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

WHEN: Tuesday, July 13, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[AMS–CN–10–0001; CN–10–001]

RIN 0581–AC99

User Fees for 2010 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will maintain user fees for cotton producers for 2010 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2009. These fees are also authorized under the Cotton Standards Act of 1923. The 2009 crop user fee was $2.20 per bale, and this rule will continue the fee for the 2010 cotton crop at that same level. This fee and the existing reserve are sufficient to cover the costs of providing classification services for the 2010 crop, including costs for administration and supervision.

DATES: *Effective Date:* June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton and Tobacco Programs, AMS, USDA, Room 2637–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–3193, facsimile (202) 690–1718, or e-mail *darryl.earnest@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on April 27, 2010 (75 FR 22026). A 15-day comment period was provided for interested persons to respond to the proposed rule. One comment was received from a national cotton industry organization in support of the service and the decision to maintain the fee at the level established for the 2009 crop.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Continuing the user fee at the 2009 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2009 user fee for classification services was $2.20 per bale; the fee for the 2010 crop would be maintained at $2.20 per bale; the 2010 crop is estimated at 14,500,000 bales).

(2) The fee for services will not affect competition in the marketplace.

(3) The use of classification services is voluntary. For the 2009 crop, 12,400,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2008 crop of 0.5520 cents per pound, 500 pound bales of cotton are worth an average of $276 each. The user fee for classification services, $2.20 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501), the information collection requirements contained in the provisions amended by this final rule have been previously approved by OMB and were assigned OMB control number 0581–AC43.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

This final rule maintains the user fee charged to producers for cotton classification at $2.20 per bale for the 2010 cotton crop. The 2010 user fee charged to farmers was calculated using new methodology, as was required by section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) (2008 Farm Bill). Prior to the changes made by the 2008 Farm Bill, the fee was determined using a user-fee formula mandated in the Uniform Cotton Classing Fees Act of 1987, as amended (Pub. L. 100–108, 728) (1987 Act). This formula used the previous year's base fee that was adjusted for inflation and economies of size (1 percent decrease/increase for every 100,000 bales above/below 12.5 million bales with maximum adjustment being ±15 percent). The user fee was then further adjusted to comply with operating reserve constraints (between 10 and 25 percent of projected operating costs) specified by the 1987 Act.

Section 14201 of the 2008 Farm Bill provides that: (1) The Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not

later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. The classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, this final rule establishes a user fee (dollar per bale classed) for the 2010 cotton crop that, when combined with other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount equal to four months of projected operating costs.

Extensive consultations regarding the establishment of the classification fee with U.S. cotton industry representatives were held during the period from September 2009 through January 2010 during numerous publicly held meetings. Representatives of all segments of the cotton industry, including producers, ginners, bale storage facility operators, merchants, cooperatives, and textile manufacturers were addressed in various industry-sponsored forums.

The user fee established to be charged cotton producers for cotton classification in 2010 is $2.20 per bale, which is the same fee charged for the 2009 crop. This fee is based on the pre-season projection that 14.5 million bales will be classed by the United States Department of Agriculture during the 2010 crop year.

Accordingly, § 28.909, paragraph (b) will reflect the continuation of the cotton classification fee at $2.20 per bale.

As provided for in the 1987 Act, a 5 cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data will continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 will remain at 5 cents per bale. The fee in § 28.910 (b) for an owner receiving classification data from the National database will remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period will remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the National Database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 will remain at $2.20 per bale.

The fee for returning samples after classification in § 28.911 will remain at 50 cents per sample.

Pursuant to 5 U.S.C. 533, good cause exists for not postponing the effective date of this final rule until 30 days after publication in the **Federal Register** because this rule maintains uniform user fees for 2010 crop cotton classification services as mandated by the Cotton Statistics and Estimates Act, at the same level as 2009 and only one comment was received during the public comment period provided in the proposed rule.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

■ For the reasons set forth in the preamble, 7 CFR part 28 is amended as follows:

PART 28—[AMENDED]

■ 1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 51–65; 7 U.S.C. 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.20 per bale.

* * * * *

■ 3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $2.20 per bale.

* * * * *

Dated: June 11, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–14582 Filed 6–16–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2010-0004]

Asian Longhorned Beetle; Quarantined Area and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations by adding a portion of Worcester County, MA, to the list of quarantined areas and restricting the interstate movement of regulated articles from that area. We are also updating the list of regulated articles in order to reflect new information concerning host plants. These actions are necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule is effective June 17, 2010. We will consider all comments that we receive on or before August 16, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0004*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0004,

Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0004.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulations, Permits, and Import Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-0754.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through branches and trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest product industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction of public enjoyment of recreational spaces.

Quarantined Areas

The regulations in 7 CFR 301.51-1 through 301.51-9 restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Surveys conducted in Massachusetts by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred outside the existing quarantined area in Worcester County. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Massachusetts are conducting intensive survey and eradication programs in the infested area. The State of Massachusetts has quarantined the infested area and is restricting the intrastate movement of regulated articles from the quarantined area to prevent the further spread of ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the spread of ALB to other States and other countries.

The regulations in § 301.51-3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State in which ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where ALB has been found. Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB. In accordance with these criteria and the recent ALB findings described above, we are amending the list of quarantined areas in § 301.51-3(c) to update the previously quarantined area in Worcester County, MA. The updated quarantined area is described in the regulatory text at the end of this document.

Regulated Articles

Section 301.51-2 of the regulations designates certain items as regulated articles. Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.51-4 through 301.51-9 of the regulations. Regulated articles listed in § 301.51-2(a) have included green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Fraxinus* (ash), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm). This list of genera was based on scientific literature provided by government officials, scientists, and government and individual researchers from China as well as survey information collected in the United States since the time of discovery of the pest.

Based on additional survey experience and research, we are amending the list of regulated articles by adding Katsura (*Cercidiphyllum* spp.). This action is necessary because inspectors have found ALB completing its development in trees of this genus within the quarantined area.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of ALB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We have prepared an economic analysis for this action. The action identifies nurseries, site developers or construction companies, tree service companies or landscapers, garden centers, firewood dealers, and utility

companies as the small entities most likely to be affected by this action and considers the costs associated with complying with the inspection and other requirements imposed by the regulations on the interstate movement of regulated articles from quarantined areas. Based on the information presented in the analysis, we expect that affected entities would not experience any additional compliance costs as a result of this rule because a State-imposed quarantine is already in place that applies the same movement restrictions and inspection requirements. We invite comment on our economic analysis, which is posted with this interim rule on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.51-2, paragraph (a) is revised to read as follows:

§ 301.51-2 Regulated articles.

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: Acer (maple), Aesculus (horse chestnut), Albizia (mimosa), Betula (birch), Celtis (hackberry), Cercidiphyllum (katsura), Fraxinus (ash), Platanus (sycamore), Populus (poplar), Salix (willow), Sorbus (mountain ash), and Ulmus (elm).

* * * * *

■ 3. In § 301.51-3, paragraph (c), under the heading "Massachusetts," the entry for *Worcester County* is revised to read as follows:

§ 301.51-3 Quarantined areas.

* * * * *

(c) * * *

Massachusetts

Worcester County. The portion of Worcester County, including the municipalities of Worcester, Holden, West Boylston, Boylston, and Shrewsbury, that is bounded by a line starting at the intersection of Route 140 (Grafton Circle) and Route 9 (Belmont Street) in Shrewsbury; then north and northwest on Route 140 through Boylston into West Boylston until it intersects Muddy Brook (body of water); then east along Muddy Brook to the Wachusett Reservoir; then along the shoreline of the Wachusett Reservoir in an easterly, northerly, and then westerly direction until it intersects the West Boylston Town boundary; then along the West Boylston Town boundary until it intersects Interstate 190 at River Road; then south along Interstate 190 to Malden Street; then west on Malden Street to Bullard Street in Holden; then west on Bullard Street to Wachusett Street; then northwest on Wachusett Street to Union Street; then southwest on Union Street until it becomes Highland Street; then southwest on Highland Street to Main Street; then southeast on Main Street to Bailey Road; then south on Bailey Road to Chapin Road; then south on Chapin Road to its end; then continuing in a southeasterly direction to Fisher Road; then southwest on Fisher Road to Stonehouse Hill Road; then south on Stonehouse Hill Road to Reservoir Street; then southeast on Reservoir Street until it intersects the Worcester City boundary; then along the Worcester City boundary until it intersects Route 20 (Hartford Turnpike); then east on Route 20 to Lake Street, then north and northeast on Lake Street to Route 9 (Belmont Street), then east on Route 9 to the point of beginning.

* * * * *

Done in Washington, DC, this 14th day of June 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–14658 Filed 6–16–10; 2:08 pm]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. APHIS-2008-0015]

RIN 0579-AC85

Citrus Greening and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina due to the presence of citrus greening and quarantining Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California due to the presence of Asian citrus psyllid, a vector of the bacterial pathogen that causes citrus greening. This action follows the discovery of these pests in the respective quarantined areas. We are also establishing restrictions on the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis in order to prevent the spread of the disease and its vector to noninfested areas of the United States.

DATES: This interim rule is effective June 17, 2010, except for § 301.76-4 which is effective September 15, 2010. We will consider all comments that we receive on or before August 16, 2010.

ADDRESSES: You may submit comments by either of the following methods:

● Federal eRulemaking Portal: Go to (*http://www.regulations.gov/*

fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0015) to submit or view comments and to view supporting and related materials available electronically.

● Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2008-0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0015.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Gomes, PPQ, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606-5213; (919) 855-7313.

SUPPLEMENTARY INFORMATION:

Background

Under section 412(a) of the Plant Protection Act (7 U.S.C. 7701 *et seq.*, referred to below as the PPA), the Secretary of Agriculture may prohibit or restrict the movement in interstate commerce of any plant or plant product, if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of a plant disease within the United States. Under the Act, the Secretary may also issue regulations requiring plants and plant products moved in interstate commerce to be subject to remedial measures determined necessary to prevent the spread of the disease, or requiring the objects to be accompanied by a permit issued by the Secretary prior to movement.

In accordance with the PPA, we are amending "Domestic Quarantine Notices" at 7 CFR part 301 by adding a new subpart, "Citrus Greening and Asian Citrus Psyllid" (§§ 301.76 through 301.76-11, referred to below as the regulations). The regulations quarantine the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina due to the presence of citrus greening and quarantine Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California due to the presence of Asian citrus psyllid, a vector of the bacterial pathogen that causes citrus greening.

Citrus greening, also known as Huanglongbing disease of citrus, is considered to be one of the most serious citrus diseases in the world. Citrus greening is a bacterial disease, caused by strains of the bacterial pathogen "*Candidatus* Liberibacter asiaticus", that attacks the vascular system of host plants. The pathogen is phloem-limited, inhabiting the food-conducting tissue of the host plant, and causes yellow shoots, blotchy mottling and chlorosis, reduced foliage, and tip dieback of citrus plants. Citrus greening greatly reduces production, destroys the economic value of the fruit, and can kill trees. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where the disease is endemic, citrus trees decline and die within a few years and may never produce usable fruit. Citrus greening was first detected in the United States in Miami-Dade County, FL, in 2005, and is only known to be present in the United States in the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina.

The bacterial pathogen causing citrus greening can be transmitted by grafting, and under laboratory conditions, by dodder. There also is some evidence, discussed later in this document, that seed transmission may occur. The pathogen can also be transmitted by two insect vectors in the family *Psyllidae: Diaphorina citri* Kuwayama, the Asian citrus psyllid (ACP), and *Trioza erytreae* (del Guercio), the African citrus psyllid. ACP can also cause economic damage to citrus in groves and nurseries by direct feeding. Both adults and nymphs feed on young foliage, depleting the sap and causing galling or curling of leaves. High populations feeding on a citrus shoot can kill the growing tip. ACP is currently present in the States of Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, and portions of Arizona, California, and South Carolina. Based on regular surveys of domestic commercial citrus-producing areas, the African citrus psyllid is not present in the United States.

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) has undertaken measures to control the artificial spread of citrus greening and its vectors to noninfested areas of the United States since the introduction of the disease in 2005. On September 16, 2005, APHIS issued a Federal Order designating one affected county in Florida as a quarantined area, and imposing restrictions on the interstate movement all citrus greening and ACP host material from this area.[1]

In January 2006, we issued an environmental assessment, titled "Citrus Greening Control Program in Florida Nurseries" (January 2006).[2] This document assessed the environmental impacts associated with the use of the pesticide treatments acetamiprid, chlorpyrifos, fenpropathrin, imidacloprid, kaolin, and a cyfluthrin/imidacloprid mixture as part of a disease control program for citrus greening and ACP.

On May 3, 2006, we revised the September 2005 Federal Order to designate 9 additional counties in Florida as quarantined areas.

On November 2, 2007, we issued a revised order that designated 18 additional counties in Florida as areas quarantined for citrus greening and quarantined 32 counties in Texas, the entire States of Florida and Hawaii, the entire Territory of Guam, and the entire Commonwealth of Puerto Rico for ACP. This order also contained treatments that could be performed on ACP regulated articles to allow their movement from a quarantined area to areas of the United States other than commercial citrus-producing States. The order stated that, prior to movement, regulated articles (other than *Bergera* (=*Murraya*) *koenigii*, or curryleaf) had to be treated using an Environmental Protection Agency (EPA)-approved product labeled for use in nurseries. The articles had to subsequently be treated with a drench containing imidacloprid as the active ingredient within 30 days prior to movement and with a foliar spray with a product containing acetamiprid,[3] chlorpyrifos, or fenpropathrin as the active ingredient within 10 days prior to movement.

[1] To view the September 2005 Federal Order, or any other Federal Order referenced in this interim rule, go to (*http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/regs.shtml*).

[2] To view the 2006 environmental assessment, go to (*http://www.aphis.usda.gov/plant_health/ea/downloads/citrusgreening1-06ea.pdf*).

[3] We have since obtained data suggesting that acetamiprid is not efficacious in neutralizing ACP. Accordingly, we are not designating it an APHIS-approved treatment within this interim rule.

Provided that it did not originate from an area quarantined for citrus greening, curryleaf could be moved interstate to any State following treatment with methyl bromide according to the APHIS-approved treatment schedule MB T101-n-2, found in 7 CFR part 305.

We accompanied this revised order with a notice[4] published on the same day in the **Federal Register** (72 FR 62204-62205, Docket No. APHIS-2007-0135) in which we announced to the public the availability of an environmental assessment, titled "Movement of Regulated Articles from Citrus Greening and Asian Citrus Psyllid Quarantine Zones" (October 2007). The assessment evaluated the possible environmental impacts associated with implementation of the revised Federal Order and, in particular, the treatment schedules specified within it.

The November 2007 order also provided Florida and Texas with a deadline of December 1, 2007, to adopt and enforce regulations restricting the intrastate movement of regulated articles that were equivalent to those imposed by the Federal Order on the interstate movement of regulated articles from areas within the State quarantined for citrus greening, in the case of Florida, and ACP, in the case of Texas. If such regulations were not established by December 1, 2007, we stated that we would designate the entire States as quarantined areas.

Texas established such regulations prior to December 1, 2007, while Florida did not. Accordingly, on January 11, 2008, we amended the Federal Order to designate the State of Florida as an area quarantined for citrus greening. In that Federal Order, we also allowed for the use of irradiation, in addition to the option of using methyl bromide, as a possible treatment for curryleaf and other articles intended for consumption or decorative use and moved from the ACP quarantined area.

On June 24, 2008, we amended the Federal Order to add one parish in Louisiana to the list of areas quarantined for citrus greening, and four parishes in Louisiana to the list of areas quarantined for ACP, following the detection of the disease and ACP within the State. On July 11, 2008, we amended the Federal Order to designate an additional parish in Louisiana as a quarantined area for ACP. On July 22, 2008, we amended the Federal Order to designate two additional parishes in Louisiana as quarantined areas for ACP. On August 5, 2008, we updated the order to add an additional parish in Louisiana to the list of ACP quarantined areas. Louisiana established equivalent intrastate regulations to prevent the spread of citrus greening and ACP from the quarantined areas.

On September 12, 2008, we amended the Federal Order to add the entire State of Georgia, as well as one county in Alabama, one county in Mississippi, three counties in South Carolina, and three additional counties in Texas to the list of ACP quarantined areas. Alabama, Mississippi, and South Carolina established equivalent intrastate regulations to prevent the spread of ACP; Georgia elected to forgo establishment of such regulations in favor of a Statewide quarantine.

On October 1, 2008, we updated the Federal Order to designate another parish in Louisiana as a quarantined area for citrus greening, and portions of one county in California as a quarantined area for ACP. Upon detection of ACP, California immediately implemented equivalent restrictions on intrastate movement of regulated articles. Therefore, only portions of one county were designated as a quarantined area.

In January 2009, Alabama, Louisiana, Mississippi, and Texas requested to have their entire States designated as quarantined areas for ACP. Accordingly, on January 28, 2009, we amended the Federal Order to designate the entire States of Alabama, Louisiana, Mississippi, and Texas as quarantined areas for ACP. In that Federal Order, we also expanded the quarantined area in California by adding portions of an adjacent county.

On July 29, 2009, we updated the Federal Order to add the State of Georgia and two counties in South Carolina to the list of areas quarantined for citrus greening, and to add portions of a third county in California to the list of areas quarantined for ACP.

On September 21, 2009, we updated the Order to add Los Angeles and Orange Counties to the area in California that is quarantined for ACP.

On November 20, 2009, we updated the Order to designate all of Puerto Rico as a quarantined area for citrus greening.

On December 15, 2009, we updated the Order to designate portions of one county in Arizona as a quarantined area for ACP, and to modify the area quarantined for ACP in California.

This rule replaces the December 15, 2009, Federal Order. It codifies some of the provisions of the order, clarifies others, and adds provisions that we have determined since the issuance of the order to be necessary in order to prevent the spread of citrus greening and ACP to noninfested areas of the United States.

Restrictions on the interstate movement of regulated articles (§ 301.76)

Section 301.76 prohibits the interstate movement of articles regulated for citrus greening and ACP from an area quarantined for citrus greening or ACP, except in accordance with the regulations.

Definitions (§ 301.76-1)

Section 301.76-1 contains definitions of the following terms: *Administrator*, *Animal and Plant Health Inspection Service (APHIS)*, *Asian citrus psyllid*, *certificate*, *citrus greening*, *commercial citrus grove*, *compliance agreement*, *EPA*, *established population*, *inspector*, *interstate*, *limited permit*, *moved (move, movement)*, *nursery*, *nursery stock*, *person*, *port*, *quarantined area*, *regulated article*, and *State*.

We recognize that the definitions of two of these terms differ from existing definitions in our domestic quarantine regulations for citrus canker, another disease of citrus plants (see 7 CFR 301.75-1). First, in the citrus canker regulations, we define a *commercial citrus grove* as "an establishment maintained for the primary purpose of producing citrus fruit for commercial sale." We are defining this term in this rule as "a solid-set planting of trees maintained for the primary purpose of producing citrus fruit for commercial sale." This new definition clarifies that groves differ from other establishments that produce citrus fruit for commercial sale, such as nurseries and packinghouses. Such a clarification is necessary because movement of regulated nursery stock to a commercial citrus grove, in certain instances, exempts the articles from having to be labeled in accordance with § 301.76-4(a). We discuss this labeling requirement in greater depth later in this document.

