MM, where this timeline may not be feasible or appropriate due to the nature of the proposed changes or the way in which data have been collected thus far in 2010. We request that commenters provide specific examples of how the proposed implementation schedule would or would not work.

II. Technical Corrections and Other Amendments

Following promulgation of the 2009 Final MRR, EPA has identified errors in the regulatory language that we are now proposing to correct. These errors were identified as a result of working with affected industries to implement the various subparts of the 2009 Final MRR. We have also identified certain rule provisions that should be amended to provide greater clarity.

The amendments we are now proposing include the following types of changes:

- Changes to correct cross references within and between subparts.
- Additional information to better or more fully understand compliance obligations in a specific provision, such as the reference to a standardized method that must be followed.
- Amendments to certain equations to better reflect actual operating conditions.
- Corrections to terms and definitions in certain equations.
- Corrections to data reporting requirements so that they more closely conform to the information used to perform emission calculations.
- Other amendments related to certain issues identified as a result of working with the affected sources during rule implementation and outreach.

We are seeking public comment only on the issues specifically identified in this notice for the identified subparts. We will not respond to any comments addressing other aspects of the 2009 Final MRR or any other related rulemakings.

A. Mobile Sources

Manufacturers of highway heavy-duty vehicles, as well as manufacturers of highway heavy-duty engines, are subject to GHG reporting requirements as proposed (*see* Section V.QQ.3.d starting on page 16589 of the proposed rule preamble), and as stated in the preamble for the 2009 Final MRR (*see* Table IV–1 on page 56353 of the final rule preamble). EPA inadvertently omitted the regulatory text covering manufacturers of highway heavy-duty vehicles. We are proposing to amend 40 CFR part 86 to correct that error by incorporating the appropriate language into the regulations at 40 CFR 86.1844–01.

B. Subpart A—General Provisions

We are proposing to add or change several definitions to subpart A, to clarify terms used in other subparts of the 2009 Final MRR. Similarly, we are proposing to amend 40 CFR 98.7 (incorporation by reference) to accommodate changes in the standard methods that are allowed by other subparts of the rule.

We are proposing to amend the following definitions in 40 CFR 98.6:

- Carbonate-based mineral,
- Carbonate-based mineral mass fraction,
- Carbonate-based raw material,
- Crude oil, and
- Gas collection system or landfill gas collection system.

We are proposing to amend the definitions of "carbonate-based mineral", "carbonate-based mineral mass fraction" and "carbonate-based raw material" in order to include barium carbonate and potassium carbonate. These carbonates were not included in the 2009 Final MRR; however, EPA has since learned that these are consumed in the glass industry subject to subpart N. Therefore, we are proposing emission factors for these carbonates in subpart N and, for consistency, we are proposing to concurrently amend these definitions in 40 CFR 98.6.

We are proposing to amend the definition of "crude oil" in 40 CFR 98.6 to be identical to the definition in the Energy Information Administration's (EIA) *Definitions of Petroleum Products and Other Terms (Revised January 2010).*[3] As indicated by our definition of crude oil in the Notice of Proposed Rulemaking (74 FR 16448), our intention is to collect information under 40 CFR 98.396(a)(20) on certain hydrocarbons from sources that are not liquid while underground as well as those that are liquid underground. We changed the definition of crude oil after proposal in response to a comment suggesting that the proposed definition could be interpreted to include natural gas (*see* comment EPA–HQ–OAR–2008–0508–0631.1, excerpt 36 in Volume 13: Subpart A: Definitions, Incorporation by Reference, and Other Subpart A Comments). In making this change after proposal, we inadvertently limited the definition of crude oil in the 2009 Final MRR to hydrocarbons that exist in a liquid phase underground. We are proposing to correct this error in today's action. We also expect to increase clarity and reduce administrative burden for reporters by proposing to use EIA's definition of "crude oil," which many reporters already use to track crude oil for EIA's petroleum supply surveys.

We received several questions as to whether passive vents or flares are considered part of a landfill gas collection system at a municipal solid waste landfill. To clarify that the passive vents/flares are not considered part of a landfill gas collection system for purposes of subpart HH, we are proposing to amend the definition of "gas collection system or landfill gas collection system," in 40 CFR 98.6 to state that such a system collects gas by means of a fan or similar mechanical, versus passive, draft equipment.

We are also proposing to amend the definition of "Mscf" in 40 CFR 98.6 to indicate that "Mscf" means thousand standard cubic feet, and not, as incorrectly stated in the 2009 Final MRR, a million standard cubic feet.

We also are proposing to amend the definition of "non-crude feedstocks" in 40 CFR 98.6 to remove the phrase "as a feedstock" in order to avoid confusion with the definition of "feedstock." Under subpart MM, refiners must calculate annual CO_2 emissions that would result from the complete combustion or oxidation of each non-crude feedstock. Our intention in subpart MM is to capture all petroleum products and natural gas liquids that enter a refinery to be further refined or otherwise used on site, including supplemental fuel burned to provide heat or thermal energy. The definition of "feedstock" in 40 CFR 98.6 excludes supplemental fuel burned to provide heat or thermal energy. By removing the term "as a feedstock" from the definition of "non-crude feedstock" and adding "including supplemental fuel burned to provide heat or thermal energy," the proposed amendments align the

[3] *http://www.eia.doe.gov/pub/oil_gas/petroleum/survey_forms/psmdefs_2010.pdf.*

definition to the original intent of the rule.

Additional amendments to definitions are proposed in the relevant subparts.

Today's proposal would also correct an error in the title of a method incorporated by reference in 40 CFR 98.7 for subpart Z, which would be updated to reflect the correct title, "Association of Fertilizer and Phosphate Chemists Analytical Methods Manual, 10th Edition." We are also proposing to incorporate by reference ASTM D6349–09, "Standard Test Method for Determination of Major and Minor Elements in Coal, Coke, and Solid Residues from Combustion of Coal and Coke by Inductively Coupled Plasma—Atomic Emission Spectrometry" for subpart N.

C. Subpart E—Adipic Acid Production

We are proposing to amend Equations E–1, Equation E–2 and Equation E–3 in 40 CFR 98.53. First, we are proposing to amend these equations so that the calculation equations are internally consistent. Currently, the equations do not correctly address situations in which a facility has more than one production unit or process line with separate N_2O control or abatement technology on the separate production units or process lines, and the technologies are not operated 100 percent of the time. In these circumstances, the current equations will not provide an accurate calculation of N_2O emissions. We are proposing to amend the equations so that emissions would be calculated separately for each production unit or process line (or groups of units or lines) that has a separate control or abatement technology, and then sum the emissions for all such units or lines to determine the overall N_2O emissions for the facility. For consistency with these amendments, we are also proposing amendments to 40 CFR 98.54(a), 98.56(j), and 98.57(c) for monitoring and QA/QC, reporting, and recordkeeping, respectively.

We are also proposing to amend equation E–3 to accommodate N_2O abatement technology located after the emission test (sampling) point, and re-designate it as equation E–3a. We are also proposing to add a new equation E–3b for facilities that do not have any N_2O abatement technology located after the test (sampling) point.

Second, we are proposing to amend the language in 40 CFR 98.54(a)(3) and 98.56(k) regarding the Administrator approved alternative method to clarify that this alternative method is for determining N_2O emissions rather than N_2O concentration. Also, we are proposing to amend the language in 40 CFR 98.54(a)(1), (e), and (f) concerning the location of the test (sampling) point used for the performance test and to clarify when the performance test should be conducted. As promulgated, the language can be misconstrued that EPA is requiring the facility to shut down any N_2O abatement technology during the performance testing. This was not intended because many, if not all, of the N_2O abatement technologies in use are mandatory according to the facility operating permit. The proposed amendments would clarify that testing can occur before or after N_2O abatement technology as long as the destruction efficiency of the N_2O abatement technology is properly accounted for. Finally, we are proposing to clarify under 98.57(f) that facilities should retain records of all data collected during performance tests, not just the calculated emission factor.

D. Subpart H—Cement Production

We are proposing to amend 40 CFR 98.84(b) to correct the most recent ASTM standard, to ASTM C114–09 rather than C114–07, for determining the weight fraction of magnesium oxide (MgO) and calcium oxide (CaO) in clinker. In addition we have learned through questions from reporters, that for some facilities it is more efficient to sample clinker for the weight fraction of total MgO and CaO as it exits the kiln rather than from bulk storage. Some facilities do perform this analysis on clinker on a daily basis. We are proposing to amend the rule to allow facilities the option to determine a monthly value based on the arithmetic average of the daily samples.

Through reporters we have also learned that facilities use direct measurement in conjunction with other factors (*e.g.* kiln feed) to determine clinker production. These procedures are verified periodically for accuracy. We are proposing to amend 40 CFR 98.84(d) to allow facilities to use these procedures already used for measuring clinker produced and verify those on a monthly basis. Facilities are already required to measure clinker on a monthly basis. Concurrent with this change, we are proposing to amend 40 CFR 98.86(b) so that facilities that do not estimate combined process and combustion emissions using continuous emission monitoring systems (CEMS) will be required to report the kiln specific feed-to-kiln ratios used to calculate clinker produced for EPA verification of emissions associated with clinker production.

Further, we understand from facilities' questions that an analysis of the organic carbon contents of raw materials could be determined from a composite sample of the kiln feed or from sampling each raw material in the kiln feed depending on the existing sampling methods and raw material storage procedures at the facility. We are proposing to amend the calculation and monitoring procedures in 40 CFR 98.83(d)(3) and 98.84(c) to allow facilities the option to use either sampling procedure for estimating carbon dioxide (CO_2) emissions from raw materials.

We are also proposing to correct and clarify the recordkeeping requirements under 40 CFR 98.87(a) and (b) for facilities with CEMS and for facilities without CEMS. In the 2009 Final MRR, the recordkeeping requirements listed under 40 CFR 98.87(a)(1) and (a)(2) should have been listed under 40 CFR 98.87(b). Facilities using CEMS to estimate combined process and combustion CO_2 emissions from kilns do not need to calculate process emissions using the clinker based emissions methodology provided in Subpart H and, therefore, would not have the relevant records requested in 40 CFR 98.87(a)(1) and (a)(2).

E. Subpart K—Ferroalloy Production

We are proposing to amend 40 CFR 98.112(a) to be consistent with the requirement described in 40 CFR 98.113(d) and in the preamble of the 2009 Final MRR to calculate methane (CH_4) emissions from an electric arc furnace (EAF) used for the production of all ferroalloys for which an applicable CH_4 emission factor is provided in the rule. These alloys and the associated CH_4 emission factors are listed in Table K–1. The 2009 Final MRR contained calculation and reporting procedures for quantifying process CH_4 emissions from all ferroalloys listed in Table K–1, but CH_4 was inadvertantly not included in the GHG's to Report section.

We are also proposing to amend the introductory language for 40 CFR 98.113 to clarify the applicability of the procedures for calculating CO_2 and CH_4 emissions in that section. Finally, we are proposing minor amendments to the language in 40 CFR 98.116 to clarify that the data reporting requirements in 40 CFR 98.116(b) are for each EAF and those in 40 CFR 98.116(d)(1) and (e)(1) are for any ferroalloy product identified in 40 CFR 98.110. We are also proposing to amend 40 CFR 98.116(d) to correct an incorrect cross-reference to 40 CFR 98.36.

F. Subpart N—Glass Production

We are proposing to amend subpart N to add CO_2 emission factors to Table N–

1 for barium carbonate and potassium carbonate. These raw materials were not included in the 2009 Final MRR, but EPA has since learned that they are also used by the glass industry. EPA is requesting comment on whether the proposed amendments to Table N–1 are sufficient or if other raw materials or carbonaceous materials are used in glass manufacturing that should be included in the rule in Table N–1 with their associated emission factors. EPA has also learned from reporters that there is another more commonly used method for determining the carbonate mineral mass fraction of raw materials used in glass production. EPA proposes to amend the rule in 40 CFR 98.144(b) to allow for another ASTM method. Specifically, in addition to ASTM D3682–01, reporters could also use ASTM D6349–09, "Standard Test Method for Determination of Major and Minor Elements in Coal, Coke, and Solid Residues from Combustion of Coal and Coke by Inductively Coupled Plasma—Atomic Emission Spectrometry." We are also proposing to amend the introductory language to 40 CFR 98.146(a) to correct an incorrect cross-reference to 40 CFR 98.36 and to clarify in 40 CFR 98.146(a)(2) that reporting of glass production is by furnace and from all furnaces combined, consistent with the calculation methods. We are proposing to amend 40 CFR 98.146(b)(7) and (9) to correct typographical errors.

G. Subpart O—HCFC–22 Production and HFC–23 Destruction

We are proposing to amend 40 CFR 98.154(k), the requirement to monitor HFC–23 emitted from process vents, to refer to Equation O–7 rather than the incorrect Equation O–6. In 40 CFR 98.154(k), (l), and (o) and in 40 CFR 98.156(b), we are proposing to amend the language so that the term "destruction device" is used rather than the narrower term "thermal oxidizer."

We are proposing to amend the reporting requirements in 40 CFR 98.156(c) and (d) to clarify that only facilities that are required to recalculate the destruction efficiency of their destruction device under 40 CFR 98.154(l) must report the flow rate of HFC–23 being fed into the destruction device, the flow rate at the outlet of the destruction device, and the emission rate of the device. In addition, such facilities would be required to report the newly calculated DE of the device, the HFC–23 concentration measurement used in the DE calculation, and whether 40 CFR 98.154(l)(1) or (l)(2) was used for the calculation. Under these two paragraphs, other HFC–23 destruction facilities would be required to report only the results of their annual measurement of the HFC–23 concentration at the outlet of the destruction device. Facilities that conduct the annual measurement of the HFC–23 concentration only at the outlet of the destruction device would be required to report the results of the annual measurement.

We are proposing to amend the reporting requirements in 40 CFR 98.156(e) to clarify that the one-time report for HFC–23 destruction facilities is due by March 31, 2011 or within 60 days of commencing HFC–23 destruction. The proposed amendment will make the due date in 40 CFR 98.156(e) consistent with the due date for a similar report required in Subpart OO.

In general, these proposed amendments to the reporting requirements for HFC–23 destruction facilities would make them consistent with the monitoring requirements for these facilities. The proposed due dates for the one-time report are consistent with those elsewhere in the 2009 Final MRR for the source categories that are required to begin monitoring in 2010.

H. Subpart P—Hydrogen Production

We are proposing amendments to clarify the definition of the source category in 40 CFR 98.160(c). The original language in the 2009 Final MRR indicated that the hydrogen production source category included hydrogen production processes located within petroleum refineries. The intent of the 2009 Final MRR was that hydrogen production facilities located within facilities that are not petroleum refineries were also included within the definition of the source category. We are proposing to amend 40 CFR 98.160(c) to clarify that hydrogen production facilities located within other facilities are also included in the source category if they are not owned by, or under the direct control of, the other facility's owner and operator. This clarification was necessary to correct a misunderstanding that the original rule text limited the source universe to hydrogen production facilities located within petroleum refineries.

Broadly, we are proposing to amend subpart P to remove several references to "process" CO_2 emissions. EPA received information from industry indicating that the use of the term "process" in the context of calculating and reporting CO_2 emissions resulted in confusion in differentiating between process and combustion emissions. We are proposing to clarify the text in the rule by removing references to the term "process" from the rule language.

We are proposing to remove the requirements in 40 CFR 98.162(b) for owners or operators to report CO_2, CH_4 and N_2O combustion emissions from each hydrogen production process unit using the emissions calculation methods in subpart C. This provision results in double counting of combustion-related emissions from hydrogen production process units, as these combustion emissions are already accounted for when following the calculation methods in 40 CFR 98.163(a) or (b). CO_2 emissions would still be reported under 98.162(a) using the procedures in 98.163(a) or 98.163(b).

We are also proposing to amend language describing the calculation of GHG emissions from gaseous, liquid and solid fuels and feedstocks in 40 CFR 98.163. The clarified language would specify that each gaseous, liquid or solid fuel and feedstock would need to be calculated based on its respective equations detailed in the rule language. This removes the concern that the current language was unclear as to which fuel and feedstock stream would be used to calculate CO_2 emissions.

Lastly, we are proposing to amend 40 CFR 98.166(c) to strike "quarterly" and "kg" (kilogram). Some facilities subject to subpart P may also be subject to subpart PP—Suppliers of Carbon Dioxide. Quarterly reporting of CO_2 quantities (in kilograms) was not consistent with subpart PP.

I. Subpart Q—Iron and Steel Production

We are proposing to amend the subpart Q requirements regarding emissions from flares to clarify the requirements and correct certain deficiencies in the rule pertaining to flares burning off-gases from argon-oxygen decarburization (AOD) and other decarburization processes. Section 98.172(b) of the 2009 Final MRR required reporting of CO_2 emissions from flares using procedures from subpart Y (Petroleum Refineries), without distinguishing flares burning off-gases from AOD or other decarburization processes from other types of flares.

The referenced equations in subpart Y and the further instructions in 40 CFR 98.172(b) in the 2009 Final MRR are applicable to estimating emissions from burning coke oven gas or blast furnace gas, but are not applicable for estimating emissions from flares burning the off-gases from AOD or other decarburization processes. We are, therefore, proposing to amend the language in 40 CFR 98.172(b) to clarify that for subpart Q facilities, flare

emissions must be estimated only for flares burning blast furnace gas or coke oven gas. Similarly, we are proposing to amend the introductory text in 40 CFR 98.175 to specify that the missing data procedures in subpart Y (Petroleum Refineries) at 40 CFR 98.255(b) must be followed for flares burning coke oven gas or blast furnace gas. We are also proposing to amend the introductory text for the data reporting requirements in 40 CFR 98.176 to include flares burning coke oven gas or blast furnace gas.

Subpart Q in the 2009 Final MRR also referenced incorrect equations from subpart Y. We are proposing to amend and correct the references in 40 CFR 98.172(b) to the subpart Y flare equations. Equations Y–2 and Y–3 are the correct equations; the promulgated subpart Q incorrectly referenced Equation Y–1.

We are proposing to amend the reporting requirements in 40 CFR 98.176(e)(3) to clarify that fuel consumption needs to be reported separately for each type of fuel and other process input and output material. We are also proposing to add paragraphs (g) and (h) to 40 CFR 98.176. Paragraph (g) would require facilities to report the annual amount of coal charged to coke ovens because it is used to estimate CO_2 emissions from coke pushing. Paragraph (g) would incorporate the same reporting requirements specified in 40 CFR 98.256(e) of subpart Y (Petroleum Refineries) for flares burning coke oven gas or blast furnace gas.

We are proposing to amend the recordkeeping requirements in 40 CFR 98.177(d) to clarify the units and processes for which annual operating hours need to be recorded.

We are also proposing to amend the requirements in the promulgated rule to estimate GHG emissions from argon-oxygen decarburization vessels to clarify that they also apply to any other type of vessel used to remove carbon from molten steel (decarburization) and result in the venting of similar GHG. The promulgated rule would have required reporting of these alternative vessel emissions as part of flare emissions. Because of the proposed clarification noted above to limit the flare emission calculations to only those flares burning coke oven gas or blast furnace gas, we are proposing to replace the term "argon-oxygen decarburization vessels" with the term "decarburization vessels" throughout the rule and to replace the definition of "argon-oxygen decarburization vessels" with a definition for "decarburization vessels" in order to maintain reporting of the CO_2 emissions from these vessels.

J. Subpart S—Lime Manufacturing

We are proposing to amend the cross reference to 40 CFR 98.193(b)(1) in the introductory language to 40 CFR 98.195; it incorrectly referenced 40 CFR 98.193(b)(2).

We are also proposing to amend the terminology used throughout subpart S to clarify whether the calculation and reporting requirements are referring to calcined byproducts and waste materials by adding the word "calcined" to the lime byproduct and waste terminology, as needed. We are also proposing amendments to the terminology in the subpart to clarify when the calculation and reporting requirements apply to lime products that are produced at the facility.

K. Subpart V—Nitric Acid Production

We are proposing to amend 40 CFR 98.223 and 98.224 to clarify how N_2O emissions are to be measured if a facility has an N_2O abatement device. The first amendment concerns the language for the location of the test (sampling) point used for the performance test in several paragraphs in 40 CFR 98.223. As promulgated, the language could be misconstrued to require the nitric acid facility to shut down any N_2O abatement technology during the performance testing. This was not the intention as many, if not all, of the N_2O abatement technologies are mandatory according to the facility operating permit. The proposed amendments would clarify that testing can occur before or after N_2O abatement technology as long as the destruction efficiency is properly accounted for.

We are also proposing to include a new Equation V–3b for facilities that do not have N_2O abatement technology located after the test (sampling) point. Equation V–3 would be redesignated as Equation V–3a, and would also be corrected so that the term on the left-hand side of the equation would be changed from EF_{N_2Ot} to E_{N_2Ot}.

In addition we are proposing to clarify in 40 CFR 98.223 that the annual performance test must be conducted for each nitric acid train, consistent with the equations in 40 CFR 98.223. Additional changes are being proposed for the monitoring requirements in 40 CFR 98.224 to conform to the changes in the calculation methods being proposed in 40 CFR 98.223. We are proposing to amend 40 CFR 98.224(a)(1) to clarify when during a nitric acid production campaign facilities must conduct the performance test.

We are also proposing to amend the language concerning the Administrator-approved alternative method for determining N_2O emissions in 40 CFR 98.223(a)(2)(ii), 98.224(a)(3), and 98.226(n). The alternative method is for determining N_2O emissions rather than N_2O concentration or an N_2O emission factor. The language has been changed to correct this point.

We are proposing to amend the data reporting requirements in 40 CFR 98.226(g) and (m) to be consistent with the calculation methods which are for each nitric acid train, not the facility.

L. Subpart Z—Phosphoric Acid Production

We are proposing to amend subpart Z to correct the title of the reference to the standard bulk sampling and analysis method in 40 CFR 98.6, and 40 CFR 98.264(a) and (b). The reference in the 2009 Final MRR currently reads, "Phosphate Mining States Methods Used and Adopted by the Association of Fertilizer and Phosphate Chemists AFPC Manual 10th Edition 2009—Version 1.9." This reference would be revised to read the "Association of Fertilizer and Phosphate Chemists Analytical Methods Manual 10th Edition," which reflects the correct title of the document.

We have learned from facilities that the AFPC manual does not currently contain a procedure for obtaining a representative grab sample of rock for testing, but that it will in the future. We are proposing to amend 40 CFR 98.264(a) to allow facilities to use the appropriate industry consensus standards currently available, in addition to the AFPC manual. We are also proposing to amend 40 CFR 98.264(a) to clarify that the grab sample must be collected prior to entering the mill for accurate analysis of inorganic carbon contents.

We are proposing to amend 40 CFR 98.266 to correct a cross reference in the introductory text of that section, and to revise paragraph (c) to clarify that the annual arithmetic average percent inorganic carbon in phosphate rock is to be reported as the percent by weight, expressed as a decimal fraction. We are also proposing to add a new paragraph (f)(9) to 40 CFR 98.266 to specify that facilities need to report the total annual process CO_2 emissions from the phosphoric acid production facility, in metric tons. Facilities must calculate these emissions already in 40 CFR 98.263(b)(2) using Equation Z–2.

M. Subpart CC—Soda Ash Manufacturing

We are proposing to amend the data reporting requirements in 40 CFR 98.296(b)(3) to clarify that the annual soda ash production is reported for each

line, and to make the reporting requirements consistent with the calculation requirements in 40 CFR 98.293(b)(1) through (b)(3). The units in 40 CFR 98.296(a)(1) and 40 CFR 98.296(b)(6) would be corrected from metric tons to short tons for consistency with other similar data reporting requirements. This change is also consistent with how facilities collect these data.

We are also proposing to amend 40 CFR 98.296(b)(10) to clarify that the information in that paragraph is reported for each manufacturing line or stack, when using a site specific emission factor, and to clarify that the elements required by 40 CFR 98.296(b)(10)(i), (ii), and (iv) are for the periods during the performance test. We are also proposing to delete 40 CFR 98.296(b)(11)(iv), (v), and (vi) because those paragraphs describe missing data procedures for elements during the site-specific emission factor performance test which are not allowed to be missing per 40 CFR 98.296(c).

N. Subpart EE—Titanium Dioxide Production

We are proposing to amend the monitoring and QA/QC reporting requirements in 40 CFR 98.314(e) to clarify that the quantity of carbon-containing waste generated from each titanium dioxide production line is determined on a monthly basis, consistent with the calculation procedures in 40 CFR 98.313(b)(3). In addition, we are proposing to amend the data reporting requirements under 40 CFR 98.316(b)(9) to be consistent with the calculation and monitoring alternative requirements of 40 CFR 98.313(b)(2) and 40 CFR 98.314(c) by removing the restriction that the carbon content factor for petroleum coke can only be from the supplier. We are also proposing to amend the data reporting requirements under 40 CFR 98.316(b)(11) to clarify that they apply to each process line, consistent with the calculation and monitoring alternative requirements of 40 CFR 98.313(b)(3) and 40 CFR 98.314(f).

O. Subpart GG—Zinc Production

We are proposing to amend the definitions of the terms for $(Electrode)_k$ and $(C_{Electrode})_k$ in Equation GG–1 to remove the references to kilns because electrodes are only used in electrothermic furnaces and are not used in Waelz kilns. We are also proposing to amend 40 CFR 98.336(a) to correct a cross reference to subpart C, and to amend 40 CFR 98.336(b)(1) to clarify that identification numbers need to be reported for both Waelz kilns and electrothermic furnaces.

We are proposing to amend the data reporting requirements in 40 CFR 98.336(b)(7) and (10) to clarify that the carbon content of each input to a kiln or furnace should be reported as a calculation parameter regardless of whether the data are collected from the supplier or by self measurement. In 40 CFR 98.336, paragraphs (b)(8) and (11) already require facilities to report whether carbon contents were determined through self measurement or based on reports from the supplier.

P. Subpart HH—Municipal Solid Waste Landfills

We are proposing numerous clarifying amendments and technical corrections to subpart HH to address questions EPA has received about the rule's requirements and to correct known errors. Technical amendments to the rule are also proposed to address some of the more significant questions that were the result of insufficient detail being provided in the rule.

Source Category Definition. We are proposing to amend 40 CFR 98.340(b) to read, "This source category does not include Resource Conservation and Recovery Act (RCRA) Subtitle C or Toxic Substances Control Act (TSCA) hazardous waste landfills, dedicated construction and demolition waste landfills, or industrial waste landfills." This change would clarify the types of landfills that are not included in the MSW landfill source category. We are further proposing to add definitions within 40 CFR 98.348 for the terms "dedicated construction and demolition waste landfills" and "industrial waste landfills" to further clarify what is meant by these excluded landfill types. These definitions are from 40 CFR 257.2 (Criteria for Classification of Solid Waste Disposal Facilities and Practices).

Equation HH–1. We are proposing the following technical amendments to Equation HH–1 in 40 CFR 98.343:

- Replace the term L_0 (CH_4 generating potential) with the terms, "$MCF \times DOC \times DOC_F \times F \times 16/12$," (where MCF is the CH_4 correction factor; DOC is the degradable organic content; DOC_F is the fraction of DOC dissimilated; and F is the fraction by volume of CH_4 in landfill gas) and remove the definition of the term L_0 from the definitions for Equation HH–1 as it no longer appears in the equation. This change provide clarity of terms and does not affect the way in which the methane generation rate is calculated by equation HH–1 since the new terms were already contained in the definition of L_0.
- Revise the definition of "S" to read, "Start year of calculation. Use the year 1960 or the opening year of the landfill, whichever is more recent," for clarity.
- Revise the definition of W_x to include "measurement data" as follows: "Quantity of waste disposed of in the landfill in year x from measurement data, tipping fee receipts, or other company records (metric tons, as received (wet weight))" to include the use of measurement data with the other methods specified.
- Revise the definition of "MCF" to read "Methane correction factor (fraction). Use the default value of 1," to clarify that the default factor of 1 must be used.
- Revise the definition of "DOCf" to read, "Fraction of DOC dissimilated (fraction). Use the default value of 0.5," to clarify that the default factor of 0.5 must be used.
- Revise the definition of "F" to clarify that F is determined on a dry basis as follows: "Fraction by volume of CH4 in landfill gas from measurement data on a dry basis, if available (fraction); default is 0.5," for clarification.
- Revise the definition of "k" to read, "Rate constant from Table HH–1 of this subpart (yr-1). Select the most applicable k value for the majority of the past 10 years (or operating life, whichever is shorter)," to clarify that k is not a measured value and that the selection of k should be based on precipitation and leachate recirculation rates over the past 10 years.

We are also proposing to amend 40 CFR 98.343(a)(2) to replace "use the bulk waste parameter values for k and L0 in Table HH–1" with "use the bulk waste parameter values for k and DOC in Table HH–1," to be consistent with the proposed changes to Equation HH–1.

Measuring Waste Quantity. We are proposing to amend 40 CFR 98.343(a) by adding a new paragraph (a)(3) that serves to provide the necessary detail and clarification on the requirements for measuring the quantity of waste disposed in the landfill beginning with the first monitoring year (2010 or later, hereafter referred to as "monitoring years"), and re-designating the existing 40 CFR 98.343(a)(3) as (a)(4).

The proposed waste measurement requirements for the monitoring years would require the use of scales when scales are in-place for all vehicles or containers delivering waste, except passenger vehicles and light duty pick-up trucks. Passenger vehicles and light duty pick-up trucks contribute only a small fraction of the total waste landfilled, but they significantly

contribute to the total number of vehicles entering and exiting the landfill. As such, most landfills do not weigh individual passenger vehicles or light duty pick-up trucks. Instead, they commonly charge these customers a flat tipping fee. Requiring each of these vehicles to be weighed both in and out of the landfill would create a significant time and recordkeeping burden on the landfill owner or operator which was not included in the cost and economic impact analysis for subpart HH. Furthermore, we find that such a requirement is not appropriate because the significant increase in labor costs will not significantly reduce the uncertainty in the mass of waste landfilled. This is, in part, due to the small contribution these loads make on the total quantity of waste landfilled and, in part, due to the fact that these vehicles often have small loads relative to the vehicle weight so the direct measurements have greater uncertainty for small loads than they do for larger loads.

When scales are present at the MSW landfill, they must be used, (except for passenger vehicles and light duty pick-up trucks). Two options for the use of scales are included in this proposal. One option is to directly weigh each vehicle/container load as it enters the landfill and weigh each vehicle/container after the waste has been off-loaded, and calculate the mass of waste disposed as the difference in the two measurements. The second option requires the landfill owner or operator to determine tare weights (empty vehicle weights) for representative vehicle types. In this option, the landfill owner or operator must weigh the incoming vehicles and containers and calculate the mass of waste disposed based on the difference of the incoming vehicle weight and the tare weight of that vehicle type.

When scales are not in place, the working capacity or the mass of waste per type of vehicle or container must be determined. These measurements may include determining the volumetric capacity of representative containers and the average density of the waste as received. Wheel-load scales or portable axle-load scales may be used for these density determinations or measures of the mass of waste received by type of load. The landfill owner or operator must record the number and type of vehicles that haul waste to the landfill and use the working capacity of the containers to calculate the quantity of waste landfilled.

While we originally assumed that scales would be present at all MSW landfills, some reporters indicated that this is not the case. After careful review of the 2009 Final MRR and its technical record, it appears the intended requirement to use scales is not clearly defined in the 2009 Final MRR and no details were provided as to how such measurements using scales were to be made. Furthermore, the definition of "W_X" in Equation HH–1 stated that "W_X = Quantity of waste disposed in the landfill in year x from tipping fee receipts or other company records." This definition does not suggest a need to perform direct mass measurements. This definition was intended to allow use of tipping fee receipts or company records for the years prior to the first reporting year, but can also be interpreted to allow these same records to be used in the reporting year. While 40 CFR 98.343(a)(3) in the 2009 Final MRR provided methods for "years prior to reporting for which waste disposal quantities are not readily available," there were no specific instructions for measurement methods for waste disposal quantities in the reporting year.

For the few landfills that do not have scales, the cost of installing scales was evaluated. According to one of the commenters, the capital cost of installing scales could be as much as $50,000 per scale, with operating and driver time resulting in an estimated annualized cost of over $23,000. We also considered the uncertainty associated with different waste quantity measuring methods and their resulting uncertainty in the overall modeled methane generation. Relative to the uncertainty of the other model parameters, requiring all landfills to have scales for mass measurements would not significantly reduce the overall uncertainty in the modeled methane generation. Given the significant additional costs for requiring the installation of scales at a landfill and the limited improvement in the uncertainty of the reported methane emissions, we are proposing to allow the use of "truck counts and capacities" as an acceptable method of determining waste quantity landfilled.

In addition, we are proposing to redesignate paragraph (a)(3) of 40 CFR 98.343 to (a)(4) and to amend that paragraph and the sub-paragraphs to clarify that measurement data can be used for historical years when the data are available. We are proposing to clarify that the "Historical waste disposal quantities should only be determined once, as part of the first annual report, and the same values should be used for all subsequent annual reports, supplemented by the next year's data on new waste disposal." We are also proposing to amend 40 CFR 98.343(a)(4)(i) to read, "Assume all prior year's waste disposal quantities are the same as the waste quantity in the first year for which waste quantities are available," to properly account for situations when waste quantity data are available for some, but not all, historic years. We are proposing to amend 40 CFR 98.343(a)(4)(iii) by revising the phrase, "*i.e.,* from first accepting waste," with "*i.e.,* from the first year accepting waste," to enhance the meaning of that sentence.

In related amendments, we are also proposing to amend 40 CFR 98.344(a) to clarify the requirements for measurement equipment by stating that "Mass measurement equipment used to determine the quantity of waste landfilled on or after January 1, 2010 must meet the requirements for weighing equipment as described in 'Specifications, Tolerances, and Other Technical Requirements For Weighing and Measuring Devices,' NIST Handbook 44 (2009) (incorporated by reference, *see* 40 CFR 98.7)." We are also proposing to amend 40 CFR 98.346(a) to require reporting of "* * * an indication of whether scales are present at the landfill," and to amend 40 CFR 98.346(b) to require reporting of the waste quantities that were determined using scales according to the proposed requirements in 40 CFR 98.343(a)(3)(i) and the waste quantities determined using vehicle counts and load capacities. We are also proposing to amend 40 CFR 98.347 to specifically require that records be maintained of all measurements used to determine vehicle tare weights or working capacities.

Equations HH–2, HH–3, and HH–4. We are proposing the following technical amendments to Equation HH–2 in 40 CFR 98.343:

- Replace the term "WGR_X" with "WDR_X" and remove the term "%SWDS" to simplify the equation since both terms were look-up values and the product can be expressed as a single value.
- Replace the definition of the term "WGR_X" with "WDR_X = Average per capita waste disposal rate for year x from Table HH–2 of this subpart (metric tons per capita per year, wet basis; tons/cap/yr)," for consistency with the revisions of Equation HH–2.
- Delete the definition of the term "%SWDS" for consistency with the revisions of Equation HH–2.
- Delete the word "of" from the definition of "POP_X" to correct a grammatical error.

We are proposing the following technical amendments to Equation HH–3 in 40 CFR 98.343:

• Replace the term "WDR_X" with "W_X" for consistency with the same term as expressed in Equation HH–1.

• Replace the definition of the term "WDR_X" with "W_X = quantity of waste place in the landfill in year x (metric tons/wet basis)," for consistency with the same term as expressed in Equation HH–1.

• Replace the definition of LFC with "Landfill capacity or, for operating landfills, capacity of the landfill used (or the total quantity of waste-in-place) at the end of the year prior to the year when waste disposal data are available from design drawings or engineering estimates (metric tons)," for clarity.

We are proposing the following technical amendments to Equation HH–4 and the related 40 CFR 98.343(b):

• Amend Equation HH–4 and the terms in that equation to more clearly allow for daily averages (365 or 366 per year) from a continuous CH_4 monitoring system, or from weekly sampling (with 52 measurement periods).

• In 40 CFR 98.343(b)(2), delete "* * * at least weekly * * * " because the measurement frequency is specified in subsequent paragraphs.

• In 40 CFR 98.343(b)(2)(ii) and subparagraphs (A) and (B), replace "no less than weekly" with "once each calendar week, with at least three days between measurements," to clarify what is meant by weekly sampling.

• In 40 CFR 98.343(c), replace "Calculate * * * " with "For all landfills, calculate * * * " to clarify and provide parallel sentence structure.

Moisture Content Measurement. In addition to the other amendments to Equation HH–4 discussed above, we are proposing to amend the moisture content measurement requirements in Equation HH–4. We intended that Equation HH–4 would be calculated on a daily or weekly average basis, but it was not properly codified in the 2009 Final MRR to allow for weekly measurements. Specifically, the instructions to use N=52 for weekly sampling is incorrect given the fixed unit conversion factor for minutes per day. To correct this error, we are proposing to revise the definition of $(V)_n$ to be the cumulative volume for the measurement period (rather than the volumetric flow rate), eliminate the 1,440 conversion factor for minutes per day, and revise the reference to "day" in the definition of equation terms with "measurement period."

We also received numerous questions regarding the moisture correction term in Equation HH–4, suggesting that the instructions to replace this term with 1 within the definitions of $(V)_n$ and $(C)_n$ were confusing and incomplete.

We intended that moisture content would be determined, if necessary, through measurement data. To address this issue, we are also proposing to amend Equation HH–4 to replace the moisture correction term, $[1-(f_{H2O})_n]$, with a moisture correction factor, K_{MC}. K_{MC} would be defined as "Moisture correction term for the measurement period, volumetric basis," for three different measurement scenarios:

K_{MC} = 1 if $(V)_n$ and $(C)_n$ are both measured on a dry basis or if both are measured on a wet basis.

$KMC = 1 - (f_{H_2O})_n$ if $(V)_n$ is measured on a wet basis and $(C)_n$ is measured on a dry basis.

$KMC = 1/[1 - (f_{H_2O})_n]$ if $(V)_n$ is measured on a dry basis and $(C)_n$ is measured on a wet basis.

Equation HH–4 in the 2009 Final MRR did not consider the third scenario for K_{MC}. While we do not anticipate that this scenario of measurements is likely, the proposed amendment is both clearer and more technically correct. We similarly propose to amend 40 CFR 98.343(b)(2)(iii)(B) to clarify that moisture content is needed "If the CH_4 concentration is determined on a dry basis and flow is determined on a wet basis or CH_4 concentration is determined on a wet basis and flow is determined on a dry basis, * * *".

Additionally, we received numerous inquiries about how reporters are to measure for moisture content, and asking whether measurements were really necessary because no moisture content measurement requirements are in 40 CFR 98.344. To clarfiy how and when reporters are to measure for moisture content, we are proposing to amend 40 CFR 98.344(d) and (e) to include reference to moisture content monitors. Specifically, we are proposing to amend 40 CFR 98.344(d) to read: "All temperature, pressure, and if necessary, moisture content monitors must be calibrated using the procedures and frequencies specified by the manufacturer." We are also proposing to amend the first sentence in 40 CFR 98.343(d) to read, "The owner or operator shall document the procedures used to ensure the accuracy of the estimates of disposal quantities and, if applicable, gas flow rate, gas composition, temperature, pressure, and moisture content measurements." These proposed amendments clarify that the moisture content is to be based on measurement values and not assumed moisture content values. We do note that moisture content calculated from wet and dry bulb temperature measurements are a suitable measure of moisture content, but that measurement of dry bulb temperature alone, assuming the gas is saturated with water (*i.e.,* 100 percent relative humidity) is not a direct measure of moisture content, and is not a suitable measurement technique.

In related amendments, we are proposing to amend 40 CFR 98.346(i)(3) and (4) to clarify the reporting requirements for temperature, pressure, and moisture content measurements. Section 98.346(i)(4) in the 2009 Final MRR pertained to pressure measurements, but inadvertently referenced "* * * or indication that temperature is incorporated into internal calculations * * *" We are proposing to amend 40 CFR 98.346(i)(3) to require reporting of both temperature and pressure (not just temperature) and to amend 40 CFR 98.346(i)(4) to require reporting of the moisture content measurements. Together, the proposed amendments to Equation HH–4 and 40 CFR 98.344 and 98.346 would clarify that moisture content need only be determined when the concentration and flow measurements are made on different basis (one wet and one dry) and that, if needed, the moisture content must be measured.

"*Active*" *and* "*Passive*" *Gas Collection Systems.* We are proposing to clarify the difference between "active" gas collection systems and "passive" gas collection systems. Some landfills use "passive" vent flares to control odor. In these "passive" systems, landfill gas flows naturally to the surface of the landfill where an opening or pipe (vent) is installed to allow for natural gas flow. Because of the low and variable flow as well as the number of passive vents that are present at a single landfill, requiring flow meters for these systems is impractical. Furthermore, these systems do not meet the definition of gas collection system in 40 CFR 98.6 because the gas is not collected to a single location. However, to clarify our intent to only require monitoring of "active" gas collection systems, we are proposing to amend the definition of "gas collection system" in 40 CFR 98.6 as described in Section II.B. of this preamble. However, we are interested in understanding the number of landfills with passive vent controls, so we are also proposing to add a reporting requirement in 40 CFR 98.346(h) and (i)(7) for reporters to provide "* * * an indication of whether passive vents and/or passive flares (vents or flares that are not considered part of the gas collection system as defined in 40 CFR 98.6) are present at this landfill."

Other Technical Corrections. We are proposing other technical corrections for subpart HH to correct typographical errors, to correct equations, and to provide minor clarifications.