Second, in the citrus canker regulations, we define a nursery as "any premises, including greenhouses but excluding groves, at which nursery stock is grown or maintained." Here, we are defining a *nursery* as "any commercial location where nursery stock is grown, propagated, stored, maintained, or sold, or any location from which nursery stock is distributed." This definition clarifies that any establishment that contains nursery stock, including retailers and distributors, must comply with the relevant regulations established by this interim rule.

[4] To view the notice or the environmental assessment, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0135*).

We intend to amend these two definitions in the citrus canker regulations in a forthcoming rulemaking to make them identical to the definitions in the citrus greening regulations.

Regulated articles for ACP and citrus greening (§ 301.76-2)

Articles of several species of plants are host material for ACP, and thus present a risk of spreading ACP if they are moved from quarantined areas without restrictions. Most, although not all, of these species are also already confirmed to be hosts of "*Candidatus* Liberibacter asiaticus", the bacterial pathogen that causes citrus greening. That said, both ACP and citrus greening are known to attack hosts within the plant family Rutaceae. Moreover, scientists have not yet discovered any members of the Rutaceae family that are resistant or immune to citrus greening. Indeed, studies to date suggest that grafting plant parts infected with citrus greening, as well as probing and feeding by ACP carrying the citrus greening pathogen, can transmit citrus greening to ACP host articles previously considered immune to the disease.[5] Finally, there is emerging evidence that plant species that are only known to be hosts of ACP may also be infected by citrus greening without showing symptoms of the disease.[6] Based on the apparent lack of immunity to citrus greening among the Rutaceae family, the possibility that ACP hosts may be infected but asymptomatic hosts for citrus greening, and the severity of citrus greening, we have determined it necessary to consider all ACP host species to be potential host species of citrus greening.

Therefore, paragraph (a) of § 301.76-2 states that all plants and plant parts (including leaves), except fruit, of the following species are regulated articles for ACP and citrus greening: *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *A. paniculata*, *Amyris madrensis*, *Atalantia* spp. (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Bergera* (=*Murraya*) *koenigii*, *Calodendrum capense*, *Choisya ternate*, *C. arizonica*, X *Citroncirus webberi*, *Citropsis articulata*, *Citropsis gilletiana*, *Citrus madurensis* (= X *Citrofortunella microcarpa*), *Citrus* spp., *Clausena anisum-olens*, *C. excavata*, *C. indica*, *C. lansium*, *Eremocitrus glauca*, *Eremocitrus* hybrid, *Esenbeckia berlandieri*, *Fortunella* spp., *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *M. australis*, *M. papuana*, X*Microcitronella* spp., *Murraya* spp., *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium ruticarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris* (=*Toddalia*) *lanceolata*, and *Zanthoxylum fagara*.

In a November 19, 2007, final rule (72 FR 65172-65204, Docket No. APHIS-2007-0022) governing the interstate movement of citrus fruit from an area quarantined for citrus canker, we stated that we were evaluating whether seed contained in fruit serves as a pathway for the transmission of citrus greening.[7] Our evaluation determined that it does not. Moreover, fruit is not known to be a host article of ACP. Accordingly, we are not designating fruit as a regulated article for either citrus greening or ACP.

That said, while propagative seed (i.e., seed not contained in fruit and intended for planting) is not a host of ACP, we do consider it a potential host of citrus greening. This determination is based on emerging scientific evidence, from studies conducted by USDA's Agricultural Research Service and the Center for Plant Health Science and Technology (CPHST) of APHIS' Plant Protection and Quarantine (PPQ) program, that a small percentage of seedlings generated from seed taken from plants infected with citrus greening have tested positive for the disease. While evidence is not yet conclusive regarding the ability of propagative seed to transmit the disease, the severity of citrus greening has led us to determine that, in the absence of scientific evidence demonstrating that propagative seed is not a host of citrus greening, it should be considered a host.

Therefore, paragraph (b) of § 301.76-2 states that propagative seed of the species listed in § 301.76-2(a) is considered a host of citrus greening but not a host of ACP. Accordingly, notwithstanding the other provisions of this rule, the movement of propagative seed of these species from an area quarantined for citrus greening is prohibited, while the movement of such seed from an area quarantined only for ACP, but not for citrus greening, is allowed without restriction.

Paragraph (c) states that any other product, article, or means of conveyance may be designated as a regulated article for ACP or citrus greening, if an inspector determines that it presents a risk of spreading these pests, and after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of the regulations. This is intended to address, for example, a truck carrying refuse from a quarantined area, if an inspector considers it reasonable to believe that this refuse may contain leaves, branches, or other plant parts of regulated articles.

Finally, as we discuss in greater detail later in this document, certain plant parts of species that are hosts of citrus greening and ACP are used for consumption, as apparel or as a similar personal accessory, or for other decorative use. In order to render these parts suitable for their intended use, as a standard industry practice, the parts often are subject to extensive processing. For example, *Bergera* (=*Murraya*) koenigii (curryleaf) leaves that are intended for culinary use are usually both dried and shredded prior to shipment.

After reviewing these industry practices, APHIS has determined that, if they are uniformly applied, they often make the plant parts incapable of hosting live ACP or disseminating viable or potentially viable "*Candidatus* Liberibacter asiaticus". Accordingly, paragraph (d) of § 301.76-2 states that plant parts of the species listed in paragraph (a) of the section may be exempted from the regulations in the subpart, provided that the parts have been processed such that an inspector determines they no longer present a risk of spreading ACP or citrus greening. Examples of such processing include, but are not limited to, heating, freezing, drying, pickling, and shredding.

(Please note that the final determination regarding whether to exempt such parts lies with the inspector. If an inspector has reason to believe that the articles may still host viable ACP or citrus greening, he or she may require that a certificate or limited permit be issued before the parts may be moved in interstate commerce or subject the articles to remedial measures pursuant to APHIS' authority under the PPA.)

Quarantined areas; citrus greening and ACP (§ 301.76-3)

Paragraph (a) of § 301.76-3 describes the process by which a quarantined area for citrus greening or ACP is designated. Under this process, the Administrator will designate an area as a quarantined area for citrus greening or as a quarantined area for ACP in accordance

[5] See, e.g., Hung, T.H. M. L. Wu, H. J. Su. Identification of Alternative Hosts of the Fastidious Bacterium Causing Citrus Greening Disease. *Journal of Phytopathology* (June 2000), 321-326.

[6] Source: Dr. Andrew Beattie, University of West Sydney. Correspondence with APHIS, March 2008.

[7] To view the November 2007 final rule, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0022*).

with the criteria listed in paragraph (c) of § 301.76-3.

We will publish the description of all areas quarantined for citrus greening or ACP on the PPQ Web site at (*http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/index.shtml*). The description of each quarantined area will include the date the description was last updated and a description of the changes that have been made to the quarantined area. Lists of all quarantined areas may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories and on the Internet at (*http://www.aphis.usda.gov/services/report_pest_disease/report_pest_disease.shtml*). After a change is made to the list of quarantined areas, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined area.

Paragraph (b) describes the conditions for the designation of less than an entire State as a quarantined area. Less than an entire State will be designated as a quarantined area for citrus greening or ACP only if the Administrator determines that:

- The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and
- The designation of less than the entire State as a quarantined area will prevent the interstate spread of citrus greening or ACP.

Based upon the criteria of this paragraph, we are quarantining the entire States of Florida and Georgia, as well as Puerto Rico and the U.S. Virgin Islands for citrus greening, and Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, and the U.S. Virgin Islands for ACP. We do not, however, consider it necessary to quarantine the entire State of Louisiana or South Carolina for citrus greening or to quarantine the entire States of Arizona, South Carolina, or California for ACP. This is because these States have adopted and are enforcing equivalent restrictions on the intrastate movement of regulated articles from all areas within the State that are quarantined for citrus greening or ACP, and because citrus greening or ACP have not been found in any areas within those States other than the following parishes and counties, or portions thereof:

- In Arizona, portions of Yuma County, as follows, which are quarantined for ACP: Sections 19, and 28 through 35 of Township 5 South and Range 20 West; Sections 15 through 36 of Township 5 South and Range 21 West; Sections 13 and 85 of Township 5 South and Range 22 West; Sections 7, 17 through 21, and Sections 27 through 34 of Township 6 South and Range 19 West; all Sections of Township 6 South and Range 20 West through 22 West; Section 31 of Township 7 South and Range 18 West; All Sections of Township 7 South and Range 19 West through 22 West; Sections 6, 7, 18, 19, 30, and 31 of Township 8 South Range 18 West; All Sections of Township 8 South and Range 19 West through 24 West; Sections 6, 7, 18 and 19 of Township 9 South and Range 18 West; All Sections of Townships 9 South and Range 19 West through 25 West; Sections 1 through 23, 27 through 33 of Township 10 South and Range 19 West; All Sections of Townships 10 South and Range 20 West through 25 West; Sections 5, 6, and 7 of Township 11 South and Range 19 West; All Sections of Townships 11 South and Range 20 West through 25 West; All Sections of Townships 12 South and Range 21 West through 23 West; All Sections of Townships 16 South and Range 21 East and 22 East;
- In Louisiana, Orleans and Washington Parishes, which are quarantined for citrus greening;
- In South Carolina, Beaufort and Charleston Counties, which are quarantined for both ACP and citrus greening, and Colleton County, which is quarantined for ACP; and
- In California, Imperial, Los Angeles, and Orange Counties, in their entirety; an area consisting of portions of Riverside and San Diego Counties; an area consisting of portions of Riverside County and San Diego County; and an area consisting of other portions of Riverside County and San Bernadino County, which are quarantined for ACP.

As we mentioned earlier in this document, paragraph (c) of § 301.76-3 sets forth the criteria for designating a State or a portion of a State as a quarantined area for citrus greening or ACP. Under the provisions of this paragraph, we will designate a State or portion of a State as a quarantined area for citrus greening when the presence of citrus greening is confirmed within the area by an APHIS-administered test, and we will designate a State or portion of a State as a quarantined area for ACP in which an established population of ACPs has been detected. "Established population" is defined in § 301.76-1 as the presence of ACP within an area that the Administrator determines is likely to persist for the foreseeable future.

A State, or portion of a State, will also be designated as a quarantined area for either citrus greening or ACP if the Administrator considers it necessary to quarantine the area because of its inseparability for quarantine enforcement purposes from localities in which citrus greening or an established population of ACP has been found.

In other regulations governing plant pests, we tend to designate an area as a quarantined area if the pest is determined to be present in the area. We have not used this criterion for designating an area as quarantined for ACP because certain ACP hosts that are intended for consumption, as apparel or as a similar personal accessory, or for other decorative use may be treated with irradiation at a dosage that neutralizes ACP, but does not kill it. Therefore, sterile ACP could be present on an article that will be shipped to retailers well outside of the natural range of ACP, e.g., on curryleaf shipped to a State in the Northeast corridor. We believe that, by qualifying that an established population of ACP must be detected within the area, we will have sufficient latitude to deal with any such incidents on a case-by-case basis, without necessarily imposing restrictions on the interstate movement of regulated articles from a State in which ACP is detected on such an article. In short, there are occasions when live ACP may be detected in an area and we will not quarantine the area for ACP.

If we detect an established population of ACP within an area, we will, on every occasion, quarantine that area for ACP. This is because ACP is the primary vector for citrus greening within the United States. Its presence in an area facilitates the introduction and spread of citrus greening.

Labeling requirements for regulated nursery stock produced within an area quarantined for citrus greening (§ 301.76-4)

We have determined that the inadvertent but illicit interstate movement of regulated nursery stock from an area quarantined for citrus greening is a high-risk pathway for the spread of the disease. For example, a tourist visiting a quarantined area could purchase ornamental nursery stock at a retail store, roadside stand, or airport kiosk, be unaware of the restrictions regarding its interstate movement, and transport the article to another State via luggage or some other means of conveyance. We are aware of at least 11 instances in FY 2008 when hosts of citrus greening were intercepted in passenger luggage in transit from Florida to another commercial citrus-

producing State. We are also aware of instances when producers have attempted to sell regulated nursery stock propagated in an area quarantined for citrus greening illicitly through Internet commerce. Because citrus greening is a high-risk disease, and because the introduction of citrus greening into a previously unaffected commercial citrus-producing area within the United States could result in substantial economic losses within that area, it is vitally important to establish a mechanism to alert the general public to these movement restrictions with the goal of preventing inadvertent movement.

Therefore, paragraph (a) of § 301.76-4 states that, effective September 15, 2010, except as provided in paragraphs (b) and (c) of § 301.76-4, all regulated nursery stock offered for commercial sale within an area quarantined for citrus greening must have an APHIS-approved plastic or metal tag on which a statement alerting consumers to Federal prohibitions regarding the interstate movement of the article is prominently and legibly displayed. Alternatively, if the article is destined for commercial sale in a box or container, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed.

The operator of the site of propagation of the nursery stock and the person offering the plants for commercial sale are jointly responsible for all such labeling. Either party may actually do the labeling, as long as the plant is labeled in accordance with this section by the time it is offered for commercial sale. In accordance with our authority under the PPA, APHIS inspectors may take remedial measures to prevent the commercial sale of any products that lack such labeling; this may include confiscation or destruction of unlabeled articles.

We recognize that some regulated nursery stock produced within a quarantined area is destined for planting in a commercial citrus grove within that same area and moved directly to that grove, without movement outside of the quarantined area. This nursery stock, often known as "source stock," is used by the grove in order to ensure that there are enough fruit-bearing plants on site for the grove to be economically viable. Accordingly, this stock is not moved from the grove or commercially distributed. Since this nursery stock is not sold to the general public, and is moved solely within an area that is already affected with citrus greening, paragraph (b) of § 301.76-4 states that such nursery stock may be moved without being labeled in accordance with paragraph (a).

Similarly, paragraph (c) states that nursery stock that will be moved interstate for immediate export under a limited permit in accordance with § 301.76-7(c) may be moved without being labeled in such a manner. Such nursery stock is not sold to the general public within the United States, and is moved interstate in a sealed container that must remain sealed as long as the articles are within the United States.

Finally, we are making this section effective on September 15, 2010, rather than upon publication of this rule in the **Federal Register**, in order to provide APHIS with sufficient time to engage in discussions with Federal and State plant health personnel, as well as regulated parties, regarding what statements and design should be approved for such labels. APHIS will provide producers and commercial retailers with a list of approved statements and tags as expeditiously as possible in order to provide these regulated parties with sufficient time to produce or purchase and affix labels in order to comply with this section.

General conditions governing the issuance of any certificate or limited permit; provisions for cancellation of a certificate or limited permit (§ 301.76-5)

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued when an inspector or person operating under a compliance agreement finds that, because of certain conditions, a regulated article can be moved safely from a quarantined area without spreading the disease or pest. For example, the article may have been grown under certain conditions that prohibit the introduction of the disease or pest, or may have been subject to remedial measures that eradicate the disease or destroy all life stages of the pest. Regulated articles accompanied by a certificate may be moved interstate without further movement restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may safely be moved interstate only subject to further restrictions, such as prohibitions on movement to certain locations or movement for limited purposes. This interim rule establishes conditions for the issuance both of certificates and of limited permits. Section 301.76-5 contains the general conditions for issuing a certificate or limited permit.

Paragraphs (a)(1) and (a)(2) of § 301.76-5 set out the general conditions under which an inspector or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article. In addition to all other relevant conditions within the regulations, a certificate may only be issued if a regulated article:

- Will be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of ACP; and
- Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the article.

In paragraph (a)(1), we have included a footnote (number 2) to explain that, in accordance with sections 414, 421, and 423 of the PPA (7 U.S.C. 7714, 7731, and 7754), an inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles.

Paragraph (b) of § 301.76-5 sets out general conditions for the issuance of a limited permit. In addition to all other relevant conditions of the regulations, an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of a regulated article only if he or she determines that the regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit) and that this movement of the regulated article will not result in the spread of citrus greening or ACP. Furthermore, a limited permit will only be issued if the regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the PPA to prevent the spread of citrus greening and ACP, and if the regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the article.

Paragraph (c) allows any person who has entered into and is operating under a compliance agreement to issue a certificate or limited permit for the interstate movement of a regulated article after he or she has determined that the article is eligible for a certificate or limited permit under the regulations.

Paragraph (d) contains provisions for the withdrawal of a certificate or limited

permit if the inspector determines that the holder of the certificate or limited permit has not complied with all of the provisions for the use of the document or with all of the conditions contained in the document. This paragraph also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Finally, paragraph (e) states that, unless specific provisions exist in § 301.76-6 or § 301.76-7 of this subpart to allow the interstate movement of a certain regulated article, the interstate movement of that article is prohibited. This paragraph is necessary to clarify that the general provisions § 301.76-5 do not, in themselves, provide sufficient conditions for the movement of regulated articles, but serve, instead, as indispensable preconditions for the movement of regulated articles.

Additional conditions for the issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined only for ACP, but not for citrus greening (§ 301.76-6)

Section 301.76-6 establishes additional conditions for the issuance of certificates and limited permits for regulated articles moved interstate from an area that is quarantined only for ACP, and not quarantined for citrus greening. Paragraph (a) establishes additional conditions under which an inspector or person operating under a compliance agreement may issue a certificate for the interstate movement of any regulated article to any State. In addition to the general conditions for issuance of a certificate contained in § 301.76-5(a), a certificate may be issued if:

- The article is treated with methyl bromide in accordance with 7 CFR part 305.
- The article is shipped in a container that has been sealed with an agricultural seal placed by an inspector.
- The container that will be moved interstate is clearly labeled with the certificate.
- A copy of the certificate will be attached to the consignee's copy of the accompanying waybill.

Methyl bromide treatment in accordance with treatment schedule MB T101-n-2 has been demonstrated to kill all life stages of ACP. Moreover, by requiring that such articles must be sealed with an agricultural seal placed by an inspector after treatment, we are mitigating the risk that the articles will become reinfested with ACP during movement. Accordingly, these conditions collectively are sufficient for the issuance of a certificate.

However, it should be noted that methyl bromide can be phytotoxic, that is, damaging or lethal to living plant tissue. Accordingly, we recommend that persons contemplating whether to apply methyl bromide to regulated nursery stock take this potential phytotoxicity into consideration prior to application of the treatment.

Moreover, it should also be noted that EPA or State or local environmental authorities may not authorize the use of methyl bromide on certain regulated articles.