We are proposing the following technical corrections to 40 CFR 98.344(b):

- Delete the word "install" to clarify that the gas composition monitors do not need to be installed to meet this requirement and to allow use of portable monitoring devices.
- In 40 CFR 98.344(b)(6)(ii), add "at the routine sampling location" to clarify the sampling location.
- Revise 40 CFR 98.344(b)(6)(ii)(A) to read "Take a minimum of three grab samples of the landfill gas with a minimum of 20 minutes between samples and determine the methane composition of the landfill gas using one of the methods specified in paragraphs (b)(1) through (b)(5) of this section" because the sampling location is previously specified and to correct spelling error.
- In 40 CFR 98.344(b)(6)(ii)(B), delete "that is collected and routed to a destruction device (before and teatment equipment)" because the sampling location is previously specified.
- In 40 CFR 98.344(b)(6)(ii)(B), add "for use in Equation HH–4" to the definition of the term CCH4 as follows "Methane concentration in the landfill gas (volume %) for use in Equation HH–4," for clarity.

In 40 CFR 98.344(c), we are proposing to revise the language to read, "Each gas flow meter shall be recalibrated either biennially (every 2 years) or at the minimum frequency specified by the manufacturer. Except as provided in 40 CFR 98.343(b)(2)(i), each gas flow meter must be capable of correcting for the temperature and pressure and, if necessary, moisture content." The amended language would conform with the general provisions for calibration of gas flow meters and with other amendments indicating when moisture corrections are necessary.

We are proposing the following technical corrections to 40 CFR 98.346:

- Revise the language in 40 CFR 98.346(a) regarding leachate recirculation to read "an indication of whether leachate recirculation is used during the reporting year and its typical frequency of use over the past 10 years (*e.g.,* used several times a year for the past 10 years, used at least once a year for the past 10 years, used occasionally but not every year over the past 10 years, not used)," to clarify the reporting requirement.
- In 40 CFR 98.346(d)(1), replace the term, "Degradable organic carbon (DOC) value used in the calculations," with "Degradable organic carbon (DOC), methane correction factor (MCF), and fraction of DOC dissimilated (DOC_F) values used in the calculations," to comport with revisions of Equation HH–1.
- Revise 40 CFR 98.346(f)(1) to read, "The surface area of the landfill containing waste (in square meters), identification of the type of cover material used (as either organic cover, clay cover, sand cover, or other soil mixtures). If multiple cover types are used, the surface area associated with each cover type." This change would clarify the reporting requirement and clarify that an average oxidation fraction does not need to be calculated because the default oxidation fraction must be used.
- Add "for the reporting year" to 40 CFR 98.346(i)(1) as follows: "Total volumetric flow of landfill gas collected for destruction for the reporting year (cubic feet at 520 °R or 60 °F and 1 atm)," to clarify the reporting requirement.
- Add "Annual average" to 40 CFR 98.346(i)(2)as follows: "Annual average CH4 concentration of landfill gas collected for destruction (percent by volume)," to clarify the reporting requirement.
- In 40 CFR 98.346(i)(7), replace the parenthetical "(manufacture, capacity, number of wells, etc.)" with "(manufacturer, capacity, and number of wells)" to correct the typographical error and to eliminate the open-ended reporting requirement implied by the etcetera.

We are also proposing to include additional definitions of terms used in the rule to help clarify the rule requirements. The following terms are proposed to be defined within 40 CFR 98.348 of subpart HH: "destruction device"; "solid waste"; and "working capacity."

We are proposing to amend Table HH–1 of subpart HH to provide a more reasoned approach for determining the decay rate constant, k, when only a small quantity of leachate is recirculated and/or when leachate recirculation is used rarely (not every year). In these cases, reporters would be required to use the highest decay rate values, even though the small or infrequent use of recirculation would not significantly alter the landfill's moisture content. Instead of an all or nothing approach, the proposed amendments require that recirculation be calculated in units of inches/year (effectively representing it as an "additional precipitation rate"). The leachate recirculation rate would be calculated as the total volume of leachate recirculated during the year divided by the area of the portion of the landfill containing waste. This leachate recirculation rate (in inches/year) would be added to the precipitation rate and the sum would be used to determine what decay rate constant is appropriate.

We are also proposing to amend Table HH–1 to delete the default value for L_O as the amended Equation HH–1 would no longer use that term. Finally, we are proposing to amend Table HH–1 to include default values for DOC and k (decay rate) for inert materials because this category of waste is needed to properly account for non-degradable wastes that are managed in MSW landfills.

We are proposing to amend Table HH–2 of subpart HH to provide directly the waste disposal factors rather than the waste generation rates and percent disposed of in solid waste disposal sites (% to SWDS). These revisions are commensurate with the proposed amendments to Equation HH–2. Additionally, we identified an inadvertent error in the waste generation rates included in Table HH–2 from 1989 to 2006, so we are correcting this error with the values for waste disposal rates in the proposed amendments to Table HH–2. Finally, we propose to add waste disposal rates for 2007, 2008, and 2009 so that Equation HH–2 can be used for projecting historical disposal quantities for these years.

We are proposing to amend Table HH–3 of subpart HH to delete the references to the average depth of waste within an area (H2, H3, H4, and H5) as these terms are not used in the calculation for landfill gas collection efficiency. We also propose to amend Table HH–3 to clarify what is considered a "final soil cover." The description for A5 is proposed to read, "Area with a final soil cover of 3 feet or thicker of clay and/or geomembrane cover system and active gas collection." In the 2009 Final MRR, A5 included areas with both a final soil AND a geomembrane cover system. The amendment is needed so the definition of area A5 matches the types of cover systems for which the efficiency value was assessed. The description for A4 is proposed to read, "Area with an intermediate soil cover, or a final soil cover not meeting the criteria for A5 below, and active gas collection." This revision is needed to clarify what is considered an intermediate soil cover and to better describe the types of cover systems for which the efficiency value of 0.75 applies.

Q. Subpart LL—Suppliers of Coal-Based Liquid Fuels

We are proposing to amend 40 CFR 98.386(a)(5) and (6) to clarify that fossil-fuel products that enter the facility

would not be reported when exiting the facility if they are not further refined or otherwise used on site (*e.g.* products stored in a tank). It was not EPA's intent that such products be reported.

R. Subpart MM—Suppliers of Petroleum Products

We are proposing to add a definition of "batch" in 40 CFR 98.398 to clarify the crude oil reporting requirements in 40 CFR 98.396(a)(20) and to minimize administrative burden. We are proposing to define a batch of crude oil as up to a calendar month of volume from a single country of origin or, if refiners do not know the country of origin, up to a total calendar month of volume. Our intention is to allow refiners to use sample data on crude oil American Petroleum Institute (API) gravity and sulfur content that they or a third party currently collect as part of normal business practices, including sample data refiners use to report monthly weighted average API gravity and sulfur content to EIA.

To better align the API gravity and sulfur content reporting requirements with normal business practices, we are also proposing to amend the recordkeeping requirements in 40 CFR 98.397 so that refiners would no longer be required to maintain laboratory reports, calculations and worksheets used in the measurement of API gravity and sulfur content of crude oil as long as they maintain sufficient records to support the information they report to EPA (as required by 40 CFR 98.397(a) and (b)).

We are also proposing to amend 40 CFR 98.394(d) and 40 CFR 98.396(a)(20) to clarify that we are seeking the weighted average API gravity and sulfur content from representative samples of each batch. We seek comment on our proposed definition of batch in 40 CFR 98.398 and the associated amendments in subpart MM.

We also seek comment on any additional changes to the monitoring and QA/QC requirements in 40 CFR 98.394, procedures for estimating missing data in 40 CFR 98.395, description of reporting requirements in 40 CFR 98.396(a)(20), or records that must be retained in 40 CFR 98.397 related to measuring API gravity and sulfur content of crude oil that would better align these provisions with normal business practices.

We also seek comment on defining a batch of crude oil, alternatively, as an annual volume of a specific type of crude oil where types of crude oil are characterized by EIA crude stream code categories [4] or other parameters (*e.g.,* ranges of API gravity and sulfur content, commonly-used industry names) that refiners use to differentiate between types of crude oil as part of normal business practices. We seek comment on whether this alternative definition would decrease burden for reporters compared to our proposed definition or provide better data for purposes of understanding upstream emissions associated with the production of crude oil and petroleum products. We also seek comment on the relative benefits of using EIA's crude stream categories, as opposed to other parameters that refiners use in the ordinary course of business, to distinguish between different types of crude.

We also seek comment on limiting the crude oil data reporting requirements under 40 CFR 98.396(a)(20) to just the annual volume of each EIA crude stream code category (*i.e.,* remove requirements to report API gravity, sulfur content, and country of origin of each batch), given that each category already reflects country of origin and the range of API gravity and sulfur content for each category may be sufficiently narrow.

We are proposing to amend the definition of $Product_i$ (annual volume of product "i" produced, imported, or exported) in equation MM–1 in 40 CFR 98.393(a)(1) and (2) to make it clear that GHG emissions should not be calculated for products leaving the refinery if those products had entered the refinery but were not further refined or otherwise used on site (*e.g.* products stored in a tank). As a harmonizing change, we are proposing to amend 40 CFR 98.396(a)(5) and (6) to clarify that these products are not reported.

We are proposing to amend the procedure in 40 CFR 98.393(f)(1) for calculating emission factors for solid products when using Calculation Method 1. The amendments would clarify that reporters should multiply the default carbon share factor in column B of Table MM–1 by 44/12 (the ratio of the molecular weight of CO_2 to the atomic weight of carbon) to convert the amount of carbon in the product to CO_2. Due to an oversight, 44/12 was not included in the original formula. This proposed amendment is necessary because otherwise reporters would calculate the emissions of carbon instead of carbon dioxide.

We are proposing to amend Equation MM–9 in 40 CFR 98.393(h)(2) to correct a typographical error. The correct emission factor (EF) term in the equation is EF_j not EF_i.

We are proposing to add an optional method for reporters in 40 CFR 98.393(i) to calculate CO_2 emissions that would result from the complete oxidation or combustion of a blended product or blended non-crude feedstock. The procedures in the existing rule require reporters to calculate CO_2 emissions for blended products either by selecting the default emission factor for the product listed in Table MM–1 that resembles most closely the blended product (Calculation Method 1) or by sampling and testing the blended product (Calculation Method 2). If a reporter applies the former method, the CO_2 emissions calculation for the blended product will reflect the CO_2 content of only one blend component. In such a case, the CO_2 from the blended product will not be as accurately accounted for in equation MM–4. The optional method we are proposing today would allow reporters to account for the CO_2 emissions of a blended product or blended non-crude feedstock in the summary calculation of total facility CO_2 by calculating the emissions of the blend's individual components using appropriate default factors listed in Table MM–1. This amendment is being proposed in an attempt to increase flexibility for facilities that receive and supply blends, especially at refineries with co-located terminals. This amendment would also improve accuracy of the summary calculation of total refinery CO_2 because it would ensure that the same quantities and emission factors are used for blend components coming in to the refinery as for blended products going out. We are seeking comment on the value of adding this new optional method and on whether it would be worthwhile to finalize these proposed rule amendments with this method included. We are seeking comment on the occasions in which reporters would use this method so that we can ensure that we have fully accounted for such occasions in the text. Please be specific in your comments. We also seek comment on whether the list of products in Table MM–1 is comprehensive of all products contained in blends that petroleum product suppliers receive or supply. We seek comment on any other alternative methods that would allow reporters to calculate CO_2 emissions for product blends using information already collected by industry in the course of

[4] EIA's foreign stream code categories are listed in Appendix A of Form EIA–856 available at *http://www.eia.doe.gov/pub/oil_gas/petroleum/survey_forms/eia856appa.pdf.* EIA's domestic stream code categories are listed in Form EIA–182 available at *http://www.eia.doe.gov/pub/oil_gas/petroleum/survey_forms/eia182f.pdf.*

normal business or as part of compliance with the mandatory reporting rule.

We are proposing that the optional method would not be available for a product that is biomass-based because such biomass-based products are subject to paragraph (h) of 40 CFR 98.393. We seek comment on whether there would be value in expanding the proposed method to include biomass-based blends, and if so how the proposed method could be amended to allow for biomass-based blends without contradicting or jeopardizing the procedures in paragraph (h) of 40 CFR 98.393. Please be specific in your comments.

To align the existing regulatory text with the proposed optional method for blends, we are proposing to amend paragraphs (a)(1) and (b)(1) of 40 CFR 98.393 and to add paragraph (d) of 40 CFR 98.396 to create new data reporting requirements for blends.

For additional discussion of the current approach to blends in subpart MM, please *see* the response to comment EPA–HQ–OAR–2008–0508–0712.1, excerpt 94 in Volume 38 of U.S. EPA's Response to Public Comments on the Mandatory Greenhouse Gas Reporting Rule: Subpart MM—Suppliers of Petroleum Products (EPA–HQ–OAR–2008–0508–2254).

We are proposing to amend the calculation procedures in 40 CFR 98.393(h) for blended biomass-based fuels. The 2009 Final MRR directed refineries that supply a petroleum product that was produced by blending a petroleum-based product with denatured ethanol to report emissions from the denaturant leaving the refinery but not the denaturant in the ethanol that enters the refinery as a feedstock. To address this fact for refineries using Calculation Method 1 for petroleum products or non-crude petroleum feedstocks that contain denatured ethanol, we are proposing to amend the definition of the term "%vol" to exclude denaturant in equations MM–8 and MM–9, respectively.

To address this fact for refineries using Calculation Method 2 for petroleum products that were produced by blending a petroleum-based product with denatured ethanol on site, we are proposing a new equation MM–10a. Proposed equation MM–10a would require refineries to sample the petroleum-based products prior to blending them with denatured ethanol and use the resulting emissions factor and the volume of the petroleum-based product to calculate emissions for the ultimate petroleum products that leave the refinery. Equation MM–10 requires reporters to subtract the CO_2 emissions that would result from the biomass portion of the blended product by multiplying the volume of the blended product by both the percent volume of the biomass portion (which for ethanol would now include the denaturant) and the default emission factor. This new equation is necessary because the default factor for ethanol does not account for denaturant. Using equation MM–10 for a blended product containing denatured ethanol would therefore result in inaccurate CO_2 emissions because the emission factors for 100% ethanol and for denaturant are different. We are proposing to split 40 CFR 98.393(h)(3) into paragraphs (i) and (ii) so that equation MM–10 remains in (i) for petroleum products blended with biomass other than denatured ethanol while the proposed equation MM–10a appears in (ii) for petroleum products blended with denatured ethanol. We are proposing to amend equation MM–10 so that the definition of the term "%vol" excludes denaturant.

Together, these proposed amendments would ensure that the denaturant present in ethanol is not accounted for in the calculation of CO_2 that would result from the complete combustion or oxidation of the biomass-blended product or feedstock. We have concluded that these amendments simplify reporting for reporters while maintaining the level of data quality and accuracy required by EPA for subpart MM because denatured ethanol that enters the refinery as a feedstock always leaves the refinery as a product and is never used on site. We are seeking comment on this conclusion.

We cannot identify a situation in which a refinery would want to use Calculation Method 2 for a non-crude feedstock that contains denatured ethanol or an importer or exporter would want to use Calculation Method 2 for products containing denatured ethanol. Therefore, we are proposing to split 40 CFR 98.393(h)(4) into paragraphs (i) and (ii) so that equation MM–11 remains in (i) for non-crude feedstocks blended with biomass other than denatured ethanol while directions to use Calculation Method 1 appear in (ii) for non-crude feedstocks blended with denatured ethanol by refineries. We are also proposing directions in 40 CFR 98.393(h)(3)(ii) for importers and exporters of petroleum products blended with denatured ethanol to use Calculation Method 1. We are proposing to amend equation MM–11 so that the definition of the term "%vol" excludes denaturant. We seek comment on our proposal to have refineries, importers, and exporters use Calculation Method 1 in these situations and on the assumption that no reporter would be adversely impacted by using Calculation Method 1 in these situations.

If a refinery, importer, or exporter would be adversely impacted by only using Calculation Method 1 in these situations, we seek comment on an alternative approach to correcting the issue of accounting for denaturant in products but not in denatured ethanol feedstock, that would allow all reporters to use Calculation Method 2 for products and non-crude feedstocks containing denatured ethanol. One alternative approach, which is not included in the proposed regulatory text, would be to amend the emission factor for ethanol to reflect a 2.5 percent volume of denaturant and directing reporters to use Equations MM–10 and MM–11, respectively. We seek comment on this alternative approach.

We are proposing amendments to 40 CFR 98.396(a)(3), (a)(7), (b)(3), and (c)(3) to align the reporting requirements with the proposed amendments to account for denaturant in ethanol.

We are also seeking comment on the value of editing Table MM–1 so that refiners must report on quantities of "fuel gas" rather than "still gas." We seek comment on whether this would increase clarity or decrease complexity for reporters as they determine how to categorize and report gas products received as non-crude feedstock or supplied to the economy.

S. Subpart NN—Suppliers of Natural Gas and Natural Gas Liquids

We are proposing to amend the definition of the term "$Fuel_h$" in Equation NN–1 to clarify that the abbreviation "Mscf" refers to "thousand standard cubic feet" in order to avoid confusion on whether this abbreviation means "million standard cubic feet". We are also proposing to add the subscript "h" to the terms for Fuel and HHV in Equation NN–1.

We are proposing to amend the definition of the term "EF" in Equation NN–7 to clarify that the emission factor is for each natural gas liquid (NGL) product "g" and to add the subscript "g" to the term "EF."

We are proposing to amend Equation NN–8 to correct the term for "Annual CO_2 mass emissions that would result from the combustion or oxidation of fractionated NGLs received from other fractionators" from "CO_{2j}" to "CO_{2m}". We are also proposing to amend Equation NN–8 to remove the summation signs that were unnecessary from this equation for clarification purposes. We are also proposing to amend the definition of the term CO_{2i} to clarify that

this term includes NGLs delivered to customers or on behalf of customers, recognizing that some customers may not receive the NGLs directly.

We are proposing to amend 40 CFR 98.406(a)(6) to correct two cross references. The incorrect references referred the reader to 40 CFR 98.406(b)(1) and (b)(2), when they were supposed to refer to 40 CFR 98.406(a)(1) and (a)(2). Similarly, we are proposing to amend an incorrect reference in 40 CFR 98.407(d) to refer the reader to 40 CFR 98.406(b)(7) instead of 40 CFR 98.406(b)(6).

We are proposing to amend 40 CFR 98.406(a)(9) to correct the abbreviation of NGL (from LNG) and to specify that reporting under that paragraph is for each product type.

We are proposing to amend 40 CFR 98.407(a) to remove the word "daily" because daily meter readings are not specifically required under this subpart.

Finally, we are proposing to update the high heat values (HHVs) and default CO_2 emission factors in Tables NN–1 and NN–2 to be consistent with the emission factors in Tables C–1 and MM–1.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. These proposed amendments do not make any substantive changes to the reporting requirements in any of the subparts for which amendments are being proposed. In many cases, the proposed amendments to the reporting requirements could potentially reduce the reporting burden by making the reporting requirements conform more closely to current industry practices. However, the OMB has previously approved the information collection requirements contained in the regulations promulgated on October 30, 2009, under 40 CFR Part 98 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0629. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Further information on EPA's assessment on the impact on burden can be found in the Technical Corrections and Amendments Cost Memo (EPA–HQ–OAR–2010–0109).

C. Regulatory Flexibility Act (RFA)

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

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

After considering the economic impacts of these proposed rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule amendments will not impose any new requirement on small entities that are not currently required by the rules promulgated on October 30, 2009 (*i.e.,* calculating and reporting annual GHG emissions).

EPA took several steps to reduce the impact of the 2009 Final MRR on small entities. For example, EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, EPA did not require facilities to install CEMS if they did not already have them. Facilities without CEMS can calculate emissions using readily available data or data that are less expensive to collect such as process data or material consumption data. For some source categories, EPA developed tiered methods that are simpler and less burdensome. Also, EPA required annual instead of more frequent reporting. Finally, EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an "open door" policy for stakeholders to help inform EPA's understanding of key issues for the industries.

We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

The UMRA seeks to protect State, local, and Tribal governments from the imposition of unfunded Federal mandates. In addition, the Act seeks to strengthen the partnership between the Federal government and State, local, and Tribal governments and ensure that the Federal government covers the costs incurred during compliance with Federal mandates.

Title II of the UMRA of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private segment, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that these proposed rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the proposed rule amendments are not

subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA determined that the proposed rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because the amendments will not impose any new requirements that are not currently required by the rules promulgated on October 30, 2009 (*i.e.,* calculating and reporting annual GHG emissions), and the rule amendments would not unfairly apply to small governments. Therefore, this action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. However, for a more detailed discussion about how these proposed rule amendments would relate to existing State programs, please *see* Section II of the proposal preamble for the Mandatory GHG Reporting Rule (74 FR 16457 to 16461, April 10, 2009).

These amendments apply directly to facilities that supply fuel that when used emit greenhouse gases or facilities that directly emit greenhouses gases. They do not apply to governmental entities unless the government entity owns a facility that directly emits greenhouse gases above threshold levels (such as a landfill), so relatively few government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, EO 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with State and local officials or representatives of State and local governments in developing the 2009 Final MRR. A summary of EPA's consultations with State and local governments is provided in Section VIII.E of the preamble to the 2009 Final MRR (74 FR 56260, October 30, 2009).

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed rule amendments would not result in any changes to the requirements of the 2009 Final MRR. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA sought opportunities to provide information to Tribal governments and representatives during the development of the rules promulgated on October 30, 2009. A summary of the EPA's consultations with Tribal officials is provided in Sections VIII.E and VIII.F of the preamble to the 2009 Final Mandatory GHG Reporting Rule (74 FR 56260, October 30, 2009).

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

This proposed rulemaking involves the use of one new voluntary consensus standard from ASTM. Specifically, EPA proposes to allow facilities in the glass industry to use ASTM D6349–09 Standard Test Method for Determination of Major and Minor Elements in Coal, Coke, and Solid Residues from Combustion of Coal and Coke by Inductively Coupled Plasma—Atomic Emission Spectrometry in addition to the methods incorporated by reference in the 2009 Final MRR. This additional voluntary concensus standard will provide an alternative method that owners or operators in the glass industry can use to monitor GHG emissions. No new test methods were developed for this proposed rule.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

List of Subjects

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Motor vehicle pollution.

40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Incorporation by reference, Suppliers, Reporting and recordkeeping requirements.

Dated: May 27, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, Chapter I, of the Code

of Federal Regulations is proposed to be amended as follows:

PART 86—[AMENDED]

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 86.1844–01 is amended by adding paragraph (j) to read as follows:

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

* * * * *

(j) For complete heavy-duty vehicles only, measure CO_2, N_2O, and CH_4 as described in this paragraph (j) with each certification test on an emission data vehicle. Do not apply deterioration factors to the results. Use the analytical equipment and procedures specified in 40 CFR part 1065 as needed to measure N_2O and CH_4. Report these values in your application for certification. The requirements of this paragraph (j) apply starting with model year 2011 for CO_2 and 2012 for CH_4. The requirements of this paragraph (j) related to N_2O emissions apply for test groups that depend on NO_X aftertreatment to meet emission standards starting with model year 2013. Businesses that are defined as a small business by the Small Business Administration size standards in 13 CFR 121.201 may omit measurement of N_2O and CH_4; other manufacturers may provide appropriate data and/or information and omit measurement of N_2O and CH_4 as described in 40 CFR 1065.5. Use the same measurement methods as for your other results to report a single value for CO_2, N_2O, and CH_4. Round the final values as follows:

(1) Round CO_2 to the nearest 1 g/mi.

(2) Round N_2O to the nearest 0.001 g/mi.

(3) Round CH_4 to the nearest 0.001 g/mi.

PART 98—[AMENDED]

3. The authority citation for part 98 continues to read as follows:

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

Subpart A—[Amended]

4. Section 98.6 is amended by:

a. Removing the definition of "Argon-oxygen decarburization (AOD) vessel."

b. Adding a definition for "Decarburization vessel."

c. Revising the definitions of "Carbonate-based mineral," "Carbonate-based mineral mass fraction," "Carbonate-based raw material," "Crude oil," "Gas collection system or landfill gas collection system," "Mscf," and "Non-crude feedstocks."

§ 98.6 Definitions.

* * * * *

Carbonate-based mineral means any of the following minerals used in the manufacture of glass: calcium carbonate ($CaCO_3$), calcium magnesium carbonate ($CaMg(CO_3)_2$), sodium carbonate (Na_2CO_3), barium carbonate ($BaCO_3$), and potassium carbonate (K_2CO_3).

Carbonate-based mineral mass fraction means the following: for limestone, the mass fraction of $CaCO_3$ in the limestone; for dolomite, the mass fraction of $CaMg(CO_3)_2$ in the dolomite; for soda ash, the mass fraction of Na_2CO_3 in the soda ash; for barium carbonate, the mass fraction of $BaCO_3$ in the barium carbonate; and for potassium carbonate, the mass fraction of K_2CO_3 in the potassium carbonate.

Carbonate-based raw material means any of the following materials used in the manufacture of glass: limestone, dolomite, soda ash, barium carbonate, and potassium carbonate.

* * * * *

Crude oil means a mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. Depending upon the characteristics of the crude stream, it may also include any of the following:

(1) Small amounts of hydrocarbons that exist in gaseous phase in natural underground reservoirs but are liquid at atmospheric pressure after being recovered from oil well (casinghead) gas in lease separators and are subsequently commingled with the crude stream without being separately measured. Lease condensate recovered as a liquid from natural gas wells in lease or field separation facilities and later mixed into the crude stream is also included.

(2) Small amounts of nonhydrocarbons produced from oil, such as sulfur and various metals.

(3) Drip gases, and liquid hydrocarbons produced from tar sands, oil sands, gilsonite, and oil shale. Liquids produced at natural gas processing plants are excluded. Crude oil is refined to produce a wide array of petroleum products, including heating oils; gasoline, diesel and jet fuels; lubricants; asphalt; ethane, propane, and butane; and many other products used for their energy or chemical content.

* * * * *

Decarburization vessel means any vessel used to further refine molten steel to reduce the carbon content of the steel. This definition includes vessels used for argon-oxygen decarburization, vacuum degassers, vacuum oxygen degassers, Rheinstahl-Heraus systems, and other decarburization vessels.

* * * * *

Gas collection system or landfill gas collection system means a system of pipes used to collect landfill gas from different locations in the landfill by means of a fan or similar mechanical draft equipment to a single location for treatment (thermal destruction) or use. Landfill gas collection systems may also include knock-out or separator drums and/or a compressor. Landfill gas collection systems do not include "passive" systems, whereby landfill gas flows naturally to the surface of the landfill where an opening or pipe (vent) is installed to allow for natural gas flow.

* * * * *

Mscf means thousand standard cubic feet.

* * * * *

Non-crude feedstocks means any petroleum product or natural gas liquid that enters the refinery to be further refined or otherwise used on site, including supplemental fuel burned to provide heat or thermal energy.

* * * * *

5. Section 98.7 is amended by revising paragraph (a)(1) and by adding paragraph (e)(43) to read as follows:

§ 98.7 What standardized methods are incorporated by reference into this part?

* * * * *

(a) * * *

(1) Association of Fertilizer and Phosphate Chemists Analytical Methods Manual 10th Edition, incorporation by reference (IBR) approved for § 98.264(a) and § 98.264(b).

* * * * *

(e) * * *

(43) ASTM D6349–09 Standard Test Method for Determination of Major and Minor Elements in Coal, Coke, and Solid Residues from Combustion of Coal and Coke by Inductively Coupled Plasma—Atomic Emission Spectrometry.

Subpart E—[Amended]

6. Section 98.53 is revised to read as follows:

§ 98.53 Calculating GHG emissions.

(a) You must determine annual N_2O emissions from adipic acid production according to paragraphs (a)(1) or (a)(2) of this section.

(1) Use a site-specific emission factor and production data according to paragraphs (b) through (h) of this section.

(2) Request Administrator approval for an alternative method of determining N_2O emissions according to paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(i) You must submit the request within 45 days following promulgation of this subpart or within the first 30 days of each subsequent reporting year.

(ii) If the Administrator does not approve your requested alternative method within 150 days of the end of the reporting year, you must determine the N_2O emissions for the current reporting period using the procedures specified in paragraphs (b) through (h) of this section.

(b) You must conduct an annual performance test according to paragraphs (b)(1) through (b)(3) of this section.

(1) You must conduct the test on the waste gas stream from the nitric acid oxidation step of the process, referred to as the test point, according to the methods specified in § 98.54(b) through (f).

(2) You must conduct the performance test under normal process operating conditions.

(3) You must measure the adipic acid production rate during the test and calculate the production rate for the test period in metric tons per hour.

(c) Using the results of the performance test in paragraph (b) of this section, you must calculate an emission factor for each adipic acid unit according to Equation E–1 of this section:

$$EF_{N2O,N} = \frac{\sum_{1}^{n} \frac{C_{N2O} * 1.14 \times 10^{-7} * Q}{P}}{n} \qquad \text{(Eq. E-1)}$$

Where:

$EF_{N2O,N}$ = Average facility-specific N_2O emission factor for each adipic acid production unit (lb N_2O generated/ton adipic acid produced).

C_{N2O} = N_2O concentration per test run during the performance test (ppm N_2O).

1.14×10^{-7} = Conversion factor (lb/dscf-ppm N_2O).

Q = Volumetric flow rate of effluent gas per test run during the performance test (dscf/hr).

P = Production rate per test run during the performance test (tons adipic acid produced/hr).

n = Number of test runs.

(d) If any N_2O abatement technology "N" is located after your test point, you must determine the destruction efficiency according to paragraphs (d)(1), (d)(2), or (d)(3) of this section.

(1) Use the manufacturer's specified destruction efficiency.

(2) Estimate the destruction efficiency through process knowledge. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current vent stream conditions. You must document how process knowledge was used to determine the destruction efficiency.

(3) Calculate the destruction efficiency by conducting an additional performance test on the emissions stream following the N_2O abatement technology.

(e) If any N_2O abatement technology "N" is located after your test point, you must determine the annual amount of adipic acid produced while N_2O abatement technology "N" is operating according to § 98.54(f). Then you must calculate the abatement factor for N_2O abatement technology "N" according to Equation E–2 of this section.

$$AF_N = \frac{P_{a,N}}{P_a} \qquad \text{(Eq. E-2)}$$

Where:

AF_N = Abatement utilization factor of N_2O abatement technology "N" (fraction of annual production that abatement technology is operating).

$P_{a,N}$ = Annual adipic acid production during which N_2O abatement technology "N" was used (ton adipic acid produced).

P_a = Total annual adipic acid production (ton acid produced).

(f) You must determine the annual amount of adipic acid produced according to § 98.54(f).

(g) You must calculate N_2O emissions according to paragraph (g)(1) or (g)(2) of this section for each adipic acid production unit and sum the unit level emissions to determine the emissions for the facility.

(1) If any N_2O abatement technology "N" is located after your test point, you must use the emissions factor (determined in Equation E–1 of this section), the destruction efficiency (determined in paragraph (d) of this section), the annual adipic acid production (determined in paragraph (f) of this section), and the abatement utilization factor (determined in paragraph (e) of this section), according to Equation E–3a of this section:

$$N_2O = \sum_{1}^{N} \frac{EF_{N20N} * P_{aN} * \left(1 - \left(DF_N * AF_N\right)\right)}{2205} \qquad \text{(Eq. E-3a)}$$

Where:

N_2O = Annual N_2O mass emissions from adipic acid production (metric tons).

EF_{N_2ON} = N_2O emissions factor for unit(s) on which N_2O abatement technology "N" is operating (lb N_2O generated/ton adipic acid produced).

P_{aN} = Annual adipic acid produced by unit(s) for which N_2O abatement technology "N" is operating (tons).

DF_N = Destruction efficiency of N_2O abatement technology "N" (percent of N_2O removed from air stream).

AF_N = Abatement utilization factor of N_2O abatement technology "N" (fraction of annual production for which N_2O abatement technology "N" is operating).

2205 = Conversion factor (lb/metric ton).

N = Number of different N_2O abatement technologies.

(2) If no N_2O abatement technologies are located after your test point, you must use the emissions factor (determined using Equation E–1 of this section) and the annual adipic acid production (determined in paragraph (f) of this section) according to Equation E–3b of this section for each adipic acid production unit.

$$N_2O = \frac{EF_{N20} * P_a}{2205} \qquad \text{(Eq. E-3b)}$$

Where:

N_2O = Annual N_2O mass emissions from adipic acid production (metric tons).

EF_{N2O} = N_2O emissions factor (lb N_2O generated/ton adipic acid produced).
P_a = Annual adipic acid produced (tons).
2205 = Conversion factor (lb/metric ton).

(h) You must determine the amount of process N_2O emissions that is sold or transferred off site (if applicable). You can determine the amount using existing process flow meters and N_2O analyzers.

7. Section 98.54 is amended by:

a. Revising paragraph (a) introductory text.

b. Adding second and third sentences to paragraph (a)(1).

c. Revising paragraph (a)(3).

d. Revising paragraph (c) introductory text.

e. Revising the first sentence of paragraph (d) introductory text.

f. Revising paragraphs (e) and (f).

§ 98.54 Monitoring and QA/QC requirements.

(a) You must conduct a new performance test and calculate a new emissions factor for each adipic acid production unit according to the frequency specified in paragraphs (a)(1) through (a)(3) of this section.

(1) * * * The test must be conducted at a point during production that is representative of the average emissions from your process. You must document the methods used to determine the representative point.

* * * * *

(3) If you requested Administrator approval for an alternative method of determining N_2O emissions under § 98.53(a)(2), you must conduct the performance test if your request has not been approved by the Administrator within 150 days of the end of the reporting year in which it was submitted.

* * * * *

(c) You must determine the adipic acid production rate during the performance test according to paragraph (c)(1) or (c)(2) of this section.

* * * * *

(d) You must determine the volumetric flow rate during the performance test in conjunction with the applicable EPA methods in 40 CFR part 60, appendices A–1 through A–4.

* * *

* * * * *

(e) You must determine the monthly amount of adipic acid produced and the monthly amount of adipic acid produced during which N_2O abatement technology, located after the test point, is operating according to the methods in paragraphs (c)(1) or (c)(2) of this section.

(f) You must determine the annual amount of adipic acid produced and the annual amount of adipic produced during which N_2O abatement technology located after the test point is operating by summing the respective monthly adipic acid production quantities determined in paragraph (e) of this section.

8. Section 98.56 is amended by:

a. Revising paragraph (c).

b. Revising paragraph (j) introductory text.

c. Revising paragraph (j)(1).

d. Revising paragraph (k) introductory text.

§ 98.56 Data reporting requirements.

* * * * *

(c) Annual adipic acid production during which N_2O abatement technology (located after the test point) is operating (tons).

* * * * *

(j) If you conducted a performance test and calculated a site-specific emissions factor according to § 98.53(a)(1), each annual report must also contain the information specified in paragraphs (j)(1) through (j)(7) of this section for each adipic acid production unit.

(1) Emission factor (lb N_2O/ton adipic acid).

* * * * *

(k) If you requested Administrator approval for an alternative method of determining N_2O emissions under § 98.53(a)(2), each annual report must also contain the information specified in paragraphs (k)(1) through (k)(4) of this section for each adipic acid production facility.

* * * * *

9. Section 98.57 is amended by:

a. Revising paragraph (c).

b. Revising paragraph (f).

§ 98.57 Records that must be retained.

* * * * *

(c) Number of facility and unit operating hours in calendar year.

* * * * *

(f) Performance test reports.

* * * * *

Subpart H—[Amended]

10. Section 98.83 is amended by revising the introductory text of paragraph (d)(3); and by revising the definitions of "rm", "TOCrm", and "M" in Equation H–5 of paragraph (d)(3) to read as follows:

§ 98.83 Calculating GHG emissions.

* * * * *

(d) * * *

(3) CO_2 emissions from raw materials. Calculate CO_2 emissions from raw materials using Equation H–5 of this section:

* * * * *

rm = The amount of raw material i consumed annually, tons/yr (dry basis) or the amount of raw kiln feed consumed annually, tons/yr (dry basis).

* * * * *

TOCrm = Organic carbon content of raw material i or organic carbon content of combined raw kiln feed(dry basis), as determined in § 98.84(c) or using a default factor of 0.2 percent of total raw material weight.

M = Number of raw materials or 1 if calculating emissions based on combined raw kiln feed.

* * * * *

11. Section 98.84 is amended by revising paragraphs (b), (c), (d), and (f) to read as follows:

§ 98.84 Monitoring and QA/QC requirements.

* * * * *

(b) You must determine the weight fraction of total CaO and total MgO in clinker from each kiln using ASTM C114–09 Standard Test Methods for Chemical Analysis of Hydraulic Cement (incorporated by reference, *see* § 98.7). The monitoring must be conducted monthly for each kiln from a monthly clinker sample drawn from bulk clinker storage if storage is dedicated to the specific kiln, or from a monthly arithmetic average of daily clinker samples drawn from the clinker conveying systems exiting each kiln.

(c) The total organic carbon content (dry basis) of raw materials must be determined annually using ASTM C114–09 Standard Test Methods for Chemical Analysis of Hydraulic Cement (incorporated by reference, *see* § 98.7) or a similar industry standard practice or method approved for total organic carbon determination in raw mineral materials. The analysis must be conducted either on sample material drawn from bulk raw kiln feed storage or on sample material drawn from bulk raw material storage for each category of raw material (*i.e.,* limestone, sand, shale, iron oxide, and alumina). Facilities that opt to use the default total organic carbon factor provided in § 98.83(d)(3), are not required to monitor for TOC.

(d) The quantity of clinker produced monthly by each kiln must be determined by direct weight measurement of clinker using the same plant techniques used for accounting purposes, such as reconciling weigh hopper or belt weigh feeder measurements against inventory measurements. As an alternative, facilities may also determine clinker production by direct measurement of

raw kiln feed and application of a kiln-specific feed-to-clinker factor. Facilities that opt to use a feed-to-clinker factor must verify the accuracy of this factor on a monthly basis.

* * * * *

(f) The annual quantity of raw kiln feed or annual quantity of each category of raw materials consumed by the facility (*e.g.,* limestone, sand, shale, iron oxide, and alumina) must be determined monthly by direct weight measurement using the same plant instruments used for accounting purposes, such as weigh hoppers, truck weigh scales, or belt weigh feeders.

* * * * *

12. Section 98.86 is amended by revising paragraphs (b)(12) and (b)(13); and by adding paragraph (b)(15) to read as follows:

§ 98.86 Data reporting requirements.

(b) * * *

(12) Annual organic carbon content of raw kiln feed or annual organic carbon content of each raw material (wt-fraction, dry basis).

(13) Annual consumption of raw kiln feed or annual consumption of each raw material (dry basis).

* * * * *

(15) Method used to determine the monthly clinker production from each kiln reported under (b)(2) of this section, including monthly kiln-specific clinker factors, if used.

13. Section 98.87 is amended by:

a. Revising paragraph (a) introductory text.

b. Removing and reserving paragraphs (a)(1) and (a)(2).

c. Adding paragraphs (b)(1), (b)(2), and (b)(3).

§ 98.87 Records that must be retained.

(a) If a CEMS is used to measure CO_2 emissions, then in addition to the records required by § 98.3(g), you must retain under this subpart the records required for the Tier 4 Calculation Methodology in § 98.37.

* * * * *

(b) * * *

(1) Documentation of monthly calculated kiln-specific clinker CO_2 emission factor.

(2) Documentation of quarterly calculated kiln-specific CKD CO_2 emission factor.

(3) Measurements, records and calculations used to determine reported parameters.

Subpart K—[Amended]

14. Section 98.112 is amended by revising paragraph (a) to read as follows:

§ 98.112 GHGs to report.

* * * * *

(a) Process CO_2 emissions from each electric arc furnace (EAF) used for the production of any ferroalloy listed in § 98.110, and process CH_4 emissions from each EAF that is used for the production of any ferroalloy listed in Table K–1 of this section.

* * * * *

15. Section 98.113 is amended by revising the introductory text to read as follows:

§ 98.113 Calculating GHG emissions.

You must calculate and report the annual process CO_2 emissions from each EAF not subject to paragraph (c) of this section using the procedures in either paragraph (a) or (b) of this section. For each EAF also subject to annual process CH_4 emissions reporting, you must also calculate and report the annual process CH_4 emissions from the EAF using the procedures in paragraph (d) of this section.

* * * * *

16. Section 98.116 is amended by revising paragraphs (b), (c), (d) introductory text, (d)(1), and (e)(1) to read as follows:

§ 98.116 Data reporting requirements.

* * * * *

(b) Annual production for each ferroalloy product identified in § 98.110, from each EAF (tons).

(c) Total number of EAFs at facility used for production of ferroalloy products.

(d) If a CEMS is used to measure CO_2 emissions, then you must report under this subpart the relevant information required by § 98.36 for the Tier 4 Calculation Methodology and the following information specified in paragraphs (d)(1) through (d)(3) of this section.

(1) Annual process CO_2 emissions (in metric tons) from each EAF used for the production of any ferroalloy product identified in § 98.110.

* * * * *

(e) * * *

(1) Annual process CO_2 emissions (in metric tons) from each EAF used for the production of any ferroalloy identified in § 98.110 (metric tons).

* * * * *

Subpart N—[Amended]

17. Section 98.144 is amended by revising paragraph (b) to read as follows:

§ 98.144 Monitoring and QA/QC requirements.