Paragraph (b) establishes additional conditions for the issuance of a limited permit for the interstate movement of regulated nursery stock from an area quarantined only for ACP, but not for citrus greening. Specifically, in addition to the general conditions for issuance of a limited permit in § 301.76-5(b), an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of regulated nursery stock if:

- The nursery stock is treated for ACP with an APHIS-approved soil drench or in-ground granular application no more than 30 days and no fewer than 20 days before shipment, followed by an APHIS-approved foliar spray no more than 10 days before shipment. All treatments must be applied according to their EPA label, including directions on application, restrictions on place of application and other restrictions, and precautions, and including statements pertaining to Worker Protection Standards.
- The nursery stock is inspected by an inspector in accordance with § 301.76-9 and found free of ACP.
- The nursery stock is affixed prior to movement with a plastic or metal tag on which the statement "Limited permit: USDA-APHIS-PPQ. Not for distribution in American Samoa, Northern Mariana Islands, or those portions of AZ, CA, and SC not quarantined due to the presence of Asian citrus psyllid or citrus greening" is prominently and legibly displayed. If the nursery stock is destined for movement or sale in boxes or containers, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed.
- The nursery stock is moved in a container sealed with an agricultural seal placed by an inspector.
- This container also prominently and legibly displays the statement of the limited permit.
- A copy of the limited permit is attached to the consignee's copy of the accompanying waybill.
- The nursery stock is moved in accordance with the conditions specified on the limited permit to the location specified on the permit.

We have previously evaluated both the efficacy of and potential environmental impacts associated with the use of several pesticide treatments as part of a control program for ACP. Based on efficacy studies reviewed by CPHST and the evaluations documented in our 2006 and 2007 environmental assessments, we have determined that soil drenches containing imidacloprid and foliar sprays containing chlorpyrifos or fenpropathrin are effective and environmentally sound means of controlling ACP for all regulated nursery stock.

At the request of the citrus industry and State plant health officials in several States with commercial citrus production, CPHST recently examined the efficacy of in-ground granular applications containing dinotefuran and foliar sprays containing bifenthrin, deltamethrin, or a mixture of imidacloprid and cyfluthrin as pesticide treatments for ACP, and found them to be effective in treating regulated nursery stock for ACP. Moreover, the EA that accompanies this rule documents that the use of bifenthrin, deltamethrin, dinotefuran, or a mixture of imidacloprid and cyfluthrin as a treatment for ACP is not likely to have a significant impact on the human environment. Accordingly, APHIS is approving the use of each of these pesticides as treatments for ACP.

Additionally, we are currently evaluating the efficacy of several other pesticides as treatments for ACP, and we welcome public comment regarding the efficacy of any pesticides not currently approved by APHIS as treatments for ACP. If, after publication of this rule, we determine that a pesticide is efficacious, we will evaluate its impact on the human environment. As necessary, we will prepare an environmental assessment documenting this evaluation, and will publish a notice in the **Federal Register** to inform the public of the availability of this assessment. If an environmental assessment is not necessary, or if an assessment and notice of availability are necessary but we receive no comments on our notice suggesting that the pesticide has a significant impact on the human environment, we will consider treatments containing the pesticide to be APHIS-approved treatments for ACP. We will maintain a continually updated list of all approved pesticides on the

PPQ Web site (*http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/index.shtml*).

While these soil drenches, granular applications, and foliar sprays have been proven to be efficacious in neutralizing ACP, because we are not establishing regulations governing the locations in which such treatments may be applied, it is possible, although unlikely, that the nursery stock could be reinfested with ACP before it is sealed in a container.

Because of this risk, we are prohibiting the movement of nursery stock treated in such a manner to American Samoa, the Northern Mariana Islands, and those portions of Arizona and California that are not quarantined due to the presence of ACP because those areas contain commercial citrus production and an established population of ACP has not yet been detected in the areas. The introduction of ACP to these areas, and the possible subsequent introduction of citrus greening, could result in substantive economic losses for the areas.

Although it is not listed as a commercial citrus-producing State, we are also prohibiting the movement of nursery stock treated in such a manner to the areas in South Carolina that are not quarantined for ACP or citrus greening because both ACP and citrus greening exist in South Carolina, because surveys have determined that host articles exist both in residential areas and in the wild in portions of the State that are currently not under quarantine for ACP or citrus greening, and because the further dissemination of ACP or citrus greening throughout the State could serve as a pathway for the natural or artificial spread of ACP and citrus greening throughout the South or to other uninfested areas of the United States.

Soil drenches and in-ground granular applications must be applied no fewer than 20 days before shipment because we have determined that application of a soil drench fewer than 20 days before shipment often results in suboptimal absorption of the drench and, in certain instances, may impede the treatment from being effective in neutralizing ACP. Conversely, if a foliar spray is applied more than 10 days before shipment, this increases the possibility of reintroduction of the psyllid prior to shipment.

Regarding the approved soil drenches and granular applications, we note that dinotefuran is currently not approved by EPA for use on fruit-bearing nursery stock. Similarly, we note that Worker Protection Standards, which are statements on the label of certain pesticides regarding the prerequisites that an individual must fulfill in order to be qualified to apply those pesticides, may also restrict a producer's ability to apply certain of these treatments. Finally, we encourage all persons who intend to apply soil drenches, granular applications, and foliar sprays in accordance with the provisions of this section to consult with the environmental authorities in their State, since State regulations may restrict the sale or use of certain Federally approved treatments.

Shortly before issuance of our January 11, 2008, Federal Order, we received a request from parties who desired to move regulated articles intended for consumption (e.g., *Bergera* (=*Murraya*) *koenigii*, or curryleaf), as apparel or as a similar personal accessory, or for other decorative use (e.g., *Murraya paniculata*, or mock orange flowers or foliage, which are often incorporated into leis and into interior floral arrangements) from an area quarantined only for ACP, but not for citrus greening, following irradiation treatment.

Based on our evaluation of the risk associated with such movement, we established conditions to allow such movement in that Federal Order.

In paragraph (c) of § 301.76-6, we codify the movement conditions of the January 2008 Federal Order. The paragraph states that, in addition to the general conditions for issuance of a limited permit within the regulations, an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of regulated articles intended for consumption, as apparel or as a similar personal accessory, or for other decorative use if:

- The articles are treated with irradiation in accordance with 7 CFR part 305 at an irradiation facility that is not located in an area quarantined for citrus greening.
- The container that will be used to move the articles interstate is clearly labeled with the limited permit, which contains the name of the State or portion of a State where the regulated article was produced and a statement that the article was treated in accordance with 7 CFR part 305.
- A copy of the limited permit is attached to the consignee's copy of the accompanying waybill.

Irradiation treatment at a dose of at least 400 gray has been demonstrated to neutralize, that is, to kill or render sterile, all plant pests that are members of the class Insecta, and do not belong to the order Lepidoptera; this includes ACP. This treatment schedule, along with all other authorized treatment schedules, is found in the PPQ Treatment Manual, found on the Internet at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml*).

The phytosanitary treatment regulations contained in 7 CFR part 305 set out standards for treatments required in 7 CFR parts 301, 318 and 319. Section 305.9 of those regulations contains general requirements for irradiation treatment and includes several specific provisions that pertain to the irradiation treatment of certain articles that are regulated as hosts of fruit flies and that are moved interstate from an area quarantined for fruit flies. After reviewing these provisions, we have determined that, with several non-substantive changes, they can also be applied to the irradiation treatment of articles that are regulated as hosts of ACP and that are moved interstate from an area quarantined for ACP. We are amending § 305.9 accordingly.

By amending § 305.9, we are not only providing for irradiation treatment at a dose of at least 400 gray as an approved treatment for host articles of ACP, but also providing that certain risk mitigation measures within that section be applied to regulated articles to preclude the introduction of ACP to the articles. First, § 305.9 requires inspectors to be present at the facility and monitor treatments and authorizes these individuals to conduct unannounced inspections of the facility. Second, the section requires that all regulated articles be packed in insect-proof cartons prior to irradiation, and that safeguarding be applied to all pallets on which the articles are transported. These measures collectively obviate the need for requiring that irradiated articles be moved interstate in a container sealed with an agricultural seal.

Irradiation at the generic dose of 400 gray may not necessarily kill ACP; however, as noted above, it does neutralize it, that is, render it sterile. Some ACP may therefore survive treatment at the facility and interstate movement from the facility to the location provided on the limited permit. This is our rationale for requiring that the facility not be located in an area quarantined for citrus greening. Moreover, we are requiring that limited permits issued in accordance with paragraph (c) of § 301.76-6 contain the State or portion of a State where the regulated article was produced, in order to alleviate concerns that the consignee listed on the limited permit may have that such an article, if found to be

infested with irradiated ACP, originates from an area quarantined for both ACP and citrus greening, and thus is potentially infested with ACP carrying the bacterial pathogen that causes citrus greening. In a similar manner, we are requiring that the limited permit contain a statement that the article was treated in accordance with 7 CFR part 305, in order to provide assurances to the consignee that any ACP found on the article have been neutralized with irradiation. In the absence of such a statement, we consider it reasonable for the consignee to assume either that the article has not been treated for ACP, or that ACP have been introduced to the article during transit.

Finally, we note that we have, to date, only received requests to allow the interstate movement of articles intended for consumption, as apparel or as a similar personal accessory, or for other decorative use following irradiation treatment for ACP. However, we will entertain any requests that we receive requesting that we authorize the use of such treatment for other regulated articles.

Additional conditions for issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined for citrus greening (§ 301.76-7)

The interstate movement of regulated nursery stock from an area quarantined for citrus greening presents a substantial risk of introducing citrus greening to a currently unaffected area of the United States. Accordingly, we are only authorizing the issuance of limited permits for nursery stock that is grown, produced, or maintained at a nursery or other facility located in an area quarantined for citrus greening if the nursery stock is moved interstate for immediate export under a protocol designed to ensure that it does not present a pathway for the artificial spread of citrus greening or ACP to these unaffected areas. Paragraph (a) of § 301.76-7 provides the conditions of the protocol.

Under the protocol, in addition to all other general conditions for issuance of a limited permit, the nursery stock must be treated for ACP with an APHIS-approved soil drench or in-ground granular application, followed by an APHIS-approved foliar spray, in accordance with § 301.76-6(b)(1), or with methyl bromide or irradiation, in accordance with 7 CFR part 305; must be inspected by an inspector prior to movement in accordance with § 301.76-9 and found free of ACP, if treated in accordance with § 301.76-6(b)(1); and must be affixed prior to movement with a plastic or metal tag on which the statement "Limited permit: USDA-APHIS-PPQ. For immediate export only" is prominently and legibly displayed. If the nursery stock is destined for movement or sale in a box or container, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed. The nursery stock must be accompanied by a copy of this limited permit attached to the consignee's copy of the waybill, and must be moved in accordance with the conditions of the limited permit directly to the port of export, in a container sealed with an agricultural seal placed by an inspector. A copy of the limited permit must also be attached to or legibly printed on this sealed container. The nursery stock must remain in this container, and the container must remain sealed, as long as the plants are within the United States.

Apart from treatment and inspection for ACP, the provisions of this protocol constitute the safeguards necessary to mitigate the risk associated with the interstate movement of potential host material for citrus greening. Treatment and inspection for ACP are necessary because, as we mentioned earlier in this document, ACP is the primary vector of citrus greening in the United States, and ACP in a citrus greening quarantined area must be presumed to be a carrier of the disease. We can foresee no instances when an area would be quarantined for citrus greening without also being quarantined for ACP either prior to or after the detection of citrus greening.

Paragraph (b) states that, except for nursery stock for which a limited permit has been issued in accordance with the conditions of paragraph (a) of this section, no other regulated article may be moved interstate from an area quarantined for citrus greening. This paragraph is necessary to clarify that the provisions of paragraph (a) are currently the only conditions under which we will allow the interstate movement of regulated articles from such an area.

That said, while there are presently no other conditions under which we will allow the interstate movement of nursery stock or any other regulated article from an area quarantined for citrus greening, we are evaluating the risk associated with the interstate movement of nursery stock produced from propagative material that is free of ACP and citrus greening and grown, packed, and moved under pest-exclusionary conditions. If we determine that there are conditions that are sufficient to allow nursery stock to move safely from such a quarantined area, we will initiate rulemaking to add provisions to § 301.76-6 to provide for the movement of such nursery stock.

Compliance agreements and cancellation (§ 301.76-8)

Section 301.76-8 provides for the use of and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in the growing, maintaining, processing, handling, packing, treating, or moving of regulated articles from quarantined areas. A person may enter into a compliance agreement when an inspector has determined that the person requesting the compliance agreement has been made aware of the requirements of the regulations and the person has agreed to comply with the requirements of the regulations and all the provisions of the compliance agreement. The person must also agree to maintain and offer for inspection such records as are necessary to demonstrate continual adherence to the requirements of the regulations and the provisions of the compliance agreement. This section contains a footnote (number 4) that explains where compliance agreement forms may be obtained.

Section 301.76-8 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations or the agreement. The inspector will notify the holder of the compliance agreement of the reasons for the cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

Inspection of regulated nursery stock (§ 301.76-9)

As we mentioned in our discussion of § 301.76-7, all regulated nursery stock treated with soil drenches or in-ground granular applications and foliar sprays prior to interstate movement from an area quarantined only for ACP but not for citrus greening, as well as all nursery stock intended for interstate movement for immediate export from an area quarantined for citrus greening, must be inspected by an inspector. Section 301.76-9 contains the requirements for such an inspection. The inspection must occur no more than 72 hours prior to movement. The person who desires to move the articles interstate must notify the inspector as far in advance of the desired interstate movement as possible. The articles must be inspected at the place and in the manner the inspector

designates as necessary to comply with this rule. If the inspector has reason to believe that the interstate movement of the articles may lead to the artificial spread of citrus greening or ACP, he or she may deny issuance of a limited permit for interstate movement of the article or take other remedial measures to prohibit such spread.

We are including a footnote (number 5) in this section to provide further information regarding how to contact an inspector. The footnote states that inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. It further states that information concerning local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737-1236.

Attachment and disposition of certificates and limited permits (§ 301.76-10)

Section 301.76-10 requires the certificate or limited permit, or a copy thereof, to be attached to or legibly printed on the outside of the container containing the regulated article or the regulated article itself, if the article is not packed in a container, to be attached to or legibly printed on the sealed container in which the article is shipped and to be attached to the consignee's copy of the accompanying waybill. Further, the section requires that the carrier or the carrier's representative must furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

Costs and charges (§ 301.76-11)

Section 301.76-11 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services. No services are provided outside of these hours, and all services provided are without cost. Finally, APHIS will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than the services of the inspector.

Treatments in 7 CFR part 305 and the PPQ Treatment Manual

As we mentioned earlier in this document, the phytosanitary treatments regulations contained in 7 CFR part 305 set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319.

Within part 305, § 305.2 states that approved treatment schedules are set out in the PPQ Treatment Manual, and § 305.3 contains our processes for adding, revising, or removing treatment schedules. Paragraph (b)(1)(iii) of § 305.3 states that new treatment schedules may immediately be added to the manual, if PPQ has determined that the schedules are effective, based on efficacy data, and that ongoing trade in an article may be adversely impacted unless the new treatment schedules are approved for use.

Prior to this rule, methyl bromide was not listed in the manual as an approved treatment for ACP. However, as we mentioned above, we have determined, based on multiple efficacy studies, that the methyl bromide treatment schedule MB T101-n-2 will kill ACP in all life stages of the pest, and therefore can be used to treat all articles regulated for ACP. Moreover, we have determined that failing to add this treatment schedule to the manual could adversely impact interstate commerce in regulated articles from an area quarantined for ACP by removing a treatment option that was available to producers under our Federal Orders. Therefore, in accordance with §§ 305.2 and 305.3, we are immediately amending the treatment manual to list MB T101-n-2 as an approved treatment schedule for such articles.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of citrus greening and ACP, a vector of citrus greening. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and the Regulatory Flexibility Act

This interim rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore has been reviewed by the Office of Management and Budget.

We are quarantining the States of Florida and Georgia, Puerto Rico, the U.S. Virgin Islands, two parishes in Louisiana, and two counties in South Carolina due to the presence of citrus greening and quarantining Alabama, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, Texas, the U.S. Virgin Islands, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California due to the presence of Asian citrus psyllid, a vector of the bacterial pathogen that causes citrus greening. This action follows the discovery of these pests in the respective quarantined areas. We are also establishing restrictions on the interstate movement of regulated articles from the quarantined areas.

We have prepared an economic analysis for this interim rule. The analysis, which includes a cost-benefit analysis, identifies nursery operations and other production sites in Alabama, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands that produce citrus trees, orange jasmine, curryleaf, and other articles regulated by the interim rule as the entities that are likely to be affected by this action and examines the potential economic effects on those entities. The economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection and recordkeeping

requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579-0363 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS-2008-0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. APHIS-2008-0015 and send your comments within 60 days of publication of this rule.

This interim rule will require persons to complete various forms and documents. These include: Compliance agreements, certificates, limited permits, and labels.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.0002644 hours per response.

Respondents: Nurseries, commercial retailers.

Estimated annual number of respondents: 116.

Estimated annual number of responses per respondent: 16,399.62.

Estimated annual number of responses: 1,902,356.

Estimated total annual burden on respondents: 503 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR parts 301 and 305 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Part 301 is amended by adding a new "Subpart—Citrus Greening and Asian Citrus Psyllid," §§ 301.76 through 301.76-11, to read as follows:

Subpart—Citrus Greening and Asian Citrus Psyllid

Sec.

Subpart—Citrus Greening and Asian Citrus Psyllid

§ 301.76 Restrictions on the interstate movement of regulated articles.

No person may move interstate from any quarantined area any articles regulated for citrus greening and Asian citrus psyllid, except in accordance with this subpart.[1]

§ 301.76-1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Asian citrus psyllid. The insect known as Asian citrus psyllid (*Diaphorina citri* Kuwayama) in any stage of development.

Certificate. A document, stamp, or other means of identification approved by APHIS and issued by an inspector or person operating under a compliance agreement when he or she finds that, because of certain conditions, a regulated article can be moved safely from an area quarantined for Asian citrus psyllid and/or citrus greening without spreading the psyllid or the disease.

Citrus greening. A plant disease caused by several strains of the uncultured, phloem-limited bacterial pathogen "*Candidatus* Liberibacter asiaticus".

Commercial citrus grove. A solid-set planting of trees maintained for the

[1] In order to enforce this section, any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of host articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

primary purpose of producing citrus fruit for commercial sale.

Compliance agreement. A written agreement between APHIS and a person engaged in the business of growing, maintaining, processing, handling, packing, or moving regulated articles for interstate movement, in which the person agrees to comply with this subpart. For the purposes of this subpart, a memorandum of understanding is considered a compliance agreement.

EPA. The U.S. Environmental Protection Agency.

Established population. Presence of Asian citrus psyllid within an area that the Administrator determines is likely to persist for the foreseeable future.

Inspector. An individual authorized by the Administrator to perform the duties required under this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document issued by an inspector or person operating under a compliance agreement to allow the interstate movement of regulated articles to a specified destination, for specified handling, processing, or utilization.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried (whether on one's person or by any other means of conveyance), or allowed to be moved, shipped, transported, or carried. For the purposes of this subpart, movements include any type of shipment, including mail and Internet commerce.

Nursery. Any commercial location where nursery stock is grown, propagated, stored, maintained, or sold, or any location from which nursery stock is distributed.