* * * * *

(b) You must measure carbonate-based mineral mass fractions at least annually to verify the mass fraction data provided by the supplier of the raw material; such measurements shall be based on sampling and chemical analysis conducted by a certified laboratory using ASTM D3682–01 (Reapproved 2006) Standard Test Method for Major and Minor Elements in Combustion Residues from Coal Utilization Processes (incorporated by reference, *see* § 98.7) or ASTM D6349–09 Standard Test Method for Determination of Major and Minor Elements in Coal, Coke, and Solid Residues from Combustion of Coal and Coke by Inductively Coupled Plasma—Atomic Emission Spectrometry (incorporated by reference, *see* § 98.7).

* * * * *

18. Section 98.146 is amended by revising paragraphs (a) introductory text, (a)(2), (b)(7), and (b)(9) to read as follows:

§ 98.146 Data reporting requirements.

* * * * *

(a) If a CEMS is used to measure CO_2 emissions, then you must report under this subpart the relevant information required under § 98.36 for the Tier 4 Calculation Methodology and the following information specified in paragraphs (a)(1) and (a)(2) of this section:

* * * * *

(2) Annual quantity of glass produced by each glass melting furnace and by all furnaces combined (tons).

(b) * * *

(7) Method used to determine fraction of calcination.

* * * * *

(9) The number of times in the reporting year that missing data procedures were followed to measure monthly quantities of carbonate-based raw materials or mass fraction of the carbonate-based minerals for any continuous glass melting furnace (months).

19. Table N–1 to subpart N is amended by adding entries for "Barium carbonate" and "Potassium carbonate" to read as follows:

TABLE N–1—TO SUBPART N—CO_2 EMISSION FACTORS FOR CARBONATE-BASED RAW MATERIALS

Carbonate-Based raw material—mineral	CO_2 emission factor[a]
* * * * *	
Barium carbonate—$BaCO_3$	0.223

TABLE N–1—TO SUBPART N—CO_2 EMISSION FACTORS FOR CARBONATE-BASED RAW MATERIALS—Continued

Carbonate-Based raw material—mineral	CO_2 emission factor[a]
Potassium carbonate—K_2CO_3	0.318

[a] Emission factors in units of metric tons of CO_2 emitted per metric ton of carbonate-based raw material charged to the furnace.

Subpart O—[Amended]

20. Section 98.154 is amended by revising the first and second sentences of paragraph (k), revising the second sentence of paragraph (l) introductory text, and revising paragraph (o) to read as follows:

§ 98.154 Monitoring and QA/QC requirements.

* * * * *

(k) The mass of HFC–23 emitted from process vents shall be estimated at least monthly by incorporating the results of the most recent emissions test into Equation O–7 of this subpart. HCFC–22 production facilities that use a destruction device connected to the HCFC–22 production equipment shall conduct emissions tests at process vents at least once every five years or after significant changes to the process. * * *

(l) * * * HFC–23 destruction facilities shall conduct annual measurements of HFC–23 concentrations at the outlet of the destruction device in accordance with EPA Method 18 at 40 CFR part 60, appendix A–6. * * *

* * * * *

(o) In their estimates of the mass of HFC–23 destroyed, HFC–23 destruction facilities shall account for any temporary reductions in the destruction efficiency that result from any startups, shutdowns, or malfunctions of the destruction device, including departures from the operating conditions defined in state or local permitting requirements and/or destruction device manufacturer specifications.

* * * * *

21. Section 98.156 is amended by revising paragraphs (b)(1), (b)(3), (c), and (d); and revising paragraph (e) introductory text to read as follows:

§ 98.156 Data reporting requirements.

* * * * *

(b) * * *

(1) Annual mass of HFC–23 fed into the destruction device.

* * * * *

(3) Annual mass of HFC–23 emitted from the destruction device.

(c) Each HFC–23 destruction facility shall report the concentration (mass fraction) of HFC–23 measured at the outlet of the destruction device during the facility's annual HFC–23 concentration measurements at the outlet of the device.

(d) If the HFC–23 concentration measured pursuant to § 98.154(l) is greater than that measured during the performance test that is the basis for the destruction efficiency (DE), the facility shall report the revised destruction efficiency calculated under § 98.154(l) and the values used to calculate it, specifying whether § 98.154(l)(1) or § 98.154(l)(2) has been used for the calculation. Specifically, the facility shall report the following:

(1) Flow rate of HFC–23 being fed into the destruction device in kg/hr.

(2) Concentration (mass fraction) of HFC–23 at the outlet of the destruction device.

(3) Flow rate at the outlet of the destruction device in kg/hr.

(4) Emission rate (in kg/hr) calculated from paragraphs (d)(2) and (d)(3) of this section.

(5) Destruction efficiency (DE) calculated from paragraphs (d)(1) and (d)(4) of this section.

(e) By March 31, 2011 or within 60 days of commencing HFC–23 destruction, HFC–23 destruction facilities shall submit a one-time report including the following information for each destruction process:

* * * * *

22. Section 98.157 is amended by revising paragraph (b)(1) to read as follows:

§ 98.157 Records that must be retained.

* * * * *

(b) * * *

(1) Records documenting their one-time and annual reports in § 98.156(b) through (e).

* * * * *

Subpart P—[Amended]

23. Section 98.160 is amended by revising paragraph (c) to read as follows:

§ 98.160 Definition of the source category.

* * * * *

(c) This source category includes merchant hydrogen production facilities located within another facility if they are not owned by, or under the direct control of, the other facility's owner and operator.

24. Section 98.162 is amended by revising paragraph (a); and by removing and reserving paragraph (b) to read as follows:

§ 98.162 GHGs to report.

* * * * *

(a) CO_2 emissions from each hydrogen production process unit.

* * * * *

25. Section 98.163 is amended by:

a. Revising the introductory text.

b. Revising paragraph (a) and paragraph (b) introductory text.

c. In paragraph (b)(1), revising the only sentence, and revising the definition of "CO_2" in Equation P–1.

d. Revising the only sentence of paragraphs (b)(2) and (b)(3).

§ 98.163 Calculating GHG emissions.

You must calculate and report the annual CO_2 emissions from each hydrogen production process unit using the procedures specified in either paragraph (a) or (b) of this section.

(a) *Continuous Emissions Montoring Systems (CEMS).* Calculate and report under this subpart the CO_2 emissions by operating and maintaining CEMS according to the Tier 4 Calculation Methodology specified in § 98.33(a)(4) and all associated requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources).

(b) *Fuel and feedstock material balance approach.* Calculate and report CO_2 emissions as the sum of the annual emissions associated with each fuel and feedstock used for hydrogen production by following paragraphs (b)(1) through (b)(3) of this section.

(1) *Gaseous fuel and feedstock.* You must calculate the annual CO_2 emissions from each gaseous fuel and feedstock according to Equation P–1 of this section:

* * * * *

CO_2 = Annual CO_2 emissions arising from fuel and feedstock consumption (metric tons/yr).

* * * * *

(2) *Liquid fuel and feedstock.* You must calculate the annual CO_2 emissions from each liquid fuel and feedstock according to Equation P–2 of this section:

* * * * *

(3) *Solid fuel and feedstock.* You must calculate the annual CO_2 emissions from each solid fuel and feedstock according to Equation P–3 of this section:

* * * * *

26. Section 98.166 is amended by revising the introductory text and paragraphs (a)(1), (b)(1), and (c) to read as follows:

§ 98.166 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain the information specified

in paragraphs (a) or (b) of this section, as appropriate, and (c) and (d):

(a) * * *

(1) Unit identification number and annual CO_2 emissions.

* * * * *

(b) * * *

(1) Unit identification number and annual CO_2 emissions.

* * * * *

(c) Quantity of CO_2 collected and transferred off site in either gas, liquid, or solid forms, following the requirements of subpart PP of this part.

* * * * *

Subpart Q—[Amended]

27. Section 98.172 is amended by revising paragraphs (b) and (c) to read as follows:

§ 98.172 GHGs to report.

* * * * *

(b) You must report CO_2 emissions from flares that burn blast furnace gas or coke oven gas according to the procedures in § 98.253(b)(1) of subpart Y (Petroleum Refineries) of this part. When using the alternatives set forth in § 98.253(b)(1)(ii)(B) and § 98.253(b)(1)(iii)(C), you must use the default CO_2 emission factors for coke oven gas and blast furnace gas from Table C–1 of subpart C in Equations Y–2 and Y–3 of subpart Y of this part. You must report CH_4 and N_2O emissions from flares according to the requirements in § 98.33(c)(2) using the emission factors for coke oven gas and blast furnace gas in Table C–2 of subpart C of this part.

(c) You must report process CO_2 emissions from each taconite indurating furnace; basic oxygen furnace; non-recovery coke oven battery combustion stack; coke pushing process; sinter process; EAF; decarburization vessel; and direct reduction furnace by following the procedures in this subpart.

28. Section 98.173 is amended by:

a. Revising the first sentence of the introductory text.

b. In paragraph (b)(1)(vi), revising the introductory text and the definition of "CO_2" in Equation Q–6.

c. Revising the first sentence of paragraph (d).

§ 98.173 Calculating GHG emissions.

You must calculate and report the annual process CO_2 emissions from each taconite indurating furnace, basic oxygen furnace, non-recovery coke oven battery, sinter process, EAF, decarburization vessel, and direct reduction furnace using the procedures in either paragraph (a) or (b) of this section. * * *

(b) * * *

(1) * * *

(vi) For decarburization vessels, estimate CO_2 emissions using Equation Q–6 of this section.

* * * * *

CO_2 = Annual CO_2 mass emissions from the decarburization vessel (metric tons).

* * * * *

(d) If GHG emissions from a taconite indurating furnace, basic oxygen furnace, non-recovery coke oven battery, sinter process, EAF, decarburization vessel, or direct reduction furnace are vented through the same stack as any combustion unit or process equipment that reports CO_2 emissions using a CEMS that complies with the Tier 4 Calculation Methodology in subpart C of this part (General Stationary Fuel Combustion Sources), then the calculation methodology in paragraph (b) of this section shall not be used to calculate process emissions.* * *

29. Section 98.174 is amended by revising first sentence of paragraph (c)(2) and revising paragraph (c)(7) to read as follows:

§ 98.174 Monitoring and QA/QC requirements.

* * * * *

(c) * * *

(2) For the furnace exhaust from basic oxygen furnaces, EAFs, decarburization vessels, and direct reduction furnaces, sample the furnace exhaust for at least three complete production cycles that start when the furnace is being charged and end after steel or iron and slag have been tapped. * * *

* * * * *

(7) If your EAF and decarburization vessel exhaust to a common emission control device and stack, you must sample each process in the ducts before the emissions are combined, sample each process when only one process is operating, or sample the combined emissions when both processes are operating and base the site-specific emission factor on the steel production rate of the EAF.

* * * * *

30. Section 98.175 is amended by revising the introductory text to read as follows:

§ 98.175 Procedures for estimating missing data.

A complete record of all measured parameters used in the GHG emissions calculations in § 98.173 is required. Therefore, whenever a quality-assured value of a required parameter is unavailable, a substitute data value for the missing parameter shall be used in the calculations as specified in the paragraphs (a) and (b) of this section. You must follow the missing data procedures in § 98.255(b) of subpart Y (Petroleum Refineries) of this part for flares burning coke oven gas or blast furnace gas. You must document and keep records of the procedures used for all such estimates.

* * * * *

31. Section 98.176 is amended by revising the introductory text and paragraphs (c) and (e)(3); and by adding paragraphs (g) and (h) to read as follows:

§ 98.176 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain the information required in paragraphs (a) through (h) of this section for each coke pushing operation; taconite indurating furnace; basic oxygen furnace; non-recovery coke oven battery; sinter process; EAF; decarburization vessel; direct reduction furnace; and flare burning coke oven gas or blast furnace gas:

* * * * *

(c) If a CEMS is used to measure CO_2 emissions, then you must report the relevant information required under § 98.36 for the Tier 4 Calculation Methodology.

* * * * *

(e) * * *

(3) The annual volume of each type of gaseous fuel (reported separately for each type in standard cubic feet), the annual volume of each type of liquid fuel (reported separately for each type in gallons), and the annual mass (in metric tons) of each other process inputs and outputs used to determine CO_2 emissions.

* * * * *

(g) The annual amount of coal charged to the coke ovens (in metric tons).

(h) For flares burning coke oven gas or blast furnace gas, the information specified in § 98.256(e) of subpart Y (Petroleum Refineries) of this part.

32. Section 98.177 is amended by revising paragraph (d) to read as follows:

§ 98.177 Records that must be retained.

* * * * *

(d) Annual operating hours for each taconite indurating furnace, basic oxygen furnace, non-recovery coke oven battery, sinter process, electric arc furnace, decarburization vessel, and direct reduction furnace.

* * * * *

Subpart S—[Amended]

33. Section 98.190 is amended by revising paragraph (a) to read as follows:

§ 98.190 Definition of the source category.

(a) Lime manufacturing plants (LMPs) engage in the manufacture of a lime product (*e.g.,* calcium oxide, high-calcium quicklime, calcium hydroxide, hydrated lime, dolomitic quicklime, dolomitic hydrate, or other lime products) by calcination of limestone, dolomite, shells or other calcareous substances as defined in 40 CFR 63.7081(a)(1).

* * * * *

34. Section 98.193 is amended by:

a. In paragraph (b)(2)(i), revising the second sentence and the definition of "2000/2205" in Equation S–1.

b. In paragraph (b)(2)(ii), revising the only sentence and the definitions of "$EF_{LKD,i,n}$", "$CaO_{LKD,i,n}$", "$MgO_{LKD,i,n}$", and "2000/2205" in Equation S–2.

c. In paragraph (b)(2)(iii), revising the only sentence and the definitions of "$E_{waste,i}$", "$CaO_{waste,i}$", "$MgO_{waste,i}$", "$M_{waste,i}$", and "2000/2205" in Equation S–3.

d. In Paragraph (b)(2)(iv), revising the definitions of "$EF_{LIME,i,n}$", "$M_{LIME,i,n}$", "$EF_{LKD,i,n}$", "$M_{LKD,i,n}$", "$E_{waste,i}$", "t", "b", and "z" in Equation S–4.

§ 98.193 Calculating GHG emissions.

* * * * *

(b) * * *

(2) * * *

(i) * * * Calculium oxide and magnesium oxide content must be analyzed monthly for each lime product type that is produced:

* * * * *

2000/2205 = Conversion factor for tons to metric tons.

(ii) You must calculate a monthly emission factor for each type of calcined byproduct/waste sold (including lime kiln dust) using Equation S–2 of this section:

* * * * *

$EF_{LKD,i,n}$ = Emission factor for calcined lime byproduct/waste type i sold, for month n (metric tons CO_2/ton lime byproduct).

* * * * *

$CaO_{LKD,i,n}$ = Calcium oxide content for calcined lime byproduct/waste type i sold, for month n (metric tons CaO/metric ton lime).

$MgO_{LKD,i,n}$ = Magnesium oxide content for calcined lime byproduct/waste type i sold, for month n (metric tons MgO/metric ton lime).

2000/2205 = Conversion factor for tons to metric tons.

(iii) You must calculate the annual CO_2 emissions from each type of calcined byproduct/waste that is not sold (including lime kiln dust and scrubber sludge) using Equation S–3 of this section:

* * * * *

$E_{waste,i}$ = Annual CO_2 emissions for calcined lime byproduct/waste type i that is not sold (metric tons CO_2).

* * * * *

$CaO_{waste,i}$ = Calcium oxide content for calcined lime byproduct/waste type i that is not sold (metric tons CaO/metric ton lime).

$MgO_{waste,i}$ = Magnesium oxide content for calcined lime byproduct/waste type i that is not sold (metric tons MgO/metric ton lime).

$M_{waste,i}$ = Annual weight or mass of calcined byproducts/wastes for lime type i that is not sold (tons).

2000/2205 = Conversion factor for tons to metric tons.

(iv) * * *

$EF_{LIME,i,n}$ = Emission factor for lime type i produced, in calendar month n (metric tons CO_2/ton lime) from Equation S–1 of this section.

$M_{LIME,i,n}$ = Weight or mass of lime type i produced in calendar month n (tons).

$EF_{LKD,i,n}$ = Emission factor of calcined byproducts/wastes sold for lime type i in calendar month n, (metric tons CO_2/ton byproduct/waste) from Equation S–2 of this section.

$M_{LKD,i,n}$ = Monthly weight or mass of calcined byproducts/waste sold (such as lime kiln dust, LKD) for lime type i in calendar month n (tons).

$E_{waste,i}$ = Annual CO_2 emissions for calcined lime byproduct/waste type i that is not sold (metric tons CO_2) from Equation S–3 of this section.

t = Number of lime types produced

b = Number of calcined byproducts/wastes that are sold.

z = Number of calcined byproducts/wastes that are not sold.

* * * * *

35. Section 98.194 is amended by:

a. Revising the first sentence of paragraph (a).

b. Revising paragraph (c) introductory text.

c. Revising paragraph (d).

§ 98.194 Monitoring and QA/QC requirements.

(a) You must determine the total quantity of each type of lime product that is produced and each calcined byproduct/waste (such as lime kiln dust) that is sold. * * *

* * * * *

(c) You must determine the chemical composition (percent total CaO and percent total MgO) of each type of lime product that is produced and each type of calcined byproduct/waste sold according to paragraph (c)(1) or (c)(2) of this section. You must determine the chemical composition of each type of lime product that is produced and each type of calcined byproduct/waste sold on a monthly basis. You must determine the chemical composition for each type of calcined byproduct/waste that is not sold on an annual basis.

* * * * *

(d) You must use the analysis of calcium oxide and magnesium oxide content of each lime product that is produced and that is collected during the same month as the production data in monthly calculations.

* * * * *

36. Section 98.195 is amended by revising the first sentence of the introductory text; and by revising paragraph (a) to read as follows:

§ 98.195 Procedures for estimating missing data.

For the procedure in § 98.193(b)(1), a complete record of all measured parameters used in the GHG emissions calculations is required (*e.g.,* oxide content, quantity of lime products, etc.).

* * *

(a) For each missing value of the quantity of lime produced (by lime type), and quantity of calcined byproduct/waste produced and sold, the substitute data value shall be the best available estimate based on all available process data or data used for accounting purposes.

* * * * *

37. Section 98.196 is revised to read as follows:

§ 98.196 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain the information specified in paragraphs (a) or (b) of this section, as applicable.

(a) If a CEMS is used to measure CO_2 emissions, then you must report under this subpart the relevant information required by § 98.36 and the information listed in paragraphs (a)(1) through (a)(8) of this section.

(1) Method used to determine the quantity of lime that is produced and sold.

(2) Method used to determine the quantity of calcined lime byproduct/waste sold.

(3) Beginning and end of year inventories for each lime product that is produced, by type.

(4) Beginning and end of year inventories for calcined lime byproducts/wastes sold, by type.

(5) Annual amount of calcined lime byproduct/waste sold, by type (tons).

(6) Annual amount of lime product sold, by type (tons).

(7) Annual amount of calcined lime byproduct/waste that is not sold, by type (tons).

(8) Annual amount of lime product not sold, by type (tons).

(b) If a CEMS is not used to measure CO_2 emissions, then you must report the information listed in paragraphs (b)(1) through (b)(17) of this section.

(1) Annual CO_2 process emissions from all kilns combined (metric tons).

(2) Monthly emission factors for each lime type produced.

(3) Monthly emission factors for each calcined byproduct/waste by lime type that is sold.

(4) Standard method used (ASTM or NLA testing method) to determine chemical compositions of each lime type produced and each calcined lime byproduct/waste type.

(5) Monthly results of chemical composition analysis of each type of lime product produced and calcined byproduct/waste sold.

(6) Annual results of chemical composition analysis of each type of lime byproduct/waste that is not sold.

(7) Method used to determine the quantity of lime produced and/or lime sold.

(8) Monthly amount of lime product sold, by type (tons).

(9) Method used to determine the quantity of calcined lime byproduct/waste sold.

(10) Monthly amount of calcined lime byproduct/waste sold, by type (tons).

(11) Annual amount of calcined lime byproduct/waste that is not sold, by type (tons).

(12) Monthly weight or mass of each lime type produced (tons).

(13) Beginning and end of year inventories for each lime product that is produced.

(14) Beginning and end of year inventories for calcined lime byproducts/wastes sold.

(15) Annual lime production capacity (tons) per facility.

(16) Number of times in the reporting year that missing data procedures were followed to measure lime production (months) or the chemical composition of lime products sold (months).

(17) Indicate whether CO_2 was used on-site (*i.e.* for use in a purification process). If CO_2 was used on-site, provide the information in paragraphs (b)(17)(i) and (b)(17)(ii) of this section.

(i) The annual amount of CO_2 captured for use in the on-site process.

(ii) The method used to determine the amount of CO_2 captured.

Subpart V—[Amended]

38. Section 98.223 is amended by:

a. Revising paragraphs (a)(1), (a)(2)(ii), (b) introductory text, (b)(1), (b)(2), (c), (d) introductory text, and (e).

b. Removing and reserving paragraph (f).

c. Revising paragraph (g).

d. Adding paragraph (i).

§ 98.223 Calculating GHG emissions.

(a) * * *

(1) Use a site-specific emission factor and production data according to paragraphs (b) through (i) of this section.

(2) * * *

(ii) If the Administrator does not approve your requested alternative method within 150 days of the end of the reporting year, you must determine the N_2O emissions for the current reporting period using the procedures specified in paragraph (a)(1) of this section.

(b) You must conduct an annual performance test for each nitric acid train according to paragraphs (b)(1) through (b)(3) of this section.

(1) You must conduct the performance test at the absorber tail gas vent, referred to as the test point, for each nitric acid train according to § 98.224(b) through (f).

(2) You must conduct the performance test under normal process operating conditions.

* * * * *

(c) Using the results of the performance test in paragraph (b) of this section, you must calculate an average site-specific emission factor for each nitric acid train "t" according to Equation V–1 of this section:

$$EF_{N2Ot} = \frac{\sum_{1}^{n} \frac{C_{N2O} * 1.14 \times 10^{-7} * Q}{P}}{n} \qquad \text{(Eq. V-1)}$$

Where:

EF_{N2Ot} = Average site-specific N_2O emissions factor for nitric acid train "t" (lb N_2O generated/ton nitric acid produced, 100 percent acid basis).

C_{N2O} = N_2O concentration for each test run during the performance test (ppm N_2O).

1.14×10^{-7}= Conversion factor (lb/dscf-ppm N_2O).

Q = Volumetric flow rate of effluent gas for each test run during the performance test (dscf/hr).

P = Production rate for each test run during the performance test (tons nitric acid produced per hour, 100 percent acid basis).

n = Number of test runs.

(d) If nitric acid train "t" exhausts to any N_2O abatement technology "N" after the test point, you must determine the destruction efficiency for each N_2O abatement technology "N" according to paragraphs (d)(1), (d)(2), or (d)(3) of this section.

* * * * *

(e) If nitric acid train "t" exhausts to any N_2O abatement technology "N" after the test point, you must determine the annual amount of nitric acid produced on train "t" while N_2O abatement technology "N" is operating according to § 98.224(f). Then you must calculate the abatement utilization factor for each N_2O abatement technology "N" for each nitric acid train "t" according to Equation V–2 of this section.

$$AF_{t,N} = \frac{P_{a,t,N}}{P_{a,t}} \qquad \text{(Eq. V-2)}$$

Where:

$AF_{t,N}$ = Abatement utilization factor of N_2O abatement technology "N" at nitric acid train "t" (fraction of annual production that abatement technology is operating).

$P_{a\ t}$ = Total annual nitric acid production from nitric acid train "t" (ton acid produced, 100 percent acid basis).

$P_{a,t,N}$ = Annual nitric acid production from nitric acid train "t" during which N_2O abatement technology "N" was operational (ton acid produced, 100 percent acid basis).

(f) [Reserved]

(g) You must calculate N_2O emissions for each nitric acid train "t" according to paragraph (g)(1) or (g)(2) of this section.

(1) If nitric acid train "t" exhausts to any N_2O abatement technology "N" after the test point, you must use the emissions factor (determined in Equation V–1 of this section), the destruction efficiency (determined in paragraph (d) of this section), the annual nitric acid production (determined in paragraph (i) of this section), and the abatement utilization factor (determined in paragraph (e) of this section) according to Equation V–3a of this section:

$$E_{N_2Ot} = \sum_{N=1}^{z} \frac{EF_{N20t} * P_{a,t} * \left(1 - \left(DF_{t,N} * AF_{t,N}\right)\right)}{2205} \qquad \text{(Eq. V-3a)}$$

Where:

E_{N2Ot} = N_2O mass emissions per year for nitric acid train "t" (metric tons).

EF_{N2Ot} = Average site-specific N_2O emissions factor for nitric acid train "t" (lb N_2O generated/ton acid produced, 100 percent acid basis).

$P_{a\ t}$ = Annual nitric acid production from the train "t" (ton acid produced, 100 percent acid basis).

$DF_{t,N}$ = Destruction efficiency of N_2O abatement technology N that is used on nitric acid train "t" (percent of N_2O removed from air stream).

$AF_{t,N}$ = Abatement utilization factor of N_2O abatement technology "N" for nitric acid train "t" (fraction of annual production that N_2O abatement technology is operating).

2204.63 = Conversion factor (lb/metric ton).

z = Number of N_2O abatement technologies on nitric acid train "t".

(2) If nitric acid train "t" does not exhaust to any N_2O abatement technology after the test point, you must use the emissions factor (determined in Equation V–1 of this section), and the annual nitric acid production (determined in paragraph (i) of this section) according to Equation V–3b of this section:

$$E_{N_2Ot} = \frac{EF_{N20t} * P_{a,t}}{2205} \qquad \text{(Eq. V-3b)}$$

Where:

E_{N2Ot} = N_2O mass emissions per year for nitric acid train "t" (metric tons).

EF_{N2Ot} = Average site-specific N_2O emissions factor for nitric acid train "t" (lb N_2O generated/ton acid produced, 100 percent acid basis).

$P_{a,\ t}$ = Annual nitric acid production from nitric acid train "t" (ton acid produced, 100 percent acid basis).

2205 = Conversion factor (lb/metric ton).

* * * * *

(i) You must determine the total annual amount of nitric acid produced on nitric acid train "t" for each nitric acid train (tons acid produced, 100 percent acid basis), according to § 98.224(f).

39. Section 98.224 is amended by:

a. Revising paragraph (a).

b. Revising the first sentence in paragraph (d) introductory text.

c. Revising paragraphs (e) and (f).

§ 98.224 Monitoring and QA/QC requirements.

(a) You must conduct a new performance test according to a test plan as specified in paragraphs (a)(1) through (a)(3) of this section.

(1) Conduct the performance test annually. The test should be conducted at a point during the campaign which is representative of the average emissions over the entire campaign. Facilities must document the methods used to determine the representative point of the campaign when the performance test is conducted.

(2) Conduct the performance test when your nitric acid production process is changed, specifically when abatement equipment is installed.

(3) If you requested Administrator approval for an alternative method of determining N_2O emissions under § 98.223(a)(2), you must conduct the performance test if your request has not been approved by the Administrator within 150 days of the end of the reporting year in which it was submitted.

* * * * *

(d) You must determine the volumetric flow rate during the performance test in conjunction with the applicable EPA methods in 40 CFR part 60, appendices A–1 through A–4.

* * *

* * * * *

(e) You must determine the total monthly amount of nitric acid produced and the monthly amount of nitric acid produced while N_2O abatement technology (located after the test point) is operating from each nitric acid train according to the methods in paragraphs (c)(1) or (c)(2) of this section.

(f) You must determine the annual amount of nitric acid produced and the annual amount of nitric acid produced while N_2O abatement technology (located after the test point) is operating for each train by summing the respective monthly nitric acid quantities determined in paragraph (e) of this section.

40. Section 98.226 is amended by revising the introductory text, paragraph (g), and paragraphs (m) and (n) introductory text to read as follows:

§ 98.226 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain the information specified in paragraphs (a) through (o) of this section.

* * * * *

(g) Number of different N_2O abatement technologies per nitric acid train "t".

* * * * *

(m) If you conducted a performance test and calculated a site-specific emissions factor according to § 98.223(a)(1), each annual report must also contain the information specified in paragraphs (m)(1) through (m)(7) of this section.

* * * * *

(n) If you requested Administrator approval for an alternative method of determining N_2O emissions under § 98.223(a)(2), each annual report must also contain the information specified in paragraphs (n)(1) through (n)(4) of this section for each nitric acid production facility.

* * * * *

Subpart Z—[Amended]

41. Section 98.264 is amended by revising paragraphs (a) and (b) to read as follows:

§ 98.264 Monitoring and QA/QC requirements.

(a) You must obtain a monthly grab sample of phosphate rock directly from the rock being fed to the process line before it enters the mill. Conduct the representative bulk sampling using the appropriate industry consensus standard or applicable standard method in the Association of Fertilizer and Phosphate Chemists Analytical Methods Manual 10th Edition (incorporated by reference, *see* § 98.7). If phosphate rock is obtained from more than one origin in a month, you must obtain a sample from each origin of rock or obtain a composite representative sample.

(b) You must determine the inorganic carbon content of each monthly grab sample of phosphate rock (consumed in the production of phosphoric acid) using the applicable standard method in the Association of Fertilizer and Phosphate Chemists Analytical Methods Manual 10th Edition (incorporated by reference, *see* § 98.7).

* * * * *

42. Section 98.265 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 98.265 Procedures for estimating missing data.

* * * * *

(a) * * * Alternatively, you must determine substitute data value by calculating the arithmetic average of the quality-assured values of inorganic carbon contents of phosphate rock of origin i from samples immediately

preceding and immediately following the missing data incident. * * *

* * * * *

43. Section 98.266 is amended by revising the introductory text, paragraph (c), and paragraph (f) introductory text; and by adding paragraph (f)(9) to read as follows:

§ 98.266 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain the information specified in paragraphs (a) through (f) of this section.

* * * * *

(c) Annual arithmetic average percent inorganic carbon in phosphate rock from monthly records (percent by weight, expressed as a decimal fraction).

* * * * *

(f) If you do not use a CEMS to measure emissions, then you must report the information in paragraphs (f)(1) through (f)(9) of this section.

* * * * *

(9) Annual process CO_2 emissions from phosphoric acid production facility (metric tons).

Subpart CC—[Amended]

44. Section 98.294 is amended by revising the third sentence of paragraph (a)(1) to read as follows:

§ 98.294 Monitoring and QA/QC requirements.

* * * * *

(a) * * *

(1) * * * The modified method referred to above adjusts the regular ASTM method to express the results in terms of trona.* * *

* * * * *

45. Section 98.296 is amended by revising paragraphs (a)(1), (b)(3), (b)(6), and (b)(10); and by removing paragraphs (11)(iv) through (11)(vi) to read as follows:

§ 98.296 Data reporting requirements.

* * * * *

(a) * * *

(1) Annual consumption of trona or liquid alkaline feedstock for each manufacturing line (tons).

* * * * *

(b) * * *

(3) Annual production of soda ash for each manufacturing line (tons).

* * * * *

(6) Monthly production of soda ash for each manufacturing line (tons).

* * * * *

(10) If you produce soda ash using the liquid alkaline feedstock process and use the site-specific emission factor method (§ 98.293(b)(3)) to estimate emissions then you must report the following relevant information for each manufacturing line or stack:

(i) Stack gas volumetric flow rate during performance test (dscfm).

(ii) Hourly CO_2 concentration during performance test (percent CO_2).

(iii) CO_2 emission factor (metric tons CO_2/metric tons of process vent flow from mine water stripper/evaporator).

(iv) CO_2 mass emission rate during performance test (metric tons/hour).

* * * * *

Subpart EE—[Amended]

46. Section 98.314 is amended by revising paragraph (e) to read as follows:

§ 98.314 Monitoring and QA/QC requirements.

* * * * *

(e) You must determine the quantity of carbon-containing waste generated from each titanium dioxide production line on a monthly basis using plant instruments used for accounting purposes including direct measurement weighing the carbon-containing waste not used during the process (by belt scales or a similar device) or through the use of sales records.

* * * * *

47. Section 98.316 is amended by revising paragraphs (b)(9) and (b)(11) to read as follows:

§ 98.316 Data reporting requirements.

* * * * *

(b) * * *

(9) Monthly carbon content factor of petroleum coke (percent by weight expressed as a decimal fraction).

* * * * *

(11) Carbon content for carbon-containing waste for each process line (percent by weight expressed as a decimal fraction).

* * * * *

Subpart GG—[Amended]

48. Section 98.333 is amended by revising the definitions of "$(Electrode)_k$" and "$(C_{Electrode})_k$" in Equation GG–1 of paragraph (b)(1) to read as follows:

§ 98.333 Calculating GHG emissions.

* * * * *

(b) * * *

(1) * * *

$(Electrode)_k$ = Annual mass of carbon electrode consumed in furnace "k" (tons).

$(C_{Electrode})_k$ = Carbon content of the carbon electrode consumed in furnace "k", from the annual carbon analysis (percent by weight, expressed as a decimal fraction).

* * * * *

49. Section 98.336 is amended by revising paragraph (a) introductory text; and by revising paragraphs (b)(1), (b)(7), and (b)(10) to read as follows:

§ 98.336 Data reporting requirements.

* * * * *

(a) If a CEMS is used to measure CO_2 emissions, then you must report under this subpart the relevant information required for the Tier 4 Calculation Methodology in § 98.36 and the information listed in this paragraph (a):

* * * * *

(b) * * *

(1) Identification number and annual process CO_2 emissions from each individual Waelz kiln or electrothermic furnace (metric tons).

* * * * *

(7) Carbon content of each carbon-containing input material charged to each kiln or furnace (including zinc bearing material, flux materials, and other carbonaceous materials) from the annual carbon analysis or from information provided by the material supplier for each kiln or furnace (percent by weight, expressed as a decimal fraction).

* * * * *

(10) Carbon content of the carbon electrode used in each furnace from the annual carbon analysis or from information provided by the material supplier (percent by weight, expressed as a decimal fraction).

* * * * *

Subpart HH—[Amended]

50. Section 98.340 is amended by revising paragraph (b) to read as follows:

§ 98.340 Definition of the source category.

* * * * *

(b) This source category does not include Resource Conservation and Recovery Act (RCRA) Subtitle C or Toxic Substances Control Act (TSCA) hazardous waste landfills, dedicated construction and demolition waste landfills, or industrial waste landfills.

* * * * *

51. Section 98.343 is amended by:

a. In paragraph (a)(1), revising Equation HH–1 and the definitions of "x," "S," "W_X," "MCF," "DOC_F," "F," and "k" in Equation HH–1; and removing the definition of "L_0" in Equation HH–1.

b. Revising the last sentence of paragraph (a)(2).

c. Redesignating paragraph (a)(3) as (a)(4) and revising new paragraph (a)(4).

d. Adding a new paragraph (a)(3).

e. Revising paragraph (b)(1), and revising paragraph (b)(2) introductory text.

f. Revising paragraphs (b)(2)(ii), (b)(2)(iii)(A), and (b)(2)(iii)(B); and revising paragraph (c) introductory text.

§ 98.343 Calculating GHG emissions.

(a) * * *

(1) * * *

$$G_{CH4} = \sum_{x=S}^{T-1} \left\{ W_x \times MCF \times DOC \times DOC_F \times F \times \frac{16}{12} \times \left(e^{-k(T-x-1)} - e^{-k(T-x)} \right) \right\} \qquad \text{(Eq. HH-1)}$$

* * * * *

x = Year in which waste was disposed.

S = Start year of calculation. Use the year 1960 or the opening year of the landfill, whichever is more recent.

* * * * *

W_X = Quantity of waste disposed in the landfill in year x from measurement data, tipping fee receipts, or other company records (metric tons, as received (wet weight)).

MCF = Methane correction factor (fraction). Use the default value of 1

* * * * *

DOC_F = Fraction of DOC dissimilated (fraction). Use the default value of 0.5.

F = Fraction by volume of CH_4 in landfill gas from measurement data on a dry basis, if available (fraction); default is 0.5.

k = Rate constant from Table HH–1 of this subpart (yr^{-1}). Select the most applicable k value for the majority of the past 10 years (or operating life, whichever is shorter).

(2) * * * For years when waste composition data are not available, use the bulk waste parameter values for k and DOC in Table HH–1 of this subpart for the total quantity of waste disposed in those years.

(3) Beginning in the first emissions monitoring year (2010 or later) and for each year thereafter, if scales are in place, you must determine the annual quantity of waste (in metric tons as received, *i.e.,* wet weight) disposed of in the landfill using paragraph (a)(3)(i) of this section for all containers and for all vehicles, other than passenger cars or light duty pickup trucks, used to haul waste to the landfill. If scales are not in place, you must use paragraph (a)(3)(ii) of this section to determine the annual quantity of waste disposed. For waste hauled to the landfill in passenger cars or light duty pickup trucks, you may use either paragraph (a)(3)(i) or paragraph (a)(3)(ii) of this section to determine the annual quantity of waste disposed. The approach used to determine the annual quantity of waste disposed of must be documented in the monitoring plan.

(i) Use direct mass measurements of each individual load received at the landfill using either of the following methods:

(A) Weigh using mass scales each vehicle or container used to haul waste as it enters the landfill or disposal area; weigh using mass scales each vehicle or container after it has off-loaded the waste; determine the quantity of waste received from the individual load as the difference in the two mass measurements; and determine the annual quantity of waste received as the sum of all waste loads received during the year. Alternatively, you may determine annual quantity of waste by summing the weights of all vehicles and containers entering the landfill and subtracting from it the sum of all the weights of vehicles and containers after they have off-loaded the waste in the landfill.

(B) Weigh using mass scales each vehicle or container used to haul waste as it enters the landfill or disposal area; determine a representative tare weight by vehicle or container type by weighing no less than 5 of each type of vehicle or container after it has off-loaded the waste; determine the quantity of waste received from the individual load as the difference between the measured weight in and the tare weight determined for that container/vehicle type; and determine the annual quantity of waste received as the sum of all waste loads received during the year.

(ii) Determine the working capacity in units of mass for each type of container or vehicle used to haul waste to the landfill (*e.g.,* using volumetric capacity and waste density measurements; direct measurement of a selected number of passenger vehicles and light duty pick-up trucks; or similar methods); record the number of loads received at the landfill by vehicle/container type; calculate the annual mass per vehicle/container type as the mass product of the number of loads of that vehicle/container multiplied by its working capacity; and calculate the annual quantity of waste received as the sum of the annual mass per vehicle/container type across all of the vehicle/container types used to haul waste to the landfill.

(4) For years prior to the first emissions monitoring year, use methods in paragraph (a)(3) of this section when waste disposal quantity data are readily available. When waste disposal quantity data are not readily available, W_x shall be estimated using one of the applicable methods in paragraphs (a)(4)(i) through (a)(4)(iii) of this section. You must determine which method is most applicable to the conditions and disposal history of your facility. Historical waste disposal quantities should only be determined once, as part of the first annual report, and the same values should be used for all subsequent annual reports, supplemented by the next year's data on new waste disposal.

(i) Assume all prior years waste disposal quantities are the same as the waste quantity in the first year for which waste quantities are available.

(ii) Use the estimated population served by the landfill in each year, the values for national average per capita waste generation, and fraction of generated waste disposed of in solid waste disposal sites found in Table HH–2 of this subpart, and calculate the waste quantity landfilled using Equation HH–2 of this section.

$$W_x = POP_x \times WDR_x \qquad \text{(Eq. HH-2)}$$

Where:

W_x = Quantity of waste placed in the landfill in year x (metric tons, wet basis).

POP_x = Population served by the landfill in year x from city population, census data, or other estimates (capita).

WDR_x = Average per capita waste disposal rate for year x from Table HH–2 of this subpart (metric tons per capita per year, wet basis; tons/cap/yr).

(iii) Use a constant average waste disposal quantity calculated using Equation HH–3 of this section for each year the landfill was in operation (*i.e.,* from the first year accepting waste until the last year for which waste disposal data is unavailable, inclusive).

$$W_x = \frac{LFC}{(YrData - YrOpen + 1)} \qquad \text{(Eq. HH-3)}$$

Where:

W_X = Quantity of waste placed in the landfill in year x (metric tons, wet basis).

LFC = Landfill capacity or, for operating landfills, capacity of the landfill used (or the total quantity of waste-in-place) at the end of the year prior to the year when waste disposal data are available from design drawings or engineering estimates (metric tons).

YrData = Year in which the landfill last received waste or, for operating landfills, the year prior to the first reporting year when waste disposal data is first available from company records, or best available data.

YrOpen = Year in which the landfill first received waste from company records or best available data. If no data are available for estimating YrOpen for a closed landfill, use 30 years as the default operating life of the landfill.

(b) * * *

(1) If you continuously monitor the flow rate, CH_4 concentration, temperature, pressure, and, if necessary, moisture content of the landfill gas that is collected and routed to a destruction device (before any treatment equipment) using a monitoring meter specifically for CH_4 gas, as specified in § 98.344, you must use this monitoring system and calculate the quantity of CH_4 recovered for destruction using Equation HH–4 of this section. A fully integrated system that directly reports CH_4 content requires no other calculation than summing the results of all monitoring periods for a given year.

$$R = \sum_{n=1}^{N}\left((V)_n \times \left(K_{MC}\right)_n \times \frac{(C)_n}{100\%} \times 0.0423 \times \frac{520^{o}R}{(T)_n} \times \frac{(P)_n}{1\ \text{atm}} \times \frac{0.454}{1{,}000} \right) \qquad \text{(Eq. HH-4)}$$

Where:

R = Annual quantity of recovered CH_4 (metric tons CH_4).

N = Total number of measurement periods in a year. Use daily averaging periods for continuous monitoring system and N = 365 (or N = 366 for leap years). For weekly sampling, as provided in paragraph (b)(2) of this section, use N = 52.

n = Index for measurement period.