Nursery stock. Any plants or plant parts, excluding fruit, intended to be planted, to remain planted, or to be replanted. Nursery stock includes, but is not limited to, trees, shrubs, cuttings, grafts, scions, and buds.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Port. Any place designated by the President, Secretary of the Treasury, or Congress at which a Customs officer is assigned with authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the Customs and Navigation laws in force at that place.

Quarantined area. Any State or portion of a State designated as a quarantined area for Asian citrus psyllid or citrus greening in accordance with § 301.76-3.

Regulated article. Any article listed in § 301.76-2 or otherwise designated as a regulated article in accordance with § 301.76-2(c).

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.76-2 Regulated articles for Asian citrus psyllid and citrus greening.

The following are regulated articles for Asian citrus psyllid and citrus greening:

(a) All plants and plant parts (including leaves), except fruit, of: *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *A. paniculata*, *Amyris madrensis*, *Atalantia* spp. (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Bergera* (=*Murraya*) *koenigii*, *Calodendrum capense*, *Choisya ternate*, *C. arizonica*, X *Citroncirus webberi*, *Citropsis articulata*, *Citropsis gilletiana*, *Citrus madurensis* (= X *Citrofortunella microcarpa*), *Citrus* spp., *Clausena anisum-olens*, *C. excavata*, *C. indica*, *C. lansium*, *Eremocitrus glauca*, *Eremocitrus* hybrid, *Esenbeckia berlandieri*, *Fortunella* spp., *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica, M. australis*, *M. papuana,* X *Microcitronella* spp., *Murraya* spp., *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium ruticarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris* (=*Toddalia*) *lanceolata*, and *Zanthoxylum fagara.*

(b) Propagative seed of the species listed in paragraph (a) of this section is considered a host of citrus greening but not a host of Asian citrus psyllid. Therefore, notwithstanding the other provisions of this subpart, the movement of propagative seed of these species from an area quarantined for citrus greening is prohibited, while the movement of such seed from an area quarantined only for Asian citrus psyllid, but not for citrus greening, is allowed without restriction.

(c) Any other product, article, or means of conveyance may be designated a regulated article for Asian citrus psyllid or citrus greening, if an inspector determines that it presents a risk of spreading these pests, and after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

(d) Plant parts of the species listed in paragraph (a) of this section may be exempted from the regulations in this subpart, provided that the parts have been processed such that an inspector determines they no longer present a risk of spreading Asian citrus psyllid or citrus greening.

§ 301.76-3 Quarantined areas; citrus greening and Asian citrus psyllid.

(a) The Administrator will designate an area as a quarantined area for citrus greening or as a quarantined area for Asian citrus psyllid in accordance with the criteria listed in paragraph (c) of this section. The Administrator will publish a description of all areas quarantined for citrus greening or Asian citrus psyllid on the Plant Protection and Quarantine (PPQ) Web site: (*http://www.aphis.usda.gov/plant_health/plant_pest_info/citrus_greening/index.shtml*). The description of each quarantined area will include the date the description was last updated and a description of any changes that have been made to the quarantined area. Lists of all quarantined areas may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories and on the Internet at (*http://www.aphis.usda.gov/services/report_pest_disease/report_pest_disease.shtml*). After a change is made to the description of quarantined areas, we will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined areas.

(b) *Designation of an area less than an entire State as a quarantined area.* Less than an entire State will be designated as a quarantined area for citrus greening or the Asian citrus psyllid only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of citrus greening or Asian citrus psyllid.

(c) *Criteria for designation of a State, or a portion of a State, as a quarantined area for citrus greening or Asian citrus psyllid.*

(1) A State, or portion of a State, will be designated as a quarantined area for citrus greening when the presence of citrus greening is confirmed within the area by an APHIS-administered test.

(2) A State, or portion of a State, will be designated as a quarantined area for Asian citrus psyllid in which an established population of Asian citrus psyllids has been detected.

(3) A State, or portion of a State, will be designated as a quarantined area for

either citrus greening or Asian citrus psyllid if the Administrator considers it necessary to quarantine the area because of its inseparability for quarantine enforcement purposes from localities in which citrus greening or an established population of Asian citrus psyllids has been found.

§ 301.76-4 Labeling requirements for regulated nursery stock produced within an area quarantined for citrus greening.

(a) Effective September 15, 2010, except as provided in paragraphs (b) and (c) of this section, all regulated nursery stock offered for commercial sale within an area quarantined for citrus greening must have an APHIS-approved plastic or metal tag on which a statement alerting consumers to Federal prohibitions regarding the interstate movement of the article is prominently and legibly displayed. Alternatively, if the article is destined for commercial sale in a box or container, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed. The operator of the site of propagation of the nursery stock and the person offering the plants for commercial sale are jointly responsible for all such labeling.

(b) Nursery stock produced within a quarantined area for planting in a commercial citrus grove within that same area and moved directly to that grove, without movement outside of the quarantined area, may be moved without being labeled in accordance with paragraph (a) of this section.

(c) Nursery stock that will be moved interstate for immediate export under a limited permit in accordance with § 301.76-7(c) may be moved without being labeled in accordance with paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 0579-0363)

§ 301.76-5 General conditions governing the issuance of any certificate or limited permit; provisions for cancellation of a certificate or limited permit.

(a) *Certificates.* In addition to all other relevant conditions within this subpart, an inspector or person operating under a compliance agreement will issue a certificate only if a regulated article:

(1) Will be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) [2] to prevent the spread of Asian citrus psyllid; and

(2) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the article.

(b) *Limited permits.* In addition to all other relevant conditions within this subpart, an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of a regulated article only if the regulated article:

(1) Is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit) and this movement of the regulated article will not result in the spread of citrus greening or the Asian citrus psyllid;

(2) Is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of citrus greening and the Asian citrus psyllid; and

(3) Is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the article.

(c) Certificates and limited permits for the interstate movement of a regulated article may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article after he or she has determined that the article is eligible for a certificate in accordance with paragraph (a) of this section and all other relevant conditions of this subpart. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after he or she has determined that the article is eligible for a limited permit in accordance with paragraph (b) of this section and all other relevant conditions of this subpart.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all of the provisions in this subpart or has not complied with all the conditions contained in the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as soon as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(e) Unless specific provisions exist in § 301.76-6 or § 301.76-7 of this subpart to allow the interstate movement of a certain regulated article, the interstate movement of that article is prohibited.

(Approved by the Office of Management and Budget under control number 0579-0363)

§ 301.76-6 Additional conditions for issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined only for Asian citrus psyllid, but not for citrus greening.

(a) *Additional conditions for issuance of a certificate; any regulated article.* In addition to the general conditions for issuance of a certificate contained in § 301.76-5(a), an inspector or person operating under a compliance agreement may issue a certificate for the interstate movement of any regulated article to any State if:

(1) The article is treated with methyl bromide in accordance with 7 CFR part 305 of this chapter.

(2) The article is shipped in a container that has been sealed with an agricultural seal placed by an inspector.

(3) The container that will be moved interstate is clearly labeled with the certificate.

(4) A copy of the certificate will be attached to the consignee's copy of the accompanying waybill.

(b) *Additional conditions for issuance of a limited permit; regulated nursery stock.* In addition to the general conditions for issuance of a limited permit contained in § 301.76-5(b), an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of regulated nursery stock to areas of the United States other than American Samoa, Northern Mariana Islands, and those portions of Arizona, California, and South Carolina not quarantined due to the presence of

[2] An inspector may hold seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 423 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

Asian citrus psyllid or citrus greening, if:

(1) The nursery stock is treated for ACP with an APHIS-approved soil drench or in-ground granular application no more than 30 days and no fewer than 20 days before shipment, followed by an APHIS-approved foliar spray no more 10 days before shipment. All treatments must be applied according to their EPA label, including directions on application, restrictions on place of application and other restrictions, and precautions, and including statements pertaining to Worker Protection Standards.

(2) The nursery stock is inspected by an inspector in accordance with § 301.76-9 and found free of Asian citrus psyllid.

(3) The nursery stock is affixed prior to movement with a plastic or metal tag on which the statement "Limited permit: USDA-APHIS-PPQ. Not for distribution in American Samoa, Northern Mariana Islands, or those portions of AZ, CA and SC not quarantined due to the presence of Asian citrus psyllid or citrus greening" is prominently and legibly displayed. If the nursery stock is destined for movement or sale in boxes or containers, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed.

(4) The nursery stock is moved in a container sealed with an agricultural seal placed by an inspector.

(5) This container prominently and legibly displays the statement of paragraph (b)(3) of this section.

(6) A copy of the limited permit is attached to the consignee's copy of the accompanying waybill.

(7) The nursery stock is moved in accordance with the conditions specified on the limited permit to the location specified on the permit.

(c) *Additional conditions for issuance of a limited permit; regulated articles intended for consumption, as apparel or as a similar personal accessory, or for other decorative use.*[3] In addition to the general conditions for issuance of a limited permit contained in § 301.76-5(b), an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement of regulated articles intended for consumption, as apparel or as a similar personal accessory, or for other decorative use if:

(1) The articles are treated with irradiation in accordance with 7 CFR part 305 of this chapter at an irradiation facility that is not located in an area quarantined for citrus greening.

(2) The container that will be used to move the articles interstate is clearly labeled with the limited permit, which must contain the name of the State or portion of a State where the articles were produced and a statement that the articles were treated in accordance with 7 CFR part 305 of this chapter.

(3) A copy of the limited permit is attached to the consignee's copy of the accompanying waybill.

§ 301.76-7 Additional conditions for issuance of certificates and limited permits for regulated articles moved interstate from areas quarantined for citrus greening.

(a) *Additional conditions for issuance of a limited permit; regulated nursery stock grown, produced, or maintained at a nursery or other facility located in the quarantined area.* In addition to the general conditions for issuance of a limited permit contained in § 301.76-5(b), an inspector or person operating under a compliance agreement may issue a limited permit for the interstate movement for immediate export of regulated nursery stock grown, produced, or maintained at a nursery or other facility located in the quarantined area if:

(1) The nursery stock is treated for Asian citrus psyllid with an APHIS-approved soil drench or in-ground granular application, followed by an APHIS-approved foliar spray, in accordance with § 301.76-6(b)(1), or with methyl bromide or irradiation, in accordance with 7 CFR part 305 of this chapter.

(2) The nursery stock is inspected by an inspector in accordance with § 301.76-9 and found free of Asian citrus psyllid, if treated in accordance with § 301.76-6(b)(1).

(3) The nursery stock is affixed prior to movement with a plastic or metal tag on which the statement "Limited permit: USDA-APHIS-PPQ. For immediate export only" is prominently and legibly displayed. If the nursery stock is destined for movement or sale in a box or container, the statement may be printed on the box or container, or printed on a label permanently affixed to the box or container, provided that, in either case, the statement is prominently and legibly displayed.

(4) The nursery stock is accompanied by a copy of this limited permit attached to the consignee's copy of the waybill.

(5) The nursery stock is moved in accordance with the conditions specified on the limited permit directly to the port of export specified on the limit permit, in a container sealed with an agricultural seal placed by an inspector.

(6) A copy of the limited permit is attached to or legibly printed on this container.

(7) The nursery stock remains in this container, and the container remains sealed, as long as the plants are within the United States.

(b) Except for nursery stock for which a limited permit has been issued in accordance with the conditions of paragraph (a) of this section, no other regulated article may be moved interstate from an area quarantined for citrus greening.

§ 301.76-8 Compliance agreements and cancellation.

(a) Any person involved in the growing, maintaining, processing, handling, packing, treating, or moving of regulating articles from areas quarantined for citrus greening or Asian citrus psyllid may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement. The person must also agree to maintain and offer for inspection such records as are necessary to demonstrate continual adherence to the requirements of the regulations and the provisions of the compliance agreement.[4]

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongly canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a

[3] Examples of such articles include *Bergera* (=*Murraya*) *koenigii* leaves, as well as *Murraya paniculata* flowers or foliage.

[4] Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine offices, which are listed in telephone directories.

hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0363)

§ 301.76-9 Inspection of regulated nursery stock.

All regulated nursery stock treated with soil drenches or in-ground granular applications and foliar sprays prior to interstate movement from an area quarantined only for Asian citrus psyllid, but not for citrus greening, as well as all nursery stock intended for interstate movement for immediate export from an area quarantined for citrus greening, must be inspected by an inspector[5] no more than 72 hours prior to movement. The person who desires to move the articles interstate must notify the inspector as far in advance of the desired interstate movement as possible. The articles must be inspected at the place and in the manner the inspector designates as necessary to comply with this subpart. If the inspector has reason to believe that the interstate movement of the articles may lead to the artificial spread of citrus greening or Asian citrus psyllid, he or she may deny issuance of a limited permit for interstate movement of the article or take other remedial measures to prohibit such spread.

(Approved by the Office of Management and Budget under control number 0579-0363)

§ 301.76-10 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, or a copy thereof, must, at all times during the interstate movement, be:

(1) Attached to or legibly printed on the outside of the container containing the regulated article or attached to the regulated article itself, if the article is not packed in a container; and

(2) Attached to or legibly printed on the sealed container in which the article is shipped; and

(3) Attached to the consignee's copy of the accompanying waybill. The host article must be sufficiently described on the certificate or limited permit and on the waybill to identify the article.

(b) The certificate or limited permit for the interstate movement of a host article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

§ 301.76-11 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. APHIS will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

PART 305—PHYTOSANITARY TREATMENTS

■ 3. The authority citation for part 305 continues to read as follows:

7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3

■ 4. Section 305.9 is amended as follows:

■ a. By revising the introductory text of the section and adding new paragraphs (a)(3) and (c)(4) to read as set forth below.

■ b. In paragraph (f)(2) introductory text, by adding the words "or Asian citrus psyllid" after the words "fruit flies".

■ c. In paragraph (f)(3), by adding the words "or Asian citrus psyllid" after the words "fruit flies".

§ 305.9 Irradiation treatment requirements.

Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for any imported regulated article (i.e., fruits, vegetables, cut flowers, and foliage); for any regulated article moved interstate from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Marianas Islands (referred to collectively, in this section, as Hawaii and U.S. territories); for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.32-2(a) of this chapter; and for any regulated article listed in 301.76-2 of this chapter and intended for consumption, as apparel or as a similar personal accessory, or for decorative use.

(a) * * *

(3) For articles that are moved interstate from areas quarantined only for Asian citrus psyllid, and not for citrus greening, irradiation facilities must be located within an area that is not quarantined for citrus greening.

* * * * *

(c) * * *

(4) Irradiation facilities treating articles moved interstate from areas quarantined only for Asian citrus psyllid, and not for citrus greening, must complete a compliance agreement with APHIS as provided in § 301.76-8 of this chapter.

* * * * *

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

Ann Wright,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2010–14495 Filed 6–16–10: 8:45 am]

BILLING CODE 3410–34–S

[5] Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737-1236.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 755

RIN 0560–AI08

Reimbursement Transportation Cost Payment Program for Geographically Disadvantaged Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule specifies regulations to implement the new Reimbursement Transportation Cost Payment (RTCP) Program for geographically disadvantaged farmers and ranchers authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of the RTCP Program is to assist farmers and ranchers in Hawaii, Alaska and insular areas who paid to transport either an agricultural commodity or an input used to produce an agricultural commodity. The payments provided by the RTCP Program are intended to offset a portion of the costs of transporting agricultural inputs and products over long distances. This rule specifies eligibility requirements, payment application procedures, and the method for calculating individual payments.

DATES: *Effective Date:* June 16, 2010.

FOR FURTHER INFORMATION CONTACT: Solomon Whitfield, Director, Price Support Division, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), Mail Stop 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512; telephone (202) 720–7901; fax (202) 690–3307; e-mail, *Solomon.Whitfield@wdc.usda.gov.* Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

U.S. farmers and ranchers outside the continental United States (the 48 contiguous United States) operate at a competitive disadvantage relative to farmers and ranchers in the continental United States. This disadvantage is due to the high cost of transporting agricultural commodities from those areas to markets in the continental United States and in other countries, and the high cost of transporting agricultural inputs to those areas. Rising fuel costs have made this competitive disadvantage worse. Section 1621 of the 2008 Farm Bill (Pub. L. 110–246) authorizes the RTCP Program, subject to appropriations, to address this issue by providing payments to "geographically disadvantaged farmers or ranchers" to compensate them for a portion of the costs of transporting agricultural inputs and commodities. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80, the 2010 Agriculture Appropriations Bill) provides $2.6 million for this program in Fiscal Year (FY) 2010 and this was the first time that monies were made available for RTCP.

The 2008 Farm Bill specifies the general requirements for eligibility for the RTCP Program, and specifies that the term "geographically disadvantaged farmer or rancher" will have the meaning given the term in section 10906(a) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 2204 note). The Farm Security and Rural Investment Act of 2002, Public Law 107–171, is commonly known as the 2002 Farm Bill. Section 10906(a) of the 2002 Farm Bill provides that the term "geographically disadvantaged farmer or rancher" means a farmer or rancher in—(1) an insular area (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103) (as amended by section 7502(a)); or (2) a State other than 1 of the 48 contiguous States. Section 7502(a) of the 2002 Farm Bill provides that that the term "insular area" means—(A) the Commonwealth of Puerto Rico; (B) Guam; (C) American Samoa; (D) the Commonwealth of the Northern Mariana Islands; (E) the Federated States of Micronesia; (F) the Republic of the Marshall Islands; (G) the Republic of Palau; and (H) the Virgin Islands of the United States. Thus, the 2002 Farm Bill definition of "insular area" includes Micronesia, Palau and the Marshall Islands despite their independent, though federated, status with respect to the United States. That independent status long preceded the 2002 legislation. By the terms of the 2008 Farm Bill, adopting the 2002 Farm Bill, those areas and the others mentioned in Section 7502 of the 2002 Farm Bill as insular areas, along with Hawaii and Alaska, are the areas that are covered by this program. That is, farmers and ranchers in those areas and States are the beneficiaries of this program as "geographically disadvantaged farmers or ranchers." The regulations adopted in this rule reflect that geographical scope and provide other details of the program, including the general rate structure for payments, and the types of costs are eligible for payment. This rule details the application process, the rate calculation method, and acceptable documentation of the producer's actual cost that FSA is implementing. In addition, this rule specifies an $8,000 cap on payments per producer per fiscal year that FSA is establishing to ensure a fair and reasonable distribution of funds in this program. This program is not expected, at least with respect to the current appropriation, to be sufficient to pay all eligible claims for the fiscal year. Otherwise (without the cap), all or most of the funds would go, in terms of substantial amounts, to large producers only. However, the rule does adopt provisions for exceeding the $8,000 cap if the total funds available would otherwise not be fully expended. The figure of $8,000 was chosen because it provides a substantial level of benefits to those who might otherwise have large claims.