$(V)_n$ = Cumulative volumetric flow for the measurement period in actual cubic feet (acf). If the flow rate meter automatically corrects for temperature and pressure, replace "$520\,^{\circ}R/(T)_n \times (P)_n/1$ atm" with "1".

$(K_{MC})_n$ = Moisture correction term for the measurement period, volumetric basis, as follows: $(K_{MC})_n = 1$ when $(V)_n$ and $(C)_n$ are both measured on a dry basis or if both are measured on a wet basis; $(K_{MC})_n = [1 - (f_{H2O})_n]$ when $(V)_n$ is measured on a wet basis and $(C)_n$ is measured on a dry basis; and $(K_{MC})_n = 1/[1 - (f_{H2O})_n]$ when $(V)_n$ is measured on a dry basis and $(C)_n$ is measured on a wet basis.

$(f_{H2O})_n$ = Average moisture content of landfill gas during the measurement period, volumetric basis (cubic feet water per cubic feet landfill gas).

$(C_{CH4})_n$ = Average CH_4 concentration of landfill gas for the measurement period (volume %).

0.0423 = Density of CH_4 lb/cf at $520\,^{\circ}R$ or $60^{\circ}F$ and 1 atm.

$(T)_n$ = Temperature at which flow is measured for the measu rement period ($^{\circ}R$).

$(P)_n$ = Pressure at which flow is measured for the measurement period (atm).

0.454/1,000 = Conversion factor (metric ton/lb).

(2) If you do not continuously monitor according to paragraph (b)(1) of this section, you must determine the flow rate, CH_4 concentration, temperature, pressure, and moisture content of the landfill gas that is collected and routed to a destruction device (before any treatment equipment) according to the requirements in paragraphs (b)(2)(i) through (b)(2)(iii) of this section and calculate the quantity of CH_4 recovered for destruction using Equation HH–4 of this section.

* * * * *

(ii) Determine the CH_4 concentration in the landfill gas that is collected and routed to a destruction device (before any treatment equipment) in a location near or representative of the location of the gas flow meter once each calendar week, with at least three days between measurements.

(iii) * * *

(A) Determine the temperature and pressure in the landfill gas that is collected and routed to a destruction device (before any treatment equipment) in a location near or representative of the location of the gas flow meter once each calendar week, with at least three days between measurements.

(B) If the CH_4 concentration is determined on a dry basis and flow is determined on a wet basis or CH_4 concentration is determined on a wet basis and flow is determined on a dry basis, and the flow meter does not automatically correct for moisture content, determine the moisture content in the landfill gas that is collected and routed to a destruction device (before any treatment equipment) in a location near or representative of the location of the gas flow meter once each calendar week, with at least three days between measurements.

(c) For all landfills, calculate CH_4 generation (adjusted for oxidation in cover materials) and actual CH_4 emissions (taking into account any CH_4 recovery, and oxidation in cover materials) according to the applicable methods in paragraphs (c)(1) through (c)(3) of this section.

* * * * *

52. Section 98.344 is amended by:

a. Revising paragraph (a).

b. Revising the first sentence of paragraph (b).

c. Revising paragraphs (b)(6)(ii), (b)(6)(ii)(A), and (b)(6)(ii)(B).

d. Revising the definition of "C_{CH4}" in Equation HH–9 of paragraph (b)(6)(iii).

e. Revising the second and third sentences of paragraph (c).

f. Revising paragraph (d).

g. Amending paragraph (e) by revising the first sentence.

§ 98.344 Monitoring and QA/QC requirements.

(a) Mass measurement equipment used to determine the quantity of waste landfilled on or after January 1, 2010 must meet the requirements for weighing equipment as described in "Specifications, Tolerances, and Other Technical Requirements For Weighing and Measuring Devices" NIST Handbook 44 (2009) (incorporated by reference, *see* § 98.7).

(b) For landfills with gas collection systems, operate, maintain, and calibrate a gas composition monitor capable of measuring the concentration of CH_4 in the recovered landfill gas using one of the methods specified in paragraphs (b)(1) through (b)(6) of this section or as specified by the manufacturer. * * *

* * * * *

(6) * * *

(ii) Determine a non-methane organic carbon correction factor at the routine sampling location no less frequently than once a reporting year following the requirements in paragraphs (b)(6)(ii)(A) through (b)(6)(ii)(C) of this section.

(A) Take a minimum of three grab samples of the landfill gas with a minimum of 20 minutes between samples and determine the methane composition of the landfill gas using one of the methods specified in paragraphs (b)(1) through (b)(5) of this section.

(B) As soon as practical after each grab sample is collected and prior to the

collection of a subsequent grab sample, determine the total gaseous organic concentration of the landfilll gas using either Method 25A or 25B at 40 CFR part 60, appendix A–7 as specified in paragraph (b)(6)(i) of this section.

* * * * *

(iii) * * *

C_{CH4} = Methane concentration in the landfill gas (volume %) for use in Equation HH–4.

* * * * *

(c) * * * Each gas flow meter shall be recalibrated either biennially (every 2 years) or at the minimum frequency specified by the manufacturer. Except as provided in § 98.343(b)(2)(i), each gas flow meter must be capable of correcting for the temperature and pressure and, if necessary, moisture content.

* * * * *

(d) All temperature, pressure, and if necessary, moisture content monitors must be calibrated using the procedures and frequencies specified by the manufacturer.

(e) The owner or operator shall document the procedures used to ensure the accuracy of the estimates of disposal quantities and, if applicable, gas flow rate, gas composition, temperature, pressure, and moisture content measurements. * * *

53. Section 98.346 is amended by revising paragraphs (a), (b), (d)(1), (f), (h), (i)(1), (i)(2), (i)(3), (i)(4), (i)(5), and (i)(7) to read as follows:

§ 98.346 Data reporting requirements.

* * * * *

(a) A classification of the landfill as "open" (actively received waste in the reporting year) or "closed" (no longer receiving waste), the year in which the landfill first started accepting waste for disposal, the last year the landfill accepted waste (for open landfills, enter the estimated year of landfill closure), the capacity (in metric tons) of the landfill, an indication of whether leachate recirculation is used during the reporting year and its typical frequency of use over the past 10 years (*e.g.,* used several times a year for the past 10 years, used at least once a year for the past 10 years, used occasionally but not every year over the past 10 years, not used), an indication as to whether scales are present at the landfill, and the waste disposal quantity for each year of landfilling required to be included when using Equation HH–1 of this subpart (in metric tons, wet weight).

(b) Method for estimating reporting year and historical waste disposal quantities, reason for its selection, and the range of years it is applied. For years when waste quantity data are determined using the methods in § 98.343(a)(3), report separately the quantity of waste determined using the methods in § 98.343(a)(3)(i) and the quantity of waste determined using the methods in § 98.343(a)(3)(ii). For historical waste disposal quantities that were not determined using the methods in § 98.343(a)(3), provide the population served by the landfill for each year the Equation HH–2 of this subpart is applied, if applicable, or, for open landfills using Equation HH–3 of this subpart, provide the value of landfill capacity (LFC) used in the calculation.

* * * * *

(d) * * *

(1) Degradable organic carbon (DOC), methane correction factor (MCF), and fraction of DOC dissimilated (DOC_F) values used in the calculations.

* * * * *

(f) The surface area of the landfill containing waste (in square meters), identification of the type of cover material used (as either organic cover, clay cover, sand cover, or other soil mixtures). If multiple cover types are used, the surface area associated with each cover type.

* * * * *

(h) For landfills without gas collection systems, the annual methane emissions (*i.e.,* the methane generation, adjusted for oxidation, calculated using Equation HH–5 of this subpart), reported in metric tons CH_4, and an indication of whether passive vents and/or passive flares (vents or flares that are not considered part of the gas collection system as defined in § 98.6) are present at this landfill.

(i) * * *

(1) Total volumetric flow of landfill gas collected for destruction for the reporting year (cubic feet at 520 °R or 60 °F and 1 atm).

(2) Annual average CH_4 concentration of landfill gas collected for destruction (percent by volume).

(3) Monthly average temperature and pressure for each month at which flow is measured for landfill gas collected for destruction, or statement that temperature and/or pressure is incorporated into internal calculations run by the monitoring equipment.

(4) An indication as to whether flow was measured on a wet or dry basis, an indication as to whether CH_4 concentration was measured on a wet or dry basis, and if required for Equation HH–4, monthly average moisture content for each month at which flow is measured for landfill gas collected for destruction.

(5) An indication of whether destruction occurs at the landfill facility or off-site. If destruction occurs at the landfill facility, also report an indication of whether a back-up destruction device is present at the landfill, the annual operating hours for the primary destruction device, the annual operating hours for the back-up destruction device (if present), and the destruction efficiency used (percent).

* * * * *

(7) A description of the gas collection system (manufacturer, capacity, and number of wells), the surface area (square meters) and estimated waste depth (meters) for each area specified in Table HH–3 of this subpart, the estimated gas collection system efficiency for landfills with this gas collection system, the annual operating hours of the gas collection system, and an indication of whether passive vents and/or passive flares (vents or flares that are not considered part of the gas collection system as defined in § 98.6) are present at the landfill.

* * * * *

54. Section 98.347 is amended by adding a second sentence to the introductory text to read as follows:

§ 98.347 Records that must be retained.

* * * You must retain records of all measurements made to determine tare weights and working capacities by vehicle/container type if these are used to determine the annual waste quantities.

55. Section 98.348 is revised to read as follows:

§ 98.348 Definitions.

Except as specified in this section, all terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part.

Dedicated construction and demolition landfill means a landfill that only receives materials generated from the construction or destruction of structures such as buildings, roads, and bridges.

Destruction device means a flare, thermal oxidizer, boiler, turbine, internal combustion engine, or any other combustion unit used to destroy or oxidize methane contained in landfill gas.

Industrial waste landfill means any landfill other than a municipal solid waste landfill, a RCRA Subtitle C hazardous waste landfill, or a TSCA hazardous waste landfill, in which industrial solid waste, such a RCRA Subtitle D wastes (nonhazardous industrial solid waste, defined in 40 CFR 257.2), commercial solid wastes, or conditionally exempt small quantity generator wastes, is placed. An

industrial waste landfill includes all disposal areas at the facility.

Solid waste has the meaning established by the Administrator pursuant to the Solid Waste Disposal Act [42 U.S.C.A. 6901 *et seq.*]

Working capacity means the maximum volume or mass of waste that is actually placed in the landfill from an individual or representative type of container (such as a tank, truck, or roll-off bin) used to convey wastes to the landfill, taking into account that the container may not be able to be 100 percent filled and/or 100 percent emptied for each load.

56. Table HH–1 to subpart HH is amended by:

a. Revising the entries for "k (precipitation <20 inches/year and no leachate recirculation)," "k (precipitation 20–40 inches/year and no leachate recirculation)," and "k (precipitation >40 inches/year or for landfill areas with leachate recirculation)."

b. Adding an entry for "DOC (bulk waste)" to follow the revised entry for "k (precipitation plus recirculated leachate[a] >40 inches/year)."

c. Removing the entry for "L_0 (Equivalent to DOC = 0.2028 when MCF = 1, DOC_F = 0.5, and F = 0.5)."

d. Adding an entry for "DOC (inerts, *e.g.* glass, plastics, metal, cement)" to follow the entry for "DOC (sewage sludge)."

e. Revising the entries for "k (food waste)," "k (garden)," "k (paper)," "k (wood and straw)," "k (textiles)," "k (diapers)," and "k (sewage sludge)."

f. Adding a new entry for "k (inerts *e.g.* glass, plastics, metal, cement)."

g. Redesignating footnote "a" as footnote "b," and revising new footnote "b."

h. Adding a new footnote "a."

TABLE HH–1 TO SUBPART HH—EMISSIONS FACTORS, OXIDATION FACTORS AND METHODS

Factor	Default value	Units
Waste Model—Bulk Waste Option		
k (precipitation plus recirculated leachate[a] <20 inches/year)	0.02	yr^{-1}.
k (precipitation plus recirculated leachate[a] 20–40 inches/year)	0.038	yr^{-1}.
k (precipitation plus recirculated leachate[a] >40 inches/year)	0.057	yr^{-1}.
DOC (bulk waste)	0.20	Weight fraction, wet basis.
* * * * * * *		
DOC (inerts, *e.g.* glass, plastics, metal, cement)	0.00	Weight fraction, wet basis.
* * * * * * *		
k (food waste)	[b]0.06 to 0.185	yr^{-1}.
k (garden)	[b]0.05 to 0.10	yr^{-1}.
k (paper)	[b]0.04 to 0.06	yr^{-1}.
k (wood and straw)	[b]0.02 to 0.03	yr^{-1}.
k (textiles)	[b]0.04 to 0.06	yr^{-1}.
k (diapers)	[b]0.05 to 0.10	yr^{-1}.
k (sewage sludge)	[b]0.06 to 0.185	yr^{-1}.
k (inerts *e.g.* glass, plastics, metal, cement)	[b]0.00	yr^{-1}.
* * * * * * *		

[a] Recirculated leachate (in inches/year) is the total volume of leachate recirculated divided by the area of the portion of the landfill containing waste with appropriate unit conversions.

[b] Use the lesser value when the potential evapotranspiration rate exceeds the mean annual precipitation rate plus recirculated leachate. Use the greater value when the potential evapotranspiration rate does not exceed the mean annual precipitation rate plus recirculated leachate.

57. Table HH–2 to subpart HH is amended by:

a. Removing the entries for "1950" through "1959."

b. Revising the entries for "1989" through "2006."

c. Adding entries for "2007" through "2009."

TABLE HH–2 TO SUBPART HH—U.S. PER CAPITA WASTE DISPOSAL RATES

Year	Waste per capita ton/cap/yr
* * * * *	
1989	0.83
1990	0.82
1991	0.76
1992	0.74
1993	0.76
1994	0.75
1995	0.70
1996	0.68
1997	0.69
1998	0.75
1999	0.75
2000	0.80
2001	0.91
2002	1.02
2003	1.02
2004	1.01
2005	0.98
2006	0.95
2007	0.95
2008	0.95
2009	0.95

58. Table HH–3 to subpart HH–3 is amended by revising the entries for "A2: Area without active gas collection, regardless of cover type H2: Average depth of waste in area A2," "A3: Area with daily soil cover and active gas collection H3: Average depth of waste in area A3," "A4: Area with an intermediate soil cover and active gas collection H4: Average depth of waste in area A4," and "A5: Area with a final soil and geomembrane cover system and active gas collection H5: Average depth of waste in area A5" to read as follows:

TABLE HH–3 TO SUBPART HH—LANDFILL GAS COLLECTION EFFICIENCIES

Description	Landfill gas collection efficiency
* * * * * * *	
A2: Area without active gas collection, regardless of cover type	CE2: 0%.
A3: Area with daily soil cover and active gas collection	CE3: 60%.
A4: Area with an intermediate soil cover, or a final soil cover not meeting the criteria for A5 below, and active gas collection	CE4: 75%.
A5: Area with a final soil cover of 3 feet or thicker of clay and/or geomembrane cover system and active gas collection	CE5: 95%.
* * * * * * *	

Subpart LL—[Amended]

59. Section 98.386 is amended by adding a third sentence to paragraphs (a)(5) and (a)(6) to read as follows:

§ 98.386 Data reporting requirements.

* * * * *

(a) * * *

(5) * * * Those products that enter the facility, but are not reported in (a)(1), shall not be reported under this paragraph.

(6) * * * Those products that enter the facility, but are not reported in (a)(2), shall not be reported under this paragraph.

* * * * *

Subpart MM—[Amended]

60. Section 98.393 is amended by:

a. In paragraph (a)(1), revising the only sentence and the definition of "$Product_i$" in Equation MM–1.

b. Revising the definition of "$Product_i$" in Equation MM–2 of paragraphs (a)(2).

c. Revising the only sentence of paragraph (b)(1) and the first sentence in paragraph (f)(1).

d. Revising the definition of "$\%Vol_i$" in Equation MM–8 in paragraph (h)(1).

e. Revising Equation MM–9 and the definition of "$\%Vol_j$" in paragraph (h)(2).

f. Revising paragraphs (h)(3) and (h)(4).

g. Adding paragraph (i).

§ 98.393 Calculating GHG emissions.

(a) * * *

(1) Except as provided in paragraphs (h) and (i) of this section, any refiner, importer, or exporter shall calculate CO_2 emissions from each individual petroleum product and natural gas liquid using Equation MM–1 of this section.

* * * * *

$Product_i$ = Annual volume of product "i" produced, imported, or exported by the reporting party (barrels). For refiners, this volume only includes products ex refinery gate, and excludes products that entered the refinery but are not reported under § 98.396(a)(1). For natural gas liquids, volumes shall reflect the individual components of the product as listed in Table MM–1 of this subpart.

* * * * *

(2) * * *

$Product_i$ = Annual mass of product "i" produced, imported, or exported by the reporting party (metric tons). For refiners, this mass only includes products ex refinery gate, and excludes products that entered the refinery but are not reported under § 98.396(a)(1).

* * * * *

(b) * * *

(1) Except as provided in paragraphs (h) and (i) of this section, any refiner shall calculate CO_2 emissions from each non-crude feedstock using Equation MM–2 of this section.

* * * * *

(f) * * *

(1) *Calculation Method 1.* To determine the emission factor (*i.e.,* EF_i in Equation MM–1) for solid products, multiply the default carbon share factor (*i.e.,* percent carbon by mass) in column B of Table MM–1 of this subpart for the appropriate product by 44/12. * * *

* * * * *

(h) * * *

(1) * * *

$\%Vol_i$ = Percent volume of product "i" that is petroleum-based, not including any denaturant that may be present in any ethanol product, expressed as a fraction (*e.g.,* 75% would be expressed as 0.75 in the above equation).

(2) * * *

$$CO_{2j} = Feedstock_j * EF_j * \%Vol_j \qquad \text{(Eq. MM-9)}$$

* * * * *

$\%Vol_j$ = Percent volume of feedstock "j" that is petroleum-based, not including any denaturant that may be present in any ethanol product, expressed as a fraction (*e.g.,* 75% would be expressed as 0.75 in the above equation).

(3) Calculation Method 2 procedures for products.

(i) A reporter using Calculation Methodology 2 of this subpart to determine the emission factor of a petroleum product that does not contain denatured ethanol must calculate the CO_2 emissions associated with that product using Equation MM–10 of this section in place of Equation MM–1 of this section.

$$CO_{2i} = \left(Product_i * EF_i\right) - \left(Product_i * EF_m * \%Vol_m\right) \qquad \text{(Eq. MM-10)}$$

Where:

CO_{2i} = Annual CO_2 emissions that would result from the complete combustion or oxidation of each product "i" (metric tons).

$Product_i$ = Annual volume of each petroleum product "i" produced, imported, or exported by the reporting party (barrels). For refiners, this volume only includes products ex refinery gate.

EF_i = Product-specific CO_2 emission factor (metric tons CO_2 per barrel).

EF_m = Default CO_2 emission factor from Table MM–2 of this subpart that most closely represents the component of product "i" that is biomass-based.

$\%Vol_m$ = Percent volume of petroleum product "i" that is biomass-based,

expressed as a fraction (*e.g.,* 75% would be expressed as 0.75 in the above equation).

(ii) In the event that a petroleum product contains denatured ethanol, importers and exporters must follow Calculation Method 1 procedures in paragraph (h)(1); and refineries must sample the petroleum portion of the blended biomass-based fuel prior to blending and calculate CO_2 emissions using Equation MM–10a of this section.

$$CO_{2i} = Product_p * EF_i \quad \text{(Eq. MM-10a)}$$

Where:

CO_{2i} = Annual CO_2 emissions that would result from the complete combustion or oxidation of each biomass-blended fuel "i" (metric tons).

$Product_p$ = Annual volume of the petroleum-based portion of each biomass blended fuel "i" produced by the refiner (barrels).

EF_i = Petroleum product-specific CO_2 emission factor (metric tons CO_2 per barrel).

(4) Calculation Method 2 procedures for non-crude feedstocks.

(i) A refiner using Calculation Method 2 of this subpart to determine the emission factor of a non-crude petroleum feedstock that does not contain denatured ethanol must calculate the CO_2 emissions associated with that feedstock using Equation MM–11 of this section in place of Equation MM–2 of this section.

$$CO_{2j} = \left(Feedstock_j * EF_j\right) - \left(Feedstock_j * EF_m * \%Vol_m\right) \quad \text{(Eq. MM-11)}$$

Where:

CO_{2j} = ($Feedstock_j$ * EF_j)-($Feedstock_j$ * EF_m * $\%Vol_m$) (Eq. MM–11)

Where:

CO_{2j} = Annual CO_2 emissions that would result from the complete combustion or oxidation of each non-crude feedstock "j" (metric tons).

$Feedstock_j$ = Annual volume of each petroleum product "j" that enters the refinery to be further refined or otherwise used on site (barrels).