The RTCP Program builds on efforts that Congress and USDA have made in the past to address the issue of high transportation costs for geographically disadvantaged farmers and ranchers. As required by section 10906 of the 2002 Farm Bill, the USDA Agricultural Marketing Service (AMS) conducted a study that analyzed barriers in agricultural transportation in non-contiguous U.S. States and Territories. The report on the case study revealed that inadequate port infrastructure, limited access to freight service, and the low priority often given by transportation providers to handling agricultural commodities often create physical and economic barriers that make it difficult for farmers and ranchers in geographically disadvantaged areas to compete successfully with continental United States producers. In all of the non-contiguous United States and insular areas except for some parts of Alaska, local farmers and ranchers must rely on sea or air transportation to ship their cargo to the continental United States and other markets. Limited transportation choices and the cost of fuel to transport agricultural commodities and inputs negatively impacts agricultural sustainability and viability in geographically disadvantaged areas.

Eligibility Requirements

To be eligible for an RTCP, a producer must be a geographically disadvantaged farmer or rancher and that means a farmer or rancher in the areas noted above.

To be eligible for RTCP Program benefits, the geographically disadvantaged farmer or rancher must be a producer of an eligible agricultural commodity and submit an application during the applicable period announced by the Deputy Administrator. For FY 2010, that period will begin within 45 days after this rule is published and end on September 10, 2010. That date is designed to expedite the making of payments but may be extended to September 30 as the need may arise. Funds under the current appropriation will be made only for transportation expenses incurred during fiscal year 2010—that being the period of October 1, 2009 through September 30, 2010. Applications may be for all expenses incurred during the period or to be incurred in the period. In the instance where the application precedes the actual occurrence, the producer will be allowed 30 days after the expenses were incurred to verify that the expenses actually did occur. Producers may apply for an RTCP using FSA fixed, set, or actual rates for transportation costs, as described below. After the RTCP application is submitted, those producers who request RTCP by using FSA fixed or set rates must submit supporting documentation within 30 days after the end of the FY to provide eligibility for a payment based on actual cost. No claims will be paid for applications not filed within the FY and all verifications and documentation must be completed within 30 days after the end of the FY.

To be eligible for reimbursement, the transportation costs must have been incurred in the FY for which the application period applies. Further, there has been no appropriated funding for the RTCP Program in 2008 or 2009 and therefore costs in those years are not eligible for reimbursement; only costs incurred in FY 2010 are eligible for FY 2010 payments under the current appropriation. However, the rule is designed to allow for the administration of future appropriations should there be any.

Government entities (State and local governments and their political subdivisions and related agencies) are not eligible for the RTCP Program. These eligibility restrictions are consistent with other CCC and FSA programs authorized by the 2008 Farm Bill.

Any person who is not a U.S. citizen or legal resident alien of the United States is ineligible to receive any type of loan or payment under Title I of the 2008 Farm Bill, with respect to any commodity produced on a farm that is owned or operated by such person, unless that person provides land, capital, and a substantial amount of active personal labor in the production of crops on such farm. RTCP is in Title I of the 2008 Farm Bill, so the eligibility restrictions on foreign persons apply. There is a certain anomaly here applying the foreign person rule in light of the independent status of Micronesia, the Marshall Islands, and Palau, but this result is mandated by the terms of the statute and in any event the foreign person definition allows for payments, as indicated, to a foreign person if the specified conditions noted above are met. For all areas, however, the rule takes care to require that the farmers or ranchers be persons producing product for the market in substantial quantities and that the claim for compensation can only be made for that part of the person's or entity's production that is commercial in nature.

Only the producer incurring transportation costs may be eligible for RTCP. In no case will the same transportation cost provide payment eligibility for both the buyer and seller of an agricultural commodity or input. To avoid duplication of benefits, any input transportation costs paid to a producer under other Federal government programs, such as, but not limited to, cost share programs or grants, will not be eligible costs under the RTCP Program.

The 2008 Farm Bill specifies that to be eligible for the RTCP Program, geographically disadvantaged farmers or ranchers must demonstrate that they transported commodities or inputs over a distance of more than 30 miles. As specified in this rule, producers in geographically disadvantaged areas will not have to demonstrate the precise distance that commodities or inputs were transported to be eligible for RTCP. It is reasonable to assume that even if an agricultural producer on a remote island sells to the local market, or buys inputs locally, the price will reflect transportation costs of more than 30 miles that occurred at some point during production. For example, a locally produced commodity will typically require inputs such as fertilizer or machinery that were transported more than 30 miles. Therefore, any producer in these areas may be eligible for payment, and the payment rate will be based on FSA's estimation of the typical transportation costs for that type of commodity or input to or from that area. As described below, producers will be required to provide supporting documentation of actual costs to receive more than FSA's estimated payment rate.

Payment Amount Calculation

The 2008 Farm Bill specifies that the transportation reimbursement payment rates for geographically disadvantaged farmers and ranchers be based on the cost of living allowances (COLAs) for Federal employees in those areas. Those allowances currently range from 14 percent to 25 percent of base pay, and 5 U.S.C. 5941 specifies that they cannot exceed 25 percent. The COLAs reflect the difference in cost of living between those areas and the cost of living in Washington, DC, and are expressed as a rate by which the cost of living exceeds the cost of living in Washington.

FSA payment rates for this program will be calculated as the estimated or actual transportation costs times the relevant COLA for that area. So, for example, if the qualifying expense was $3,000 and the applicable COLA is 25 percent, then the payable benefits under this program would be $750. The estimated transportation cost will be a fixed rate or set rate established by FSA for eligible commodities and inputs. These rates will be on a per unit (bushel, pound, etc.) basis. The fixed rate is an estimated transportation cost for that item established by FSA based on the best available data on typical shipping rates for that item associated with the applicable area. The FSA set rate is an estimated transportation cost for an item, such as bags of fertilizer or equipment parts, where the transportation cost is not available, typically because it is included in the price for that item. If the producer can document actual transportation costs, the payment rate will be the COLA percentage times the actual cost. If there is an FSA fixed or set rate, the documentation of actual costs may be used to justify a rate other than the FSA fixed or set rate. In other words, the initial payment calculation will be done one of three ways:

1. If the commodity or input transported is on the FSA fixed rate list, the payment will be the COLA percentage times the FSA fixed transportation rate times the number of units.

2. In no case may the producer be paid any amount greater than the amount actually paid by the producer, but the producer can be paid higher than the fixed or set amount if the actual amount paid is a reasonable amount and is established by proper documentation.

3. If the commodity or input is not on the FSA fixed rate list, and the producer cannot document actual transportation costs, the FSA State office for that area will set a rate. The payment will be the COLA times the set rate times the number of units.

A producer who paid a combined transportation and other handling services fee for an assortment of items can use the FSA fixed rate list to report transportation costs for each type of item. Sources that FSA will use to determine the fixed transportation rates may include, but are not limited to, fares and rates posted by the Public Utilities Commission, transportation rates posted by shipping companies, surveys of plant nurseries, surveys of farm suppliers, National Agricultural Statistics Service (NASS) data, surveys from producers, State and National studies that examine increased costs in each applicable area, and comparison of average fuel prices within a particular area.

The FSA set rate method will benefit farmers and ranchers who do business with companies that do not break out specific transportation costs but rather include the transportation cost in the price charged for the service or product. For example, if a producer buys fertilizer in bags at a local store and has a receipt for that input, but the store does not provide information on what percentage of the cost was transportation, FSA will provide a set rate to that producer for that input.

The actual costs method will benefit farmers and ranchers who can document actual costs. FSA will accept and pro-rate documented actual transportation costs that were for both eligible and ineligible commodities and inputs. For example, FSA will pro-rate a transportation cost for agricultural commodities, equipment parts, and general supplies, where the general supplies are not eligible.

The fixed and set rates will be determined by the State office. The State offices for the eligible areas are Alaska, Hawaii, Florida, and Puerto Rico. Final approval of the fixed and set rates will be made by the Deputy Administrator to ensure rates are established in a fair and equitable manner. FSA will post the fixed and set rates at the State and county offices for the applicable areas.

The payment amount for a producer is the sum of the initial calculated payment amounts (applicable transportation rate times units times the COLA) for each input or commodity. The payment amount for a producer can reflect a combination of fixed, set, and actual cost rates. A producer can provide supporting documentation for one commodity's actual cost of transportation and report a fixed or set rate for another commodity or input.

The sum of the initial calculated payments for a producer will be the actual payment amount for that producer, subject to an $8,000 cap per producer per FY, if applications exceed available funding, less a reserve. The administration of this program is made discretionary by the terms of the statute (the 2008 Farm Bill) and the statute does not specify the manner in which limited funds should be distributed. The $8,000 "cap" adopted here is not statutory but is being implemented so that the payments are not skewed in favor of large producers to the effective exclusion of small producers in a manner that is inconsistent with the general nature of farm programs and in particular past farm programs, such as various dairy programs, operating under capped amounts. If applications exceed available funding, all payments will be recalculated using a factor set by FSA to ensure that the payments do not exceed the available funding, less the reserve. For example, if applications are received for twice the available funding, payments will be half the initially calculated amount. The individual payments can only be calculated after total payment amounts have been determined from all eligible program applicants. If funds are adequate for all payment amounts, all eligible producers will be paid at the full calculated payment amount.

The 2010 Agriculture Appropriations Bill provides $2.6 million for payments to geographically disadvantaged farmers and ranchers. We anticipate that the applications received will exceed the available funding, and that therefore reimbursement rates will be recalculated downward. Until all the applications are received, we do not know the extent to which rates will be recalculated.

AGI Limits

A farmer or rancher must meet the AGI limitations in 7 CFR part 1400 to be eligible for RTCP Program benefits. Any geographically disadvantaged farmer or rancher who had annual average adjusted gross nonfarm income in excess of $500,000 for calendar years 2006 through 2008 is not eligible for RTCP Program benefits in FY 2010. The 2008 Farm Bill does not specifically require the application of the AGI limits to the RTCP Program.

Application Process

Producers must apply for RTCP payments during the application period announced by the Deputy Administrator. The application period will be announced through an FSA notice, press releases, and on the FSA Web site. The application period for FY 2010 will begin within 45 days after this rule is published, and end on September 10, 2010.

To ensure all producers are provided an opportunity to submit actual reimbursable costs and potentially qualify for a payment other than at a fixed or set rate, applicants will also have until 30 days after the end of the FY to provide supporting documentation of actual costs to the FSA County Office.

During the application period, and the period for submitting supporting documentation, RTCP applicants may apply or submit their supporting documentation in person at FSA county offices during regular business hours. Applications and supporting documentation may also be submitted to FSA by mail or FAX. Program applications may be obtained in person, by mail, and facsimile from farmers' and ranchers' designated FSA county office or via the Internet at *http://www.fsa.usda.gov/pricesupport.*

Any applications received after the application period closes will not be eligible for payment. A specific application period with a cutoff date is needed because FSA will need to know the total reimbursements requested from all producers to calculate the total payment amounts. A limited amount of funds will be held in reserve for appeals and corrections.

The period for submitting supporting documentation for previously submitted applications is not an extension to the application period. If supporting documentation is submitted, but there was no application filed during the application period, any such documentation will not be considered and will not provide eligibility.

Applications for FY 2010 are due September 10, 2010. Supporting documentation for FY 2010 is due October 30, 2010. FSA plans to calculate payment rates and disburse payments for FY 2010 by November 30, 2010.

Miscellaneous Requirements

Producers must have been in compliance with the regulations in 7 CFR part 12, "Highly Erodible Land and Wetland Conservation," during the year for which the person is requesting benefits. If it is determined after a payment is issued for the RTCP Program that a violation occurred, then repayment of the benefit plus interest will be required.

Information provided on applications and supporting documentation will be subject to verification by FSA. False certifications by producers carry strict penalties and FSA will verify applications with random compliance spot-checks. Producers determined to have, knowingly or inadvertently, made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program's purpose will be required to refund all payments issued under this program with interest, and may be subject to other civil, criminal, or administrative remedies.

If a producer in the RTCP Program who has a disputed claim succeeds through the appeal processes in 7 CFR parts 11 or 780 in obtaining a determination that additional payments are due to that producer, the producer will be paid only to the extent that funding under the RTCP Program remains available.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that these regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Therefore, these regulations are issued as final.

Executive Order 12866

The Office of Management and Budget (OMB) designated this final rule as not significant under Executive Order 12866 and, therefore, OMB not reviewed this rule.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because FSA is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

FSA has determined that the participation in this program is solely intended to offset a portion of the costs of transporting agricultural inputs and products over long distances and does

not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, in accordance with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799) no environment assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial action may be brought regarding provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not have tribal implications that preempt tribal law.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or tribal governments or for the private sector. In addition, FSA was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The regulations in this rule are exempt from requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601 of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

FSA 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.

List of Subjects in 7 CFR Part 755

Agricultural commodities, Reporting and recordkeeping requirements, Rural areas, Transportation.

■ For the reasons discussed above, the USDA Farm Service Agency adds 7 CFR part 755 to read as follows:

PART 755—REIMBURSEMENT TRANSPORTATION COST PAYMENT PROGRAM FOR GEOGRAPHICALLY DISADVANTAGED FARMERS AND RANCHERS

Sec.

Authority: 7 U.S.C. 8792.

§ 755.1 Administration.

(a) This part establishes the terms and conditions under which the Reimbursement Transportation Cost Payment (RTCP) Program for geographically disadvantaged farmers and ranchers will be administered.

(b) The RTCP Program will be administered under the general supervision of the FSA Administrator, or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(c) FSA State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part, except as provided in paragraph (e) of this section.

(d) The FSA State committee will take any action required by the provisions of this part that has not been taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require an FSA county committee to correct any action taken by the county committee that is not in compliance with the provisions of this part.

(2) Require an FSA county committee to not take an action or implement a decision that is not in compliance with the provisions of this part.

(e) No provision or delegation of this part to an FSA State committee or a county committee will preclude the FSA Administrator, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State committee or a county committee.

(f) The Deputy Administrator for Farm Programs, FSA, may waive or modify program requirements of this part in cases where failure to meet requirements does not adversely affect the operation of the program and where the requirement is not statutorily mandated.

§ 755.2 Definitions.

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they may conflict with the definitions in this section.

Actual transportation rate means the transportation rate that reflects the actual transportation costs incurred and can be determined by supporting documentation.

Agricultural commodity means any agricultural commodity (including horticulture, aquaculture, and floriculture), food, feed, fiber, livestock (including elk, reindeer, bison, horses, or deer), or insects, and any product thereof.

Agricultural operation means a parcel or parcels of land; or body of water applicable to aquaculture, whether contiguous or noncontiguous, constituting a cohesive management

unit for agricultural purposes. An agricultural operation will be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon, it will be regarded to be in the county in which the major portion of the land or applicable body of water is located.

Application period means the period established by the Deputy Administrator for geographically disadvantaged farmers and ranchers to apply for program benefits.

County office or FSA county office means the FSA offices responsible for administering FSA programs in a specific area, sometimes encompassing more than one county, in a State.

Department or USDA means the U.S. Department of Agriculture.

Eligible reimbursement amount means the reported costs incurred to transport an agricultural commodity or input used to produce an agricultural commodity in an insular area, Alaska, or Hawaii, over a distance of more than 30 miles. The amount is calculated by multiplying the number of units of the reported transportation amount times the applicable transportation fixed, set, or actual rate times the applicable FY allowance (COLA).

Farm Service Agency or FSA means the Farm Service Agency of the USDA.

Fiscal year or FY means the year beginning October 1 and ending the following September 30. The fiscal year will be designated for this part by year reference to the calendar year in which it ends. For example, FY 2010 is from October 1, 2009, through September 30, 2010 (inclusive).

Fixed transportation rate means the per unit transportation rate determined by FSA to reflect the transportation cost applicable to an agricultural commodity or input used to produce an agricultural commodity in a particular region.

FY allowance (COLA) means the nonforeign area cost of living allowance or post differential, as applicable, for that FY set by Office of Personnel Management for Federal employees stationed in Alaska, Hawaii, and other insular areas, as authorized by 5 U.S.C. 5941 and E.O. 10000 and specified in 5 CFR part 591, subpart B, appendices A and B.

Geographically disadvantaged farmer or rancher means a farmer or rancher in an insular area, Alaska, or Hawaii.

Input transportation costs means those transportation costs of inputs used to produce an agricultural commodity including, but not limited to, air freight, ocean freight, and land freight of chemicals, feed, fertilizer, fuel, seeds, plants, supplies, equipment parts, and other inputs as determined by FSA.

Insular area means the Commonwealth of Puerto Rico; Guam; American Samoa; the Commonwealth of the Northern Mariana Islands; the Federated States of Micronesia; the Republic of the Marshall Islands; the Republic of Palau; and the Virgin Islands of the United States.

Payment amount means the amount due a producer that is the sum of all eligible reimbursement amounts, as calculated by FSA subject to the availability of funds, and subject to an $8,000 cap per producer per FY.

Producer means any geographically disadvantaged farmer or rancher who is an individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity, as defined in § 1400.3 of this title, who is, or whose members are, a citizen of or legal resident alien in the United States, and who, as determined by the Secretary, shares in the risk of producing an agricultural commodity in substantial commercial quantities, and who is entitled to a share of the agricultural commodity from the agricultural operation.

Reported transportation amount means the reported number of units (such as pounds, bushels, pieces, or parts) applicable to an agricultural commodity or input used to produce an agricultural commodity, which is used in calculating the eligible reimbursement amount.

Set transportation rate means the transportation rate established by FSA for a commodity or input for which there is not a fixed transportation rate or supporting documentation of the actual transportation rate.

United States means the 50 States of the United States of America, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any other territory or possession of the United States.

Verifiable records means evidence that is used to substantiate the amount of eligible reimbursements by geographically disadvantaged farmers and ranchers in an agricultural operation that can be verified by FSA through an independent source.

§ 755.3 Time and method of application.

(a) To be eligible for payment, producers must obtain and submit a completed application for payment and meet other eligibility requirements specified in this part. Producers may obtain an application in person, by mail, or by facsimile from any county FSA office. In addition, producers may download a copy of the application at *http://www.sc.egov.usda.gov.*

(b) An application for payment must be submitted on a completed application form. Applications and any other supporting documentation must be submitted to the FSA county office serving the county where the agricultural operation is located, but, in any case, must be received by the FSA county office by the close of business on the last day of the application period established by the Deputy Administrator.

(c) All producers who incurred transportation costs for eligible reimbursements and who share in the risk of an agricultural operation must certify to the information on the application before the application will be considered complete. FSA may require the producer to provide documentation to support all verifiable records.

(d) Each producer requesting payment under this part must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. All information provided is subject to verification by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Federal Government may be punishable by imprisonment, fines and other penalties or sanctions.

(e) To ensure all producers are provided an opportunity to submit actual costs for reimbursement at the actual cost rate, applicants will have 30 days after the end of the FY to provide supporting documentation of actual transportation costs to the FSA County Office. The actual costs documented in supporting documentation will override previously reported costs of eligible reimbursable costs at the fixed or set rate made during the application period.

(f) If verifiable records are not provided to FSA, the producer will be ineligible for payment.

(g) If supporting documentation is provided within 30 days after the end of the FY, but an application was not submitted to the applicable FSA County Office before the end of the application period, the producer is not eligible for payment.