EF_j = Feedstock-specific CO_2 emission factor (metric tons CO_2 per barrel).

EF_m = Default CO_2 emission factor from Table MM–2 of this subpart that most closely represents the component of petroleum product "j" that is biomass-based.

$\%Vol_m$ = Percent volume of non-crude feedstock "j" that is biomass-based, expressed as a fraction (*e.g.,* 75% would be expressed as 0.75 in the above equation).

(ii) In the event that a non-crude feedstock contains denatured ethanol, refiners must follow Calculation Method 1 procedures in paragraph (h) (2) of this section.

(i) Optional procedures for blended products that do not contain biomass.

(1) In the event that a reporter produces, imports, or exports a blended product that does not include biomass, the reporter may calculate emissions for the blended product according to the method in paragraph (i)(2) of this section. In the event that a refiner receives a blended non-crude feedstock that does not include biomass, the refiner may calculate emission for the blended non-crude feedstock according to the method in paragraph (i)(3) of this section. The procedures in this section may be used only if all of the following criteria are met:

(i) The reporter knows the relative proportion of each component of the blend (*i.e.,* the mass or volume percentage).

(ii) Each component of blended product "i " or blended non-crude feedstock "j " meets the strict definition of a product listed in Table MM–1.

(iii) The blended product or non-crude feedstock is not comprised entirely of natural gas liquids.

(iv) The reporter uses Calculation Method 1.

(v) Solid components are blended only with other solid components.

(2) The reporter must calculate emissions for the blended product using Equation MM–12 of this section in place of Equation MM–1 of this section.

$$CO_{2i} = \sum\left[Blending\ Component_{i\ldots n} * EF_{i\ldots n}\right] \quad \text{(Eq. MM-12)}$$

Where:

CO_{2i} = Annual CO_2 emissions that would result from the complete combustion or oxidation of a blended product "i" (metric tons).

$Blending\ Component_{i\ldots n}$ = Annual volume or mass of each blending component that is blended (barrels or metric tons).

$EF_{i\ldots n}$ = CO_2 emission factors specific to each blending component (metric tons CO_2 per barrel or per metric ton of product).

n = Number of blending components blended into blended product "i".

(3) For refineries, the reporter must calculate emissions for the blended non-crude feedstock using Equation MM–13 of this section in place of Equation MM–2 of this section.

$$CO_{2i} = \sum\left[Blending\ Component_{i\ldots n} * EF_{i\ldots n}\right] \quad \text{(Eq. MM-13)}$$

Where:

CO_{2j} = Annual CO_2 emissions that would result from the complete combustion or oxidation of a blended non-crude feedstock "j" (metric tons).

Blending $Component_{i * * * n}$ = Annual volume or mass of each blending component that is blended (barrels or metric tons).

$EF_{i * * * n}$ = CO_2 emission factors specific to each blending component (metric tons CO_2 per barrel or per metric ton of product).

n = Number of blending components blended into blended non-crude feedstock "j".

(4) For refineries, if a blending component "k" used in paragraph (i)(2) of this section enters the refinery before blending as non-crude feedstock:

(i) The emissions that would result from the complete combustion or oxidation of non-crude feedstock "k" must still be calculated separately using Equation MM–2 of this section and applied in Equation MM–4 of this section.

(ii) The quantity of blending component " k" applied in Equation MM–12 of this section and the quantity of non-crude feedstock "k" applied in Equation MM–2 of this section must be determined using the same method or practice.

61. Section 98.394 is amended by revising paragraphs (d)(1), (d)(3), and (d)(4) to read as follows:

§ 98.394 Monitoring and QA/QC requirements.

(d) * * *

(1) A representative sample or multiple representative samples of each batch of crude oil shall be taken according to an appropriate standard method published by a consensus-based standards organization.

* * * * *

(3) API gravity shall be measured using an appropriate standard method published by a consensus-based standards organization. The weighted average API gravity for each batch shall be calculated by multiplying the volume associated with each representative sample by the API gravity, adding these values for all the samples, and then dividing that total value by the volume of the batch.

(4) Sulfur content shall be measured using an appropriate standard method published by a consensus-based standards organization. The weighted average sulfur content for each batch shall be calculated by multiplying the volume associated with each representative sample by the sulfur content, adding these values for all the samples, and then dividing that total value by the volume of the batch.

* * * * *

62. Section 98.396 is amended by:

a. Revising paragraph (a)(3).

b. Amending paragraphs (a)(5) and (a)(6) by adding a third sentence.

c. Revising paragraphs (a)(7), (a)(20)(ii), (a)(20)(iii), (b)(3), and (c)(3).

d. Adding a new paragraph (d).

§ 98.396 Data reporting requirements.

* * * * *

(a) * * *

(3) For each feedstock reported in paragraph (a)(2) of this section that was produced by blending a petroleum-based product with a biomass-based product, report the percent of the volume reported in paragraph (a)(2) of this section that is petroleum-based (excluding any denaturant that may be present in any ethanol product).

* * * * *

(5) * * * Petroleum products and natural gas liquids that enter the refinery, but are not reported in (a)(1), shall not be reported under this paragraph.

(6) * * * Petroleum products and natural gas liquids that enter the refinery, but are not reported in (a)(2), shall not be reported under this paragraph.

(7) For each product reported in paragraph (a)(6) of this section that was produced by blending a petroleum-based product with a biomass-based product, report the percent of the volume reported in paragraph (a)(6) of this section that is petroleum-based (excluding any denaturant that may be present in any ethanol product).

* * * * *

(20) * * *

(ii) Weighted average API gravity of the batch at the point of entry at the refinery.

(iii) Weighted average sulfur content of the batch at the point of entry at the refinery.

* * * * *

(b) * * *

(3) For each product reported in paragraph (b)(2) of this section that was produced by blending a petroleum-based product with a biomass-based product, report the percent of the volume reported in paragraph (b)(2) of this section that is petroleum-based (excluding any denaturant that may be present in any ethanol product).

* * * * *

(c) * * *

(3) For each product reported in paragraph (c)(2) of this section that was produced by blending a petroleum-based product with a biomass-based product, report the percent of the volume reported in paragraph (c)(2) of this section that is petroleum based (excluding any denaturant that may be present in any ethanol product).

* * * * *

(d) Blended non-crude feedstock and products.

(1) Refineries, exporters, and importers must report the following information for each blended product and non-crude feedstock where emissions were calculated according to § 98.393(i):

(i) Volume or mass of each blending component.

(ii) The CO_2 emissions in metric tons that would result from the complete combustion or oxidation of each blended non-crude feedstock or product, using Equation MM–12 or Equation MM–13 of this section.

(2) For a product that enters the refinery to be further refined or otherwise used on site that is a blended non-crude feedstock, refiners must meet the reporting requirements of paragraphs (a)(1) and (a)(2) of this section by reflecting the individual components of the blended non-crude feedstock.

(3) For a product that is produced, imported, or exported that is a blended product, refiners, importers, and exporters must meet the reporting requirements of paragraphs (a)(5), (a)(6), (b)(1), (b)(2), (c)(1), and (c)(2) of this section, as applicable, by reflecting the individual components of the blended product.

§ 98.397 [Amended]

63. Section 98.397 is amended by removing paragaph (e); and by redesignating paragraphs (f) and (g) as (e) and (f), respectively.

64. Section 98.398 is revised to read as follows:

§ 98.398 Definitions.

Except as specified in this section, all terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part.

Batch means up to a calendar month of crude oil volume from a single country of origin or up to a calendar month of crude oil volume for which the country of origin is unknown.

Subpart NN—[Amended]

65. Section 98.403 is amended by:

a. Revising the definitions of "Fuel" and "HHV" in Equation NN–1 of paragraph (a)(1).

b. Revising the definition of "Fuel" in Equation NN–2 of paragraph (a)(2).

c. Revising the definition of "$Fuel_l$" in Equation NN–5 of paragraph (b)(3).

d. Revising the definition of "EF" in Equation NN–7 of paragraph (c)(1).

e. In paragraph (c)(2), revising Equation NN–8 and the definition of "CO_{2i}" in Equation NN–8.

§ 98.403 Calculating GHG emissions.

(a) * * *

(1) * * *

$Fuel_h$ = Total annual volume of product "h" supplied (volume per year, in thousand standard cubic feet (Mscf) for natural gas and bbl for NGLs).

HHV_h = Higher heating value of product "h" supplied (MMBtu/Mscf or MMBtu/bbl).

* * * * *

(2) * * *

$Fuel_h$ = Total annual volume of product "h" supplied (bbl or Mscf per year).

* * * * *

(b) * * *

(3) * * *

$Fuel_l$ = Total annual volume of natural gas received by the LDC at the city gate and stored on-system or liquefied and stored in the reporting year (Mscf per year).

* * * * *

(c) * * *

(1) * * *

EF_g = Fuel-specific CO_2 emission factor of NGL product "g" (MT CO_2/bbl).

(2) * * *

$$CO_2 = CO_{2i} - CO_{2m} \qquad \text{(Eq. NN-8)}$$

* * * * *

CO_{2i} = Annual CO_2 mass emissions that would result from the combustion or oxidation of fractionated NGLs delivered to all customers or on behalf of customers as calculated in paragraph (a)(1) or (a)(2) of this section (metric tons).

* * * * *

66. Section 98.406 is amended by revising paragraphs (a)(6) and (a)(9) introductory text to read as follows:

§ 98.406 Data reporting requirements.

(a) * * *

(6) Annual CO_2 emissions (metric tons) that would result from the complete combustion or oxidation of the quantities in paragraphs (a)(1) and (a)(2) of this section, calculated in accordance with § 98.403(a) and (c)(1).

* * * * *

(9) If the NGL fractionator developed reporter-specific EFs or HHVs, report the following for each product type:

* * * * *

67. Section 98.407 is amended by revising paragraphs (a) and (d) to read as follows:

§ 98.407 Records that must be retained.

* * * * *

(a) Records of all meter readings and documentation to support volumes of natural gas and NGLs that are reported under this part.

* * * * *

(d) Records related to the large end-users identified in § 98.406(b)(7).

* * * * *

68. Tables NN–1 and NN–2 to Subpart NN are amended to read as follows:

TABLE NN–1 TO SUBPART NN—DEFAULT FACTORS FOR CALCULATION METHODOLOGY 1 OF THIS SUBPART

Fuel	Default high heating value factor	Default CO_2 emission factor (kg CO_2/MMBtu)
Natural Gas	1.028 MMBtu/Mscf	53.02
Propane	3.822 MMBtu/bbl	61.46
Normal butane	4.242 MMBtu/bbl	65.15
Ethane	4.032 MMBtu/bbl	62.64
Isobutane	4.074 MMBtu/bbl	64.91
Pentanes plus	4.620 MMBtu/bbl	70.02

TABLE NN–2 OF SUBPART NN—LOOKUP DEFAULT VALUES FOR CALCULATION METHODOLOGY 2 OF THIS SUBPART

Fuel	Unit	Default CO_2 emission value (MT CO_2/unit)
Natural Gas	Mscf	0.055
Propane	Barrel	0.235
Normal butane	Barrel	0.276
Ethane	Barrel	0.253
Isobutane	Barrel	0.266
Pentanes plus	Barrel	0.324

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Federal Register

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FEDERAL REGISTER PAGES AND DATE, JUNE

30267–30686 1
30687–31272 2
31273–31662 3
31663–32074 4
32075–32244 7
32245–32648 8
32649–32840 9
32841–33158 10
33159–33488 11
33489–33672 14
33673–33982 15

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
9 33734
11 33734
12 33734

2 CFR

2339 31273

3 CFR

Proclamations:
8527 32075
8528 32077
8529 32079
8530 32081
8531 32083
8532 32085

Administrative Orders:
Memorandums:
Memorandum of May 21, 2010 32087
Memorandum of June 1, 2010 32245
Memorandum of June 2, 2010 32247
Notices:
Notice of June 8, 2010 32841
Notice of June 8, 2010 32843
Presidential Determinations:
No. 2010-09 of June 2, 2010 33489

5 CFR

630 33491
875 30267

7 CFR

271 33422
273 33422
275 33422
277 33422
916 31275
917 31275
923 31663
930 33673
1218 31279
1470 31610
3430 33497
4280 33501

Proposed Rules:
46 32306
319 ..... 30303, 32310
930 ..... 31719, 33673
1000 33534
1215 31730
1755 32313

8 CFR

Proposed Rules:
103 33446
204 33446
244 33446
274A 33446

10 CFR

72 33678
440 32089

Proposed Rules:
30 33902
32 33902
33 33902
34 33902
35 33902
36 33902
37 33902
39 33902
51 33902
71 33902
72 33736
73 33902
430 ..... 31224, 31323

12 CFR

205 ..... 31665, 33681
230 31673
561 33501
611 30687
613 30687
615 30687
619 30687
620 30687

Proposed Rules:
1282 32099

14 CFR

39 ..... 30268, 30270, 30272, 30274, 30277, 30280, 30282, 30284, 30287, 30290, 30292, 30687, 31282, 32090, 32251, 32253, 32255, 32260, 32262, 32263, 32266, 32649, 33159, 33162
65 31283
71 ..... 30295, 30689, 31677, 32268, 32269, 32271, 32272, 32651, 32652, 33164, 33165, 33681
73 32093
91 30690
97 ..... 32094, 32096, 32653, 32655
406 30690

Proposed Rules:
23 33553
39 ..... 30740, 31324, 31327, 31329, 31330, 31332, 31731, 31734, 32315, 32863, 33738
65 30742
71 ..... 30746, 32117, 32119, 32120, 32317, 32865, 33556, 33557, 33559, 33560, 33561
234 32318
244 32318

250.....32318
253.....32318
259.....32318
399.....32318

15 CFR

734.....31678
744.....31678
740.....31678
748.....31678
750.....31678
766.....31678, 33682
774.....31678

Proposed Rules:

700.....32122
902.....32994

16 CFR

320.....31682
1215 .....31688, 31691, 33683

17 CFR

240.....33100
241.....33100

Proposed Rules:

36.....33198
37.....33198
38.....33198
242.....32556

18 CFR

375.....32657

19 CFR

Proposed Rules:

351.....32341

20 CFR

404 .....30692, 32845, 33166, 33167
405.....33167
408.....33167
416.....32845, 33167
418.....33167
439.....31273

Proposed Rules:

1001.....33203

21 CFR

106.....32658
107.....32658
312.....32658
803.....32658
872.....33169

Proposed Rules:

1301.....32140
1309.....32140

24 CFR

Proposed Rules:

3500.....31334

25 CFR

900.....31699
1000.....31699

26 CFR

1.....31736, 32659
40.....33683
49.....33683
602.....33683

Proposed Rules:

40.....33740
49.....33740

27 CFR

478.....31285

28 CFR

Proposed Rules:

0.....33205
51.....33205

29 CFR

1202.....32273
1206.....32273
1404.....30704
2530.....32846
4022.....33688
4044.....33688

Proposed Rules:

1910.....32142

30 CFR

Proposed Rules:

218.....32343

33 CFR

100 .....30296, 32661, 32852, 33502, 33690
117 .....30299, 30300, 32663, 32854, 33505
147.....32273
165 .....30706, 30708, 32275, 32280, 32664, 32666, 32855, 33170, 33506, 33692, 33694, 33696, 33698, 33701

Proposed Rules:

100.....32866
117 .....30305, 30747, 30750, 32349, 32351
165.....30753, 33741

34 CFR

5.....33509
361.....32857
691.....32857

Proposed Rules:

Ch. VI.....31338

37 CFR

256.....32857

38 CFR

17.....32668, 32670
21.....32293
36.....33704

Proposed Rules:

17.....30306, 33216

39 CFR

111 .....30300, 31288, 31702

Proposed Rules:

111.....32143
501.....30309

40 CFR

7.....31702
51.....31514
52 .....30710, 31288, 31290, 31306, 31514, 31709, 31711, 32293, 32673, 32857, 32858, 33172, 33174
63.....31317
70.....31514
71.....31514
141.....32295
156.....33705
180.....31713, 33190
228.....33708
260.....31716
261.....31716, 33712
262.....31716
263.....31716
264.....31716
265.....31716
266.....31716
268.....31716
270.....31716
300.....33724

Proposed Rules:

7.....31738
52 .....30310, 31340, 32353, 33220, 33562
60 .....31938, 32613, 32682
63 .....31896, 32006, 32682
72.....33392
75.....33392
86.....33950
98.....33950
156.....33744
228.....33747
241.....31844, 32682
300.....33747
1039.....32613
1042.....32613
1065.....32613
1068.....32613

42 CFR

417.....32858
422.....32858
423.....32858
480.....32858

Proposed Rules:

412.....30756, 30918
413.....30756, 30918

44 CFR

64.....32302

Proposed Rules:

67 .....31361, 31368, 32684

45 CFR

Proposed Rules:

301.....32145
302.....32145
303.....32145
307.....32145

46 CFR

501.....31320

47 CFR

27.....33729
36.....30301

Proposed Rules:

2.....33748
15.....33220
54.....32692, 32699
73.....30756, 33227
97.....33748

48 CFR

216.....32641
217.....32638, 32639
225.....32637, 32640
228.....32642
231.....32642
234.....32638
252.....32642, 33195
505.....32860
3025.....32676
3052.....32676

Proposed Rules:

202.....33752
203.....33752
212.....33752
242.....33237
252.....32636, 33752
919.....33752
922.....33752
923.....33752
924.....33752
925.....33752
926.....33752
952.....33752
970.....32719
3015.....32723
3016.....32723
3052.....32723

49 CFR

390.....32860
395.....32860
571.....33515
1002.....30711
1011.....30711
1152.....30711
1180.....30711

Proposed Rules:

535.....33565
611.....31321, 33757

50 CFR

223.....30714
600.....30484
635 .....30484, 30730, 30732, 33531, 33731
648.....30739
660.....33196, 33733
679.....31321, 31717

Proposed Rules:

17 .....30313, 30319, 30338, 30757, 30769, 31387, 32727, 32728, 32869
20.....32872
80.....32877
223.....30769
224.....30769
600.....33570
660.....32994

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 2711/P.L. 111–178
Special Agent Samuel Hicks Families of Fallen Heroes Act (June 9, 2010; 124 Stat. 1262)

H.R. 3250/P.L. 111–179
To designate the facility of the United States Postal Service located at 1210 West Main Street in Riverhead, New York, as the ''Private First Class Garfield M. Langhorn Post Office Building''. (June 9, 2010; 124 Stat. 1264)

H.R. 3634/P.L. 111–180
To designate the facility of the United States Postal Service located at 109 Main Street in Swifton, Arkansas, as the ''George Kell Post Office''. (June 9, 2010; 124 Stat. 1265)

H.R. 3892/P.L. 111–181
To designate the facility of the United States Postal Service located at 101 West Highway 64 Bypass in Roper, North Carolina, as the ''E.V. Wilkins Post Office''. (June 9, 2010; 124 Stat. 1266)

H.R. 4017/P.L. 111–182
To designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the ''Ann Marie Blute Post Office''. (June 9, 2010; 124 Stat. 1267)

H.R. 4095/P.L. 111–183
To designate the facility of the United States Postal Service located at 9727 Antioch Road in Overland Park, Kansas, as the ''Congresswoman Jan Meyers Post Office Building''. (June 9, 2010; 124 Stat. 1268)

H.R. 4139/P.L. 111–184
To designate the facility of the United States Postal Service located at 7464 Highway 503 in Hickory, Mississippi, as the ''Sergeant Matthew L. Ingram Post Office''. (June 9, 2010; 124 Stat. 1269)

H.R. 4214/P.L. 111–185
To designate the facility of the United States Postal Service located at 45300 Portola Avenue in Palm Desert, California, as the ''Roy Wilson Post Office''. (June 9, 2010; 124 Stat. 1270)

H.R. 4238/P.L. 111–186
To designate the facility of the United States Postal Service located at 930 39th Avenue in Greeley, Colorado, as the ''W.D. Farr Post Office Building''. (June 9, 2010; 124 Stat. 1271)

H.R. 4425/P.L. 111–187
To designate the facility of the United States Postal Service located at 2-116th Street in North Troy, New York, as the ''Martin G. 'Marty' Mahar Post Office''. (June 9, 2010; 124 Stat. 1272)

H.R. 4547/P.L. 111–188
To designate the facility of the United States Postal Service located at 119 Station Road in Cheyney, Pennsylvania, as the ''Captain Luther H. Smith, U.S. Army Air Forces Post Office''. (June 9, 2010; 124 Stat. 1273)

H.R. 4628/P.L. 111–189
To designate the facility of the United States Postal Service located at 216 Westwood Avenue in Westwood, New Jersey, as the ''Sergeant Christopher R. Hrbek Post Office Building''. (June 9, 2010; 124 Stat. 1274)

H.R. 5330/P.L. 111–190

To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, and for other purposes. (June 9, 2010; 124 Stat. 1275)

Last List June 11, 2010

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