(h) Producers who submit applications after the application period are not entitled to any payment consideration or determination of eligibility. Regardless of the reason why an application is not submitted to or

received by FSA, any application received after the close of business on such date will not be eligible for benefits under this program.

§ 755.4 Eligibility.

(a) To be eligible to receive payments under this part, a geographically disadvantaged farmer or rancher must:

(1) Be a producer of an eligible agricultural commodity in substantial commercial quantities;

(2) Incur transportation costs for the transportation of the agricultural commodity or input used to produce the agricultural commodity;

(3) Submit an accurate and complete application for payment as specified in § 755.3; and

(4) Be in compliance with the wetland and highly erodible conservation requirements in part 12 of this title and meet the adjusted gross income and pay limit eligibility requirements in part 1400 of this title, as applicable, except that the $8,000 cap provided for in this rule is a per producer cap, not a per person cap. For example, a partnership of four individuals would be considered one producer, not four persons, for the purposes of this cap and thus the partnership could only generate a single $8,000 payment under this program if the cap holds because of full subscription of the program.

(b) Individual producers in an agricultural operation that is an entity are only eligible for a payment based on their share of the operation. A producer is not eligible for payment based on the share of production of any other producer.

(c) Multiple producers, such as the buyer and seller of a commodity (for example, a producer of hay and a livestock operation that buys the hay), are not eligible for payments for the same eligible transportation cost. Unless the multiple producers agree otherwise, only the last buyer will be eligible for the payment.

(d) A person or entity determined to be a "foreign person" under part 1400 of this title is not eligible to receive benefits under this part, unless that person provides land, capital, and a substantial amount of active personal labor in the production of crops on such farm.

(e) State and local governments and their political subdivisions and related agencies are not eligible for RTCP payments.

§ 755.5 Proof of eligible reimbursement costs incurred.

(a) To be eligible for reimbursement based on FSA fixed or set rates as specified in § 755.7, the requirements specified in paragraphs (b) and (c) of this section must be met at the time of the application. To be eligible for reimbursement of actual costs, the requirements of paragraph (d) must also be met, within 30 days after the end of the applicable fiscal year.

(b) Eligible verifiable records to support eligible reimbursement costs include, but are not limited to:

(1) Invoices;

(2) Account statements;

(3) Contractual Agreements; or

(4) Bill of Lading.

(c) Verifiable records must show:

(1) Name of producer(s);

(2) Commodity and unit of measure;

(3) Type of input(s) associated with transportation costs;

(4) Date(s) of service;

(5) Name of person or entity providing the service, as applicable, and;

(6) Retail sales receipts with verifiable records handwritten as applicable.

(d) To be eligible for reimbursement based on actual costs, the producer must provide supporting documentation that documents the specific costs incurred for transportation of each commodity or input. Such documentation must:

(1) Show transportation costs for each specific commodity or input, and

(2) Show the units of measure for each commodity or input, such that FSA can determine the transportation cost per unit.

§ 755.6 Availability of funds.

(a) Payments under this part are subject to the availability of funds.

(b) A reserve will be created to handle appeals and errors.

§ 755.7 Transportation rates.

(a) Payments may be based on fixed, set, or actual transportation rates. Fixed and set transportation rates will be established by FSA, based on available data for transportation costs for that commodity or input in the applicable State or insular region.

(b) Fixed transportation rates will establish per unit transportation costs for each eligible commodity or input used to produce the eligible commodity.

(c) Set transportation rates will be established for those transportation costs that are not on the FSA list of fixed rates and for which an actual rate cannot be documented. The set transportation rate will be set by FSA, based on available data of transportation costs for similar commodities and inputs.

(d) Actual transportation rates will be determined based on supporting documentation.

§ 755.8 Calculation of individual payments.

(a) Transportation cost for each commodity or input will be calculated by multiplying the number of reported eligible units (the reported transportation amount) times the fixed, set, or actual transportation rate, as applicable.

(b) Eligible reimbursement amounts will be calculated by multiplying the result of paragraph (a) of this section times the appropriate FY COLA percentage, as provided in this part.

(c) If transported inputs are used for both eligible and ineligible commodities, the eligible reimbursable costs will be determined on a revenue share of eligible commodities times input cost, as determined by FSA, and transportation may be allowed only for those commodities which were produced for the commercial market.

(d) The total payment amount for a producer is the sum of all eligible reimbursable amounts determined in paragraph (b) of this section for all commodities and inputs used to produce the eligible commodities listed on the application.

(e) Payment amounts are subject to $8,000 cap per FY per producer as defined in this part, not per "person" or "legal entity" as those terms might be defined in part 1400 of this title.

(f) In the event that approval of all calculated payment amounts would result in expenditures in excess of the amount available, FSA will recalculate the payment amounts in a manner that FSA determines to be fair and reasonable.

§ 755.9 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, a producer will be ineligible to receive payments under this part if the producer is determined by FSA to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any payment to any producer engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due. Any producer engaged in acts prohibited by this section and receiving payment under this part will be jointly and severally liable with other producers involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 755.10 Death, incompetence, or disappearance.

(a) In the case of the death, incompetency, or disappearance of a person or the dissolution of an entity that is eligible to receive a payment in accordance with this part, such alternate person or persons specified in part 707 of this chapter may receive such payment, as determined appropriate by FSA.

(b) Payments may be made to an otherwise eligible producer who is now deceased or to a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority over the deceased producer's estate or a dissolved entity must be provided.

(c) If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must be identified in the application for payment.

§ 755.11 Maintaining records.

Persons applying for payment under this part must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment to the producer under this part.

§ 755.12 Refunds; joint and several liability.

(a) Any producer that receives excess payment, payment as the result of erroneous information provided by any person, or payment resulting from a failure to comply with any requirement or condition for payment under this part, must refund the amount of that payment to FSA.

(b) Any refund required will be due from the date of the disbursement by the agency with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this title.

(c) Each producer that has an interest in the agricultural operation will be jointly and severally liable for any refund and related charges found to be due to FSA.

(d) Interest will be applicable to any refunds to FSA required in accordance with parts 792 and 1403 of this title except as otherwise specified in this part. Such interest will be charged at the rate that the U.S. Department of the Treasury charges FSA for funds, and will accrue from the date FSA made the payment to the date the refund is repaid.

(e) FSA may waive the accrual of interest if it determines that the cause of the erroneous payment was not due to any action of the person or entity, or was beyond the control of the person or entity committing the violation. Any waiver is at the discretion of FSA alone.

§ 755.13 Miscellaneous provisions and appeals.

(a) *Offset.* FSA may offset or withhold any amount due to FSA from any benefit provided under this part in accordance with the provisions of part 1403 of this title.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this title.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the eligible reimbursable costs thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of part 1404 of this title.

(e) *Violations regarding controlled substances.* The provisions of § 718.6 of this chapter, which generally limit program payment eligibility for persons who have engaged in certain offenses with respect to controlled substances, will apply to this part.

(f) *Appeals.* The appeal regulations specified in parts 11 and 780 of this chapter apply to determinations made under this part.

Signed in Washington, DC on June 9, 2010.

Jonathan W. Koppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–14427 Filed 6–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS–FV–09–0085; FV10–925–1 FIR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Relaxation of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that relaxed the handling requirements prescribed under the California table grape marketing order (order) and the table grape import regulation. The interim rule relaxed the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for grapes packed in consumer packages holding 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of such containers may consist of single clusters of at least five berries each. This action continues the relaxation that was prescribed on a one-year test basis in 2009 and provides California desert grape handlers and importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs.

DATES: Effective June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Jerry.Simmons@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide;* or 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, or E-mail: *Antoinette.Carter@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited

unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The shipping of table grapes produced in a designated area of southeastern California is regulated by 7 CFR part 925. The regulations specify that bunches of grapes must weigh a minimum of one-quarter pound to meet requirements of U.S. No. 1 Table grade grapes. In response to a marketing opportunity, the industry experimented with a new container during the 2009 season. The experimental container's small capacity makes it difficult to completely fill with grape bunches of one-quarter pound or larger. Therefore, for the 2009 season, the minimum bunch size requirement was relaxed for U.S. No. 1 table grade grapes packed in these containers. The 2009 experimental period was successful and the Committee recommended continuing these handling requirements for the 2010 and subsequent seasons.

Imported table grapes are subject to regulations specified in 7 CFR part 944. Under those regulations, imported grapes must meet the same minimum size requirement as specified for domestic grapes under the order. Therefore, the minimum bunch size requirement was also relaxed for imported grapes packed in small consumer packages containing 2 pounds net weight or less.

In an interim rule published in the **Federal Register** on April 5, 2010, and effective on April 8, 2010, (75 FR 17031, Doc. No. AMS–FV–09–0085, FV10–925–1 IFR), §§ 925.304 and 944.503 were amended by relaxing the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each clamshell container (individual consumer packages) may consist of single clusters weighing less than one-quarter pound, but with at least five berries each.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are about 15 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. In addition, there are about 100 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those whose annual receipts are less than $750,000. Four of the 15 handlers subject to regulation have annual grape sales of more than $7,000,000. Based on data from the National Agricultural Statistics Service and the committee, the crop value for 2009 was about $55,000,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of $1,100,000, this is above the SBA threshold of $750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and none of the producers may be classified as small entities. It is estimated that the average importer receives $3,200,000 in revenue from the sale of grapes. Therefore, it may be concluded that the majority of importers may be classified as small entities.

This rule continues in effect the action that revised § 925.304(a) of the rules and regulations of the California desert grape order and § 944.503(a)(1) of the table grape import regulation. This rule continues in effect the action that relaxed the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each consumer package weighing two pounds or less may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. Authority for the change to the California desert grape order is provided in §§ 925.52(a)(1) and 925.53. Authority for the change to the table grape import regulation is provided in section 8e of the Act.

There is general agreement in the industry for the need to continue to relax the minimum bunch size requirement for grapes packed in these consumer packages to allow for more packaging options. No additional alternatives were considered because the 2009 one-year test relaxation produced the desired results with no identified problems. The committee unanimously agreed that the relaxation for grapes packed in consumer packages containing 2 pounds net weight or less was appropriate to prescribe for the 2010 and subsequent seasons.

Regarding the impact of this rule on affected entities, this rule provides both California desert grape handlers and importers the flexibility to continue to respond to an ongoing marketing opportunity to meet consumer needs. This marketing opportunity initially existed in the 2009 season, and the minimum bunch size regulations were relaxed accordingly for one year on a test basis. As in 2009, handlers and importers will be able to provide buyers in the retail sector more packaging choices. The relaxation may result in increased shipments of consumer-sized grape packages, which would have a positive impact on producers, handlers, and importers.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers or importers. 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the November 12, 2009, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Also, the World Trade Organization, the Chilean Technical Barriers to Trade inquiry point for notifications under the U.S–Chile Free Trade Agreement, the embassies of Argentina, Brazil, Canada, Chile, Italy, Mexico, Peru, and South Africa, and known grape importers were also notified of this action.

Comments on the interim rule were required to be received on or before May 5, 2010. One comment was received. That comment was in support of the relaxation of the handling requirements providing a larger tolerance margin for

smaller bunches in consumer packages holding 2 pounds net weight or less. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480acfcb7*.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 17031, April 5, 2010) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PARTS 925 and 944—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR parts 925 and 944 and that was published at 75 FR 17031 on April 5, 2010, is adopted as a final rule, without change.

Dated: June 11, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–14572 Filed 6–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Doc. No. AMS–FV–10–0020; FV10–956–1 FR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Changes to Reporting and Assessment Due Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the reporting and assessment date requirements prescribed under the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon. The marketing order is administered locally by the Walla Walla Sweet Onion Marketing Committee (hereinafter referred to as the "Committee"). This rule revises the submission due date for certain handler reports and assessment payments from September 1 to September 30. This change allows handlers additional time to compile requisite information and submit it to the Committee. It is expected that this action will improve handler compliance with the administrative requirements of the marketing order.

DATES: *Effective Date:* July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation 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, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of sweet onions in the Walla Walla Valley of southeast Washington and northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is 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 not later than 20 days after the date of the entry of the ruling.

This final rule revises the due date prescribed in the order's administrative rules for certain reports and assessment payments. Specifically, the submission due date for handler shipment statements and assessment payments for Walla Walla sweet onions shipped prior to September 1 (hereinafter referred to as "regular season") is changed from September 1 to September 30. The due date change will allow handlers the needed time to compile information, file reports, and pay assessments. It is expected that this action will improve handler compliance with the order's reporting and assessment requirements. The rule was unanimously recommended by the Committee at its February 2, 2010, meeting.

Section 956.80 of the order provides that, upon request of the Committee, with the approval of the Secretary, each handler shall furnish to the Committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the Committee to perform its duties. In addition, § 956.42(a) provides that each person who first handles Walla Walla sweet onions shall pay assessments to the Committee upon demand.

Section 956.180(b) of the order's administrative rules prescribes that each handler shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments.* Prior to this final rule, for Walla Walla sweet onions handled prior to September 1, such report was required to be furnished to the Committee by September 1. In addition, § 956.142 of the order provided that, for Walla Walla Sweet Onions handled prior to September 1, annual assessment payments were also due September 1.

At its meeting on February 2, 2010, the Committee recommended that the order's reporting and assessment due date for regular season shipments be changed from September 1 to September 30 to allow handlers additional time to

fulfill their reporting and assessment requirements. At the time the order was promulgated in 1995, the Walla Walla sweet onion shipping season typically concluded at the end of July or early in August. As such, the Committee established a September 1 deadline for submitting reports and paying assessments for Walla Walla sweet onions handled during the regular season, which gave handlers most of the month of August to accumulate information and prepare their reports and assessment payments.

Recently, however, handlers have indicated to the Committee that advancements in Walla Walla sweet onion production and storage techniques have extended the regular season for the shipment of such onions until the end of August. As a result, it has become more difficult for handlers to gather the information required in time to meet the September 1 deadline for reporting shipments and paying assessments. Changing the due date for submission of the handler's shipment statement and assessment payment for regular season shipments from September 1 to September 30 allows handlers the needed time to complete the requirements and submit them to the Committee.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 28 handlers of Walla Walla sweet onions who are subject to regulation under the marketing order and approximately 37 Walla Walla sweet onion producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on information from the Committee for the 2009 shipping season, handlers shipped 621,218 50-pound equivalents of Walla Walla sweet onions. At an average price of $11.50 per 50-pound equivalent, total handler revenue was approximately $7,144,000 and average revenue per handler was approximately $255,100. Also based on information from the Committee, producers harvested an average of 24 acres of Walla Walla sweet onions, with an average production of 699 50-pound equivalents per acre. With an average farm gate value of $8.75 per 50-pound equivalent, Walla Walla sweet onion producers averaged approximately $146,800 in gross receipts for the year. Based on this information, the majority of handlers and producers of Walla Walla sweet onions may be classified as small entities under SBA's standards.

This final rule revises the due date contained in §§ 956.180 and 956.142 of the order for the submission of regular season handler reports and assessment payments for Walla Walla sweet onions handled from June 1 through August 31. The deadline for submitting reports and assessment payments for such regular season onion shipments is revised from September 1 to September 30. This change does not affect the reporting and assessment payment due dates for late season Walla Walla sweet onions shipped during the September 1 through May 31 period, which continues to be 30 days after the end of the month in which the onions were handled. The due date change allows handlers the needed time to compile information, file reports and pay assessments. Authority for this action is provided in §§ 956.42(f) and 956.80.

At its February 2, 2010, meeting, the Committee discussed whether the due date for certain reports and assessment payments needed to be changed to allow more time for handlers to comply with the order's requirements. Handlers stated at the meeting that advancements in both the production and storage of Walla Walla sweet onions had extended the marketability of their product well into August, whereas, traditionally, their primary marketing season ended around the end of July. As such, the handlers explained that there is now less time between the end of their shipping period and the reporting deadline to compile information, complete reports and pay their assessments. The Committee staff indicated that compliance with the order's reporting and assessment requirements would likely improve if handlers were given additional time to fulfill them.

At the meeting, the Committee discussed alternatives to this change, including extending the due dates even further; requiring submission of reports and assessments monthly instead of at the end of the regular season; changing the due dates, but adding a late penalty; and not making any changes. However, the Committee believed that changing the due date for reports and assessment payments on regular season onion shipments from September 1 to September 30 adequately addressed the concerns of the handlers while maintaining sufficient consequences for noncompliance and reasonable timelines for the administration of the order.

This final rule is not expected to have any economic impact on handlers or producers of any size. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

Information collected under this order is currently approved under OMB No. 0581–0178. This action will not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As stated above, information collected will not change with this rule; only the date on which the collection is required to be submitted will be revised. 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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

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.

In addition, the Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 2, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on April 12, 2010 (75 FR 18428). Copies of the rule were mailed or sent via facsimile to all Committee members and Walla Walla sweet onion handlers. Finally, the rule was made

available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 12, 2010, was provided to allow interested persons to respond to the proposal. No comments were received during the comment period in response to the proposal. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 956 is amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

■ 1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 956.142 to read as follows:

§ 956.142 Interest charges.

For Walla Walla Sweet Onions handled prior to September 1, the Committee shall impose an interest charge on any handler who fails to pay his or her annual assessments within thirty (30) days of the due date of September 30. For Walla Walla Sweet Onions handled during the period September 1 through May 31, the Committee shall impose an interest charge on any handler who fails to pay his or her assessments within thirty (30) days of the last day of the month in which such shipments are made. The interest charge shall be 1½ percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment amount within 60 days following the due date, the 1½ percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

■ 3. Revise § 956.180(b) introductory text to read as follows:

§ 956.180 Reports.

* * * * *

(b) Each handler shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments* containing the information in paragraphs (a)(1), (a)(2), and (a)(3) of this section, except that gift box and roadside stand sales shall be exempt from paragraph (a)(2) of this section: *Provided,* That for Walla Walla Sweet Onions handled prior to September 1, such report shall be furnished to the Committee by September 30, and that for Walla Walla Sweet Onions handled during the period September 1 through May 31, such report shall be furnished to the Committee no later than thirty (30) days after the end of the month in which such onions were handled:

* * * * *

Dated: June 11, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–14569 Filed 6–16–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0803; Directorate Identifier 2009–NE–34–AD; Amendment 39–16330; AD 2010–12–09]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Auxiliary Power Unit Models GTCP36–150(R) and GTCP36–150(RR)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Honeywell International Inc. auxiliary power unit (APU) models GTCP36–150(R) and GTCP36–150(RR). This AD requires inspecting the fuel control unit (FCU) differential pressure (Delta P) sleeve bore for erosion, replacing the FCU if it fails the inspection, and installing a fuel deflector on the Delta P sleeve of the FCU. This AD results from eight reports of fuel leakage from the FCU. We are issuing this AD to prevent fuel leakage in the APU compartment, which could lead to ignition of fuel vapor, creating a fire and explosion hazard resulting in injury, and damage to the APU and the airplane.

DATES: This AD becomes effective July 22, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 22, 2010.

ADDRESSES: You can get the service information identified in this AD from Honeywell International Inc., 111 S. 34th Street, Phoenix, Arizona 85034–2802; *Web site: http://portal.honeywell.com/wps/portal/aero;* telephone No. (800) 601–3099; international telephone No. (601) 365–3099.

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

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *e-mail: roger.pesuit@faa.gov;* telephone (562) 627–5251, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Honeywell International Inc. APU models GTCP36–150(R) and GTCP36–150(RR). We published the proposed AD in the **Federal Register** on December 23, 2009 (74 FR 68196). That action proposed to require inspecting the Delta P sleeve bore for erosion, replacing the FCU if it fails the inspection, and installing a fuel deflector on the Delta P sleeve of the FCU.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect four APUs installed on airplanes of U.S. registry. We also estimate that it will take about one work-hour per APU to perform the actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $201 per APU. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $1,124.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–12–09 Honeywell International Inc. (formerly AlliedSignal Inc., formerly Garrett Auxiliary Power Division): Amendment 39–16330. Docket No. FAA–2009–0803; Directorate Identifier 2009–NE–34–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. Auxiliary Power Unit (APU) models GTCP36–150(R) and GTCP36–150(RR). These APUs are installed on, but not limited to, Fokker Services B.V. Model F.28 Mark 0100, and F.28 Mark 0070 airplanes.

Unsafe Condition

(d) This AD results from eight reports of fuel leakage from the fuel control unit (FCU). We are issuing this AD to prevent fuel leakage in the APU compartment, which could lead to ignition of fuel vapor, creating a fire and explosion hazard resulting in injury, and damage to the APU and the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next shop visit of the APU, or the next shop visit of the APU FCU, or before the APU accumulates an additional 4,000 operating hours, whichever occurs first after the effective date of this AD, unless the actions have already been done.

Inspection of the FCU Differential Pressure (Delta P) Sleeve Bore

(f) Inspect the FCU Delta P sleeve bore for erosion. Use paragraphs 3.B.(1) through 3.B.(4) of Honeywell International Inc. Service Bulletin (SB) No. 3882840–49–7975, Revision 1, dated April 10, 2009, to do the inspection:

(1) If the erosion in the Delta P sleeve bore is 0.030 inch or more in depth, replace the FCU housing.

(2) If the erosion in the Delta P sleeve bore is less than 0.030 inch in depth, the FCU housing is acceptable for use.

Installation of Fuel Deflector

(g) Install fuel deflector, part number 70720001–1, onto the Delta P sleeve of the FCU. Use paragraphs 3.B(5) through 3.B.(9) of Honeywell International Inc. SB No. 3882840–49–7975, Revision 1, dated April 10, 2009, to do the installation.

Alternative Methods of Compliance

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

Related Information

(i) Contact Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *e-mail: roger.pesuit@faa.gov;* telephone (562) 627–5251, fax (562) 627–5210, for more information about this AD.

Material Incorporated by Reference

(j) You must use Honeywell International Inc. SB No. 3882840–49–7975, Revision 1, dated April 10, 2009, to perform the inspection and installation required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Honeywell International Inc., 111 S. 34th Street, Phoenix, Arizona 85034–2802; *Web site:* telephone No. (800) 601–3099; international telephone No. (601) 365–3099, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on May 28, 2010.

Peter A. White,

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

[FR Doc. 2010–13595 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1076; Directorate Identifier 2009–CE–019–AD; Amendment 39–16296; AD 2010–10–17]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Various Models MU–2B Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede Airworthiness Directive (AD) 2006–17–01, AD 2006–15–07, AD 2000–02–25, and AD 97–25–02, which applies to certain Mitsubishi Heavy Industries, Ltd. (MHI) various Models MU–2B airplanes. An FAA MU–2B safety evaluation resulted in the standardization of the MU–2B specific training and the FAA-accepted pilot operating checklists through a special Federal aviation regulation (SFAR). MHI revised the airplane flight manuals (AFMs) to align them with the information in that training and the checklists. In addition, incorporating all AFM revisions up to and including this latest AFM revision will incorporate all AFM compliance actions required by the four above-mentioned ADs. This AD would retain from AD 2006–17–01 the inspection of the engine torque indication system and possible recalibration of the torque pressure transducers and would require incorporating all revisions up to and including the latest revisions of the AFM. We are issuing this AD to correct inconsistencies in critical operating procedures between the MU–2B specific training, the FAA-accepted pilot operating checklists, and the AFMs, which, if not corrected, could result in the pilot inadvertently taking inappropriate actions in critical operating conditions.

DATES: This AD becomes effective on July 22, 2010.

On July 22, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, Suite 800, Addison, Texas 75001; telephone: (972) 934–5480; fax: (972) 934–5488; Internet: *http://www.mu-2aircraft.com* or *http://www.turbineair.com.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2009–1076; Directorate Identifier 2009–CE–019–AD.

FOR FURTHER INFORMATION CONTACT: Al Wilson, Flight Test Pilot, FAA, Fort Worth ACO, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5146; fax: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

This AD results from inconsistencies in critical operating procedures between the MU–2B specific training, the FAA-accepted pilot operating checklists, and the AFMs. In 2005, the FAA, Aircraft Certification Service and Flight Standards Service, conducted an MU–2B safety evaluation. The FAA found that MU–2B specific training was not required for all operators and, when provided, was not standardized. The safety evaluation also revealed that many FAA-accepted pilot operating checklists used by operators and trainers at the time of the evaluation had no regulatory basis and were locally produced. This resulted in a lack of standardization for normal, abnormal, and emergency flight operations.

In 2008, the FAA issued SFAR No. 108, Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Requirements. This SFAR requires standardization for critical operating procedures in training and in the FAA-accepted pilot operating checklists. MHI revised the AFMs to align them with the information in the current SFAR. The FAA requested Mitsubishi Heavy Industries, Ltd. make changes to the AFM for each model approved under Type Certificate Data Sheets (TCDS) A10SW and A2PC.

Incorporating all AFM revisions up to and including this latest AFM revision will incorporate the AFM actions in other ADs, as follows:

- AD 97–25–02, Amendment 39–10225 (62 FR 63830, December 3, 1997), requires revising the Limitations section of the airplane AFM to prohibit positioning the power levers below the flight idle stop while the airplane is in flight.
- AD 2000–02–25, Amendment 39–11543 (65 FR 5422, February 4, 2000), requires revising the AFM to include requirements for activating the airframe pneumatic deicing boots.
- AD 2006–15–07, Amendment 39–14687 (71 FR 41116, July 20, 2006), requires revising the Limitations section of the AFM to prevent improper rigging of the propeller feathering linkage.
- AD 2006–17–01, Amendment 39–14722 (71 FR 47697, August 18, 2006), requires inspecting the engine torque indication system, recalibrating the torque pressure transducers as required, and revising the Limitations section of the AFM to include power assurance charts. The one-time inspection and possible recalibration are not part of the AFM revisions.

We are issuing this AD to correct inconsistencies in critical operating procedures between the MU–2B specific training, the FAA-accepted pilot operating checklists, and the AFMs, which, if not corrected, could result in the pilot inadvertently taking inappropriate actions in critical operating conditions.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: This Failure Could Lead to Loss of Control

Ralph M. Sorrells, Mitsubishi Heavy Industries America, Inc., Patrick E. Cannon, Turbine Aircraft Services, Inc., and Earle P. Martin III, Mid-Coast Air Charter, Inc., comment on the Summary, Discussion, and Unsafe Condition sections of the proposed AD. The commenters oppose the wording used in the notice of proposed rulemaking (NPRM) that says the unsafe condition, if left uncorrected, could result in loss of control. Two of the commenters suggest this is an "administrative" AD and we should not use "loss of control" as a justification. One commenter suggests changing the justification to "improve safety" in lieu of "loss of control."

We agree with the commenters that the wording "loss of control" used throughout the NPRM does not accurately reflect the justification for this AD. We are changing the wording to the following in the Summary, Discussion, and Unsafe Condition sections of the NPRM: "We are issuing this AD to correct inconsistencies in critical operating procedures between the MU–2B specific training, the FAA-accepted pilot operating checklists, and the AFMs, which, if not corrected, could result in the pilot inadvertently taking inappropriate actions in critical operating conditions."

Comment Issue No. 2: Special Federal Aviation Regulation (SFAR)–108

Ralph M. Sorrells, Mitsubishi Heavy Industries America, Inc., states the current SFAR–108 mandates standardized training, the latest revision of the AFM, and the use of standardized checklists. The SFAR requirements have eliminated the "inconsistencies" as stated in the NPRM; and the SFAR standardized FAA-accepted checklists, eliminating the inconsistencies in the checklists; therefore, no unsafe condition exists. We infer from this comment the commenter feels this AD action is unnecessary. The FAA partially agrees with these comments.

We agree with the commenter that the SFAR–108 is the current regulatory standard to follow, when inconsistencies exist between the SFAR requirements and the approved AFM. However, we disagree with the commenter that the inconsistencies have been eliminated. The SFAR mandated the appropriate AFM for each model; however, it did not specify an AFM revision level. Owners could currently be using a version of the AFM that is not consistent with the FAA-accepted checklists required by the SFAR. The intent of this NPRM is to mandate the latest AFM revision level. To clarify the intent of the wording "FAA-accepted checklists" used in the NPRM, we are changing the first paragraph of the Discussion section to read: "* * * the safety evaluation also revealed that many FAA-accepted pilot operating checklists used by operators and trainers at the time of the evaluation had no regulatory basis * * *"

Comment Issue No. 3: Current Applicable Service Bulletin for the Compliance Section, Paragraph 2(e)(1)

Ralph M. Sorrells, Mitsubishi Heavy Industries America, Inc., states that the NPRM does not reference the latest revision to the service bulletin in the Compliance section, paragraph 2(e)(1). He suggests revising the Compliance section, paragraph 2(e)(1), to reference MHI MU–2 Service Bulletin No. 233B, dated March 8, 2007, as the applicable service bulletin for TCDS A2PC model airplanes.

The FAA partially agrees with this comment. We agree that inspecting the engine torque indication system and recalibrating the torque pressure transducers following MHI MU–2 Service Bulletin No. 233B, dated March 8, 2007, will comply with the requirements of the AD. However, we disagree with requiring the actions following MHI MU–2 Service Bulletin No. 233B, dated March 8, 2007. The actions to inspect the engine torque indication system and recalibrate the torque pressure transducers are retained from AD 2006–17–01, issued in 2006, and doing the actions following MHI MU–2 Service Bulletin No. 233A, dated January 14, 1999, still complies with the intent of AD 2006–17–01. We will retain inspecting the engine torque indication system and recalibrating the torque pressure transducers following MHI MU–2 Service Bulletin No. 233A, dated January 14, 1999, but add language allowing the use of MHI MU–2 Service Bulletin No. 233B, dated March 8, 2007, to comply with the requirements of this final rule AD action.

Comment Issue No. 4: Reformat Table No. 1

Ralph M. Sorrells, Mitsubishi Heavy Industries America, Inc., comments that Table 1 of the NPRM in the Compliance section of the NPRM should be revised to clarify which TCDS applies to each model. The commenter also suggests we change Table 1 of the NPRM to show the correct revision level for the Model MU–2B–35 (A2PC), which is revision 10 versus revision 9. Certain model airplanes (–25, –26, and –35) were type certificated under both the A2PC and A10SW type certificates and have separate AFMs.

The commenter states Table 1 of the NPRM appears confusing as to which AFM applies to the models approved under both TCDS A2PC and A10SW. Table 1 of the NPRM does not reference the reissued AFM date that applies for TCDS A2PC models. The AFM for TCDS A10SW models are not affected since the power assurance charts were included in the reissued AFM and have not been revised.

The FAA agrees with the commenter and will revise Table 3 of the final rule AD action to clarify the appropriate TCDS and identify the correct AFM, revision level, and effective pages for the power assurance charts for all models.

Comment Issue No. 5: Reformat Table No. 2

Ralph M. Sorrells, Mitsubishi Heavy Industries America, Inc., comments on the need to clarify the appropriate action to obtain the AFM information for Models MU–2B–35 and MU–2B–36 type certificated under TCDS A10SW.

The commenter suggests referencing "MU–2B–35 Airplane Flight Manual J Model, Document Number MR–0158–1" as the approved data for Model MU–2B–35. The commenter also states there has never been an A10SW version of the MU–2B–36 so this item should be removed. The commenter recommends changing the language for the Note associated with Table 2 in the NPRM to state, "AFM revisions are not available for Model MU–2B–35 under TCDS A10SW because the only Model MU–2B–35 airplane is no longer in service and was subsequently removed from the registry. Mitsubishi Heavy Industries, Ltd. has indicated they have no intention of putting the MU–2B–35 model back in production. There are no other serial numbers eligible for this model, foreign or domestic. This model is still eligible under the type certificate, so if Mitsubishi Heavy Industries, Ltd., does put this model back in production, contact them for an FAA-approved AFM."

The FAA partially agrees with the commenter. We agree that the A10SW TCDS has been revised to show no serial numbers for –35 and –36 models. However, since the models are still part of the type certificate, we disagree with removing those models from the AD. As such, we are retaining Models –35 and –36 in the Applicability section of this AD. Since no serial numbers for these model airplanes currently exist, it would be impossible to comply with the actions of this AD for those airplane models. We are removing NOTE 2 and NOTE 3 and removing Models –35 and –36 from TABLE 4 of this final rule AD action.

Comment Issue No. 6: Suggest the Wording "Current AFM Revision"

Patrick E. Cannon, Turbine Aircraft Services, Inc., suggests that to avoid revising the AD to mandate each subsequent AFM revision, the NPRM use the term "current AFM revision" to mandate incorporating subsequent revisions to the AFMs.

The FAA does not agree. We do not have the legal authority to reference documents that do not currently exist for the purpose of addressing an unsafe condition through AD action. The FAA will consider approval of future revisions through additional rulemaking should the need arise or may consider allowing their use of future revisions through approval of an alternative method of compliance (AMOC) if the substantiating data supports the revised AFM.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes previously discussed and minor editorial corrections. We have determined that these minor corrections:

• Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 355 airplanes.

We estimate the following costs to accomplish the engine torque indication system inspection, including the recalibration and ground check if needed.

This is a retained cost from AD 2006–17–01:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 work-hours × $85 = $425	Not applicable	$425	$150,875

We estimate the following costs to do the AFM revisions:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $85 per hour = $85	Not applicable	$85	$30,175

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 AD.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

2. Is not a "significant rule" under 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2009–1076; Directorate Identifier 2009–CE–019–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–25–02, Amendment 39–10225 (62 FR 63830, December 3, 1997); AD 2000–02–25, Amendment 39–11543 (65 FR 5422, February 4, 2000); AD 2006–15–07, Amendment 39–14687 (71 FR 41116, July 20, 2006); and AD 2006–17–01, Amendment 39–14722 (71 FR 47697, August 18, 2006), and adding the following new AD:

2010–10–17 Mitsubishi Heavy Industries, Ltd.: Amendment 39–16296; Docket No. FAA–2009–1076; Directorate Identifier 2009–CE–019–AD.

Effective Date

(a) This AD becomes effective on July 22, 2010.

Affected ADs

(b) This AD supersedes AD 97–25–02, Amendment 39–10225; AD 2000–02–25, Amendment 39–11543; AD 2006–15–07, Amendment 39–14687; and AD 2006–17–01, Amendment 39–14722.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

TABLE 1—MITSUBISHI HEAVY INDUSTRIES, LTD., (MHI) AIRPLANES LISTED IN TYPE CERTIFICATE DATA SHEET (TCDS) A10SW

Models	Serial Nos.
MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–36A, MU–2B–40, and MU–2B–60.	All serial numbers.
MU–2B–35 and MU–2B–36	There are no serial numbers for MU–2B–35 or MU–2B–36 under TCDS A10SW.

TABLE 2—MHI AIRPLANES LISTED IN TCDS A2PC

Models	Serial Nos.
MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, MU–2B–36	All serial numbers.

Unsafe Condition

(d) This AD results from inconsistencies in critical operating procedures between the MU–2B specific training, the FAA-accepted pilot operating checklists, and the airplane flight manuals (AFM). MHI revised the AFMs to align them with the information in that training and the checklists. We are issuing this AD to correct inconsistencies in critical operating procedures between the MU–2B specific training, the FAA-accepted pilot operating checklists, and the AFMs, which, if not corrected, could result in pilots inadvertently taking inappropriate actions in critical operating conditions.

Compliance

(e) Do the following unless already done:

(1) Within 100 hours time-in-service (TIS) after September 22, 2006 (the effective date retained from AD 2006–17–01), inspect the engine torque indication system and, before further flight after the inspection, recalibrate the torque pressure transducers as required. For airplanes listed in TCDS A2PC, follow MHI MU–2 Service Bulletin No. 233A, dated January 14, 1999 or MHI MU–2 Service Bulletin No. 233B, dated March 8, 2007. For airplanes listed in TCDS A10SW, follow MHI MU–2 Service Bulletin No. 095/77–002, dated July 15, 1998. This inspection requires the use of the following power assurance charts as applicable:

(i) If you have not incorporated the AFM revisions required in paragraph (e)(2) of this AD: Use the power assurance charts referenced in Table 3 below; or

(ii) If you have already incorporated the AFM revisions required in paragraph (e)(2) of this AD: Use the power assurance charts in section 6 of the revised AFMs required by paragraph (e)(2) of this AD.

TABLE 3—POWER ASSURANCE CHART FROM AD 2006–17–01

TCDS	Airplane model affected	Date and version of AFM	Page No. from AFM
A2PC	MU–2B	AFM, Section 6, Reissued March 5, 1987, Revision 9, dated January 14, 1999	6–34.
	MU–2B–10	AFM, Section 6, Reissued March 5, 1987, Revision 9, dated January 14, 1999	6–19.
	MU–2B–15	AFM, Section 6, Reissued March 5, 1987, Revision 9, dated January 14, 1999	6–19.
	MU–2B–20	AFM, Section 6, Reissued March 3, 1987, Revision 9, dated January 14, 1999	6–20.
	MU–2B–25	AFM, Section 6, Reissued March 3, 1987, Revision 9, dated January 14, 1999	6–19.
	MU–2B–26	AFM, Section 6, Reissued March 3, 1987, Revision 9, dated January 14, 1999	6–19.
	MU–2B–30	AFM, Section 6, Reissued February 19, 1987, Revision 10, dated January 14, 1999	6–19.
	MU–2B–35	AFM, Section 6, Reissued February 19, 1987, Revision 10, dated January 14, 1999	6–19.
	MU–2B–36	AFM, Section 6, Reissued February 19, 1987, Revision 9, dated January 14, 1999	6–20.
A10SW	MU–2B–25	AFM, Section 6, Reissued March 25, 1986	6–18 and 6–19.
	MU–2B–26	AFM, Section 6, Reissued March 25, 1986	6–17 and 6–18.
	MU–2B–26A	AFM, Section 6, Reissued March 25, 1986	6–17 and 6–18.
	MU–2B–36A	AFM, Section 6, Reissued February 28, 1986	6–20 and 6–21.
	MU–2B–40	AFM, Section 6, Reissued March 25, 1986	6–17 and 6–18.
	MU–2B–60	AFM, Section 6, Reissued September 24, 1986	6–19 and 6–20.

(2) Within the next 50 hours TIS after July 22, 2010 (the effective date of this AD) or within the next 6 months after July 22, 2010 (the effective date of this AD), whichever occurs first, incorporate all revisions up to and including the latest revisions as published in the list of effective pages of the applicable AFM listed in Table 4 and Table 5 of this AD. Assure that the applicable AFM contains each page, matching all the page numbers and page dates, listed in the Effective Pages listing for that AFM. The airplane identification data plate identifies the type certificate number for that airplane:

TABLE 4—TCDS A10SW

Airplane model	AFM name	Effective pages list
MU–2B–25	MU–2B–25 Airplane Flight Manual K Model, Document Number MR–0156–1.	all revised pages up to and including revision 11, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–26	MU–2B–26 Airplane Flight Manual M Model, Document Number MR–0160–1.	all revised pages up to and including revision 11, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.

TABLE 4—TCDS A10SW—Continued

Airplane model	AFM name	Effective pages list
MU–2B–26A	MU–2B–26A Airplane Flight Manual P Model, Document Number MR–0194–1.	all revised pages up to and including revision 13, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–36A	MU–2B–36A Airplane Flight Manual N Model, Document Number MR–0196–1.	all revised pages up to and including revision 15, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–40	MU–2B–40 Airplane Flight Manual SOLITAIRE Model, Document Number MR–0271–1.	all revised pages up to and including revision 13, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–60	MU–2B–60 Airplane Flight Manual MARQUISE Model, Document Number MR–0273–1.	all revised pages up to and including revision 15, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.

TABLE 5—TCDS A2PC

Airplane model	AFM name	Effective pages list
MU–2B	MU–2B Airplane Flight Manual, YET 67026A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–10	MU–2B–10 Airplane Flight Manual, YET 86400	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–15	MU–2B–15 Airplane Flight Manual, YET 68038A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–20	MU–2B–20 Airplane Flight Manual, YET 68034A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–25	MU–2B–25 Airplane Flight Manual, YET 71367A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–26	MU–2B–26 Airplane Flight Manual, YET 74129A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–30	MU–2B–30 Airplane Flight Manual, YET 69013A	all revised pages up to and including revision 14, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–35	MU–2B–35 Airplane Flight Manual, YET 70186A	all revised pages up to and including revision 14, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–36	MU–2B–36 Airplane Flight Manual, YET 74122A	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, FAA, Fort Worth Airplane Certification Office (ACO), has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Al Wilson, Flight Test Pilot, FAA, Fort Worth ACO, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5146; fax: (817) 222–5960. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(g) You must use Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 233A, dated January 14, 1999; Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 095/77–002, dated July 15, 1998; Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 233B, dated March 8, 2007; and the AFMs specified in Table 6 of this AD to do the actions required by this AD, unless the AD specifies otherwise. The AFMs and Pilot's Operating Manuals (POMs) are bound together in one book for each airplane model; however, only the AFMs are required to comply with this AD. The POMs are not approved data and are not incorporated by reference; the POMs are not required to comply with this AD.

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

(2) On September 22, 2006 (71 FR 47699, August 18, 2006) the Director of the Federal Register approved the incorporation by reference of Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 095/77–002, dated July 15, 1998; and Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 233A, dated January 14, 1999.

(3) For service information identified in this AD, contact Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, Suite 800, Addison, Texas 75001; telephone: (972) 934–5480; fax: (972) 934–5488; Internet: *http://www.mu-2aircraft.com* or *http://www.turbineair.com.*

(4) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

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

TABLE 6—MATERIAL INCORPORATED BY REFERENCE

AFM/POM name	AFM effective pages list
MU–2B–25 Airplane Flight Manual K Model, Document Number MR–0156–1, MU–2B–25; MU–2B–25 Pilot's Operating Manual, Document Number MR–0157–1, revised July 15, 2004.	all revised pages up to and including revision 11, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–26 Airplane Flight Manual M Model, Document Number MR–0160–1; MU–2B–26 Pilot's Operating Manual, Document Number MR–0161–1, revised July 15, 2004.	all revised pages up to and including revision 11, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–26A Airplane Flight Manual P Model, Document Number MR–0194–1; MU–2B–26A Pilot's Operating Manual, Document Number MR–0195–1, revised July 15, 2004.	all revised pages up to and including revision 13, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–36A Airplane Flight Manual N Model, Document Number MR–0196–1; MU–2B–36A Pilot's Operating Manual, Document Number MR–0197–1, revised July 15, 2004.	all revised pages up to and including revision 15, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–40 Airplane Flight Manual SOLITAIRE Model, Document Number MR–0271–1; MU–2B–40 Pilot's Operating Manual, Document Number MR–0335–1, revised July 15, 2004.	all revised pages up to and including revision 13, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–60 Airplane Flight Manual MARQUISE Model, Document Number MR–0273–1; MU–2B–60 Pilot's Operating Manual, Document Number MR–0338–1, revised July 15, 2004.	all revised pages up to and including revision 15, dated March 10, 2009, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B Airplane Flight Manual, YET 67026A; MU–2B Pilot's Operating Manual, Document Number YET 67025A, revised September 10, 1997.	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–10 Airplane Flight Manual, YET 86400; MU–2B–10 Pilot's Operating Manual, Document Number YET 87236, revised September 10, 1997.	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–15 Airplane Flight Manual, YET 68038A; MU–2B–15 Pilot's Operating Manual, Document Number YET 87237, revised September 10, 1997.	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–20 Airplane Flight Manual, YET 68034A; MU–2B–20 Pilot's Operating Manual, Document Number YET 68134A, revised February 20, 1998.	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–25 Airplane Flight Manual, YET 71367A; MU–2B–25 Pilot's Operating Manual, Document Number YET 72067A, revised September 10, 1997.	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–26 Airplane Flight Manual, YET 74129A; MU–2B–26 Pilot's Operating Manual, Document Number YET 74130A, revised September 10, 1997.	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–30 Airplane Flight Manual, YET 69013A; MU–2B–30 Pilot's Operating Manual, Document Number YET 69224A, revised September 10, 1997.	all revised pages up to and including revision 14, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–35 Airplane Flight Manual, YET 70186A; MU–2B–10 Pilot's Operating Manual, Document Number YET 70187A, revised September 10, 1997.	all revised pages up to and including revision 14, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.
MU–2B–36 Airplane Flight Manual, YET 74122A; MU–2B–36 Pilot's Operating Manual, Document Number YET 74123A, revised September 10, 1997.	all revised pages up to and including revision 13, dated November 29, 2007, as listed on page 1 and page 2 of the "Effective Pages" in the AFM.

Issued in Kansas City, Missouri on May 4, 2010.

Wes Ryan,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11034 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0327; Directorate Identifier 2010–CE–012–AD; Amendment 39–16321; AD 2010–12–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 525A Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD 2009–24–13, which applies to certain Cessna Aircraft Company (Cessna) Model 525A airplanes. AD 2009–24–13 currently requires you to repetitively inspect the thrust attenuator paddle assemblies for loose and damaged fasteners and for cracks. AD 2009–24–13 also requires you to replace loose or damaged fasteners and replace cracked thrust attenuator paddles found during any inspection. Since we issued AD 2009–24–13, Cessna has developed new design thrust attenuator paddles and universal head rivets as terminating action for the repetitive inspections. Consequently, this AD would retain the requirements of AD 2009–24–13 until replacement of both thrust attenuator paddles and the eight countersunk fasteners with new design thrust attenuator paddles and universal head

rivets. We are issuing this AD to detect and correct loose and damaged fasteners and cracks in the thrust attenuator paddles, which could result in in-flight departure of the thrust attenuator paddles. This failure could lead to rudder and elevator damage and result in loss of control.

DATES: This AD becomes effective on July 22, 2010.

On July 22, 2010, the Director of the Federal Register approved the incorporation by reference of Cessna Citation Service Bulletin SB525A–78–02, Revision 1, dated February 5, 2010, listed in this AD.

As of December 15, 2009 (74 FR 62479, November 30, 2009), the Director of the Federal Register approved the incorporation by reference of Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, listed in this AD.

ADDRESSES: For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; *telephone:* (316) 517–6000; *fax:* (316) 517–8500; *Internet: http://www.cessna.com.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2010–0327; Directorate Identifier 2010–CE–012–AD.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4155; *fax:* (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On March 23, 2010, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Model 525A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 30, 2010 (75 FR 15629). The NPRM proposed to supersede AD 2009–24–13 with a new AD that would retain the requirements of AD 2009–24–13 until replacement of both thrust attenuator paddles and the eight countersunk fasteners with new design thrust attenuator paddles and universal head rivets.

Comments

We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 136 airplanes in the U.S. registry.

We estimate the following costs to do the inspection (retained from AD 2009–24–13):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $85 per hour = $85	Not Applicable	$85	$11,560

We estimate the following costs to do any necessary installation (retained from AD 2009–24–13) of missing/damaged fasteners that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost for two fasteners	Total cost per airplane
2 work-hours × $85 per hour = $170	$99.90	$269.90

We estimate the following costs to do any necessary replacement (retained from AD 2009–24–13) of a cracked thrust attenuator paddle that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost (per paddle)	Total cost per airplane
3 work-hours × $85 per hour = $255	$1,200	$1,455

We estimate the following costs to do the replacement of both thrust attenuator paddles and the eight countersunk fasteners with new design thrust attenuator paddles and universal head rivets:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 work-hours × $85 per hour = $425	$3,464	$3,889	$528,904

As determined by the manufacturer, eligible airplanes may qualify for warranty coverage of parts and labor.

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 AD.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

2. Is not a "significant rule" under 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2010–0327; Directorate Identifier 2010–CE–012–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–24–13, Amendment 39–16105 (74 FR 62479, November 30, 2009), and adding the following new AD:

2010–12–01 Cessna Aircraft Company: Amendment 39–16321; Docket No. FAA–2010–0327; Directorate Identifier 2010–CE–012–AD.

Effective Date

(a) This AD becomes effective on July 22, 2010.

Affected ADs

(b) This AD supersedes AD 2009–24–13, Amendment 39–16105.

Applicability

(c) This AD applies to Model 525A airplanes, serial numbers 0001 through 0244, that are certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from reports of fatigue cracks found in thrust attenuator paddles on Cessna Model 525A airplanes. We are issuing this AD to detect and correct loose and damaged fasteners and cracks in the thrust attenuator paddles, which could result in in-flight departure of the thrust attenuator paddles. This failure could lead to rudder and elevator damage and result in loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Visually inspect the left and right thrust attenuator paddle assemblies to determine if there are any missing, loose, or damaged fasteners and to determine if there are any cracks in the paddle.	Within the next 60 days after December 15, 2009 (the effective date retained from AD 2009–24–13) or within the next 30 hours time-in-service (TIS) after December 15, 2009 (the effective date retained from AD 2009–24–13), whichever occurs first. Repetitively thereafter inspect at intervals not to exceed 150 hours TIS.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.
(2) If you do not find any cracks in the thrust attenuator paddles during any inspection required in paragraph (f)(1) of this AD, install any missing fasteners, and replace any loose or damaged fasteners.	Before further flight after the inspection required in paragraph (f)(1) of this AD. Continue with the repetitive inspections specified in paragraph (f)(1) of this AD.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.
(3) If cracks are found during any inspection required in paragraph (f)(1) of this AD, do a surface eddy current inspection of the thrust attenuator paddles and the fastener hole(s) to determine the length of the cracks(s).	Before further flight after the inspection required in paragraph (f)(1) of this AD in which cracks are found.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.

Actions	Compliance	Procedures
(4) If the cracks identified in paragraph (f)(3) of this AD meet or exceed the limits specified in paragraph 3 of Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, replace the thrust attenuator paddle and attachment hardware, as applicable.	(i) If the conditions of paragraph 3.A.(1) of Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, are met, replace before further flight after the inspection required in paragraph (f)(3) of this AD. After the replacement, continue with the repetitive inspections specified in paragraph (f)(1) of this AD. (ii) If the conditions of paragraph 3.A.(2) of Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, are met, replace within the next 150 hours TIS after the inspection required in paragraph (f)(3) of this AD. After the replacement, continue with the repetitive inspections specified in paragraph (f)(1) of this AD.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.
(5) Replace both thrust attenuator paddles	Within the next 300 hours TIS after July 22, 2010 (the effective date of this AD), or within 1 year after July 22, 2010 (the effective date of this AD), whichever occurs first.	Follow Cessna Citation Service Bulletin SB525A–78–02, Revision 1, dated February 5, 2010.

(g) The replacement required in paragraph (f)(5) of this AD terminates the repetitive inspection requirement of this AD. This replacement may be done at anytime, but must be done no later than 300 hours TIS after July 22, 2010 (the effective date of this AD), or within 1 year after July 22, 2010 (the effective date of this AD), whichever occurs first.

(h) If, before July 22, 2010 (the effective date of this AD), you have done all the actions in the original issue of Cessna Citation Service Bulletin SB525A–78–02, dated November 13, 2009, then no further action is required by this AD. This is considered "unless already done" credit for this AD action.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* T.N. Baktha, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4155; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(j) AMOCs approved for AD 2009–24–13 are approved for this AD.

Material Incorporated by Reference

(l) You must use Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, and Cessna Citation Service Bulletin SB525A–78–02, Revision 1, dated February 5, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Cessna Citation Service Bulletin SB525A–78–02, Revision 1, dated February 5, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On December 15, 2009 (74 FR 62479, November 30, 2009), the Director of the Federal Register approved the incorporation by reference of Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.

(3) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; *telephone:* (316) 517–6000; *fax:* (316) 517–8500; *Internet: http://www.cessna.com.*

(4) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

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

Issued in Kansas City, Missouri, on May 26, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–13139 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0170; Directorate Identifier 2009–NM–127–AD; Amendment 39–16328; AD 2010–12–07]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR Airplanes; and EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Reassessment of the damage tolerance analysis resulted in threshold reduction for some Structure Significant Items (SSI) of the Maintenance Review Board Report (MRBR) Airworthiness Limitations Items (ALI). Failure to inspect these structural components, according to the new threshold, could prevent a timely detection of fatigue cracking. These cracks, if not properly

addressed, could adversely affect the structural integrity of the airplane.

* * * * *

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

DATES: This AD becomes effective July 22, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 22, 2010.

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 25, 2010 (75 FR 8557). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Reassessment of the damage tolerance analysis resulted in threshold reduction for some Structure Significant Items (SSI) of the Maintenance Review Board Report (MRBR) Airworthiness Limitations Items (ALI). Failure to inspect these structural components, according to the new threshold, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity of the airplane.

* * * * *

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 711 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $60,435, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–12–07 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16328. Docket No. FAA–2010–0170; Directorate Identifier 2009–NM–127–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and EMBRAER Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Subject

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

Reason

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

Reassessment of the damage tolerance analysis resulted in threshold reduction for some Structure Significant Items (SSI) of the Maintenance Review Board Report (MRBR) Airworthiness Limitations Items (ALI). Failure to inspect these structural components, according to the new threshold, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity of the airplane.

* * * * *

Compliance

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

Actions

(g) Within 90 days after the effective date of this AD, do the following actions, as applicable.

(1) For EMBRAER Model EMB–135ER, –135KE, –135KL, and –135LR airplanes, and Model EMB–145, –145EP, –145ER, –145LR, –145MP, and –145MR airplanes: Revise the Airworthiness Limitations (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate Tasks 54–50–00–230–802–A00 and 54–50–00–220–808–A01 specified in Appendix 2, Airworthiness Limitation Requirements, of EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008 (the "MRBR"). The initial compliance times for the tasks start from the applicable threshold specified in Appendix 2 of the MRBR, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For EMBRAER Model EMB–145EP, –145ER, –145LR, –145MR, and –145MP airplanes: Revise the ALS of the ICA to incorporate Tasks 57–26–00–250–815–A00, 57–26–00–250–815–A01, 57–26–00–250–813–A00, and 57–26–00–250–813–A02, specified in Appendix 2, Airworthiness Limitation Requirements, of EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008 ("the MRBR"). The initial compliance times for the tasks start from the later of the times specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) At the later of the applicable thresholds specified in Appendix 2 of the MRBR or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(ii) At the applicable time specified in Section A2.3.2.3.1, "Fatigue Threshold Reduced," of Appendix 2, Airworthiness Limitation Requirements, of the MRBR.

(3) For all airplanes: Revise the ALS of the ICA to incorporate Tasks 57–10–00–250–801–A00 and 57–10–00–250–801–A01 specified in EMBRAER Temporary Revision 12–1, dated November 27, 2008, to the EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008. The initial compliance times for the tasks start at the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD, as applicable.

(i) For Task 57–10–00–250–801–A00: Prior to the accumulation of 23,600 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For Task 57–10–00–250–801–A01: Within 24,000 flight cycles after accomplishing EMBRAER Service Bulletin 145–57–0047, dated October 18, 2008, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(h) After accomplishing the actions specified in paragraph (g) of this AD, no alternative inspections, inspection intervals, or airworthiness limitations may be used unless the inspections, inspection intervals, or airworthiness limitations are approved as alternative method of compliance in accordance with the procedures specified in paragraph (i) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(j) Refer to MCAI Brazilian Airworthiness Directive 2009–05–02, effective June 1, 2009; EMBRAER Temporary Revision 12–1, dated November 27, 2008, to the EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008; and Tasks 54–50–00–230–802–A00, 54–50–00–220–808–A01, 57–26–00–250–815–A00, 57–26–00–250–815–A01, 57–26–00–250–813–A00, and 57–26–00–250–813–A02, specified in Appendix 2, Airworthiness Limitation Requirements, of EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008; for related information.

Material Incorporated by Reference

(k) You must use EMBRAER Temporary Revision 12–1, dated November 27, 2008, to the EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150; and the specified tasks in Appendix 2, Airworthiness Limitation Requirements, of EMBRAER EMB135/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 12, dated September 19, 2008; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.*

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

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

Issued in Renton, Washington, on May 25, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–13429 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1512

Consumer Product Safety Act: Notice of Commission Action on the Stay of Enforcement of Testing and Certification Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Limited extensions of stay of enforcement.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is extending its stay of enforcement of certain testing and certification provisions of section 14 of the Consumer Product Safety Act (CPSA) as amended by section 102 of the Consumer Safety Improvement Act of 2008 (CPSIA). The Commission is extending the stay for products under 16 CFR part 1512 (bicycles) until August 14, 2010, with two exceptions. First, the Commission is extending the stay related to 16 CFR 1512.16 (reflectors) until November 14, 2010. Second, bicycles with non-quill-type stems are excluded from certifying compliance to 16 CFR 1512.6(a) (handlebar stem insertion mark) until further notice.

DATES: As it pertains to products under 16 CFR part 1512, the stay of enforcement is extended until August 14, 2010, except for products under 16 CFR 1512.16, for which the stay is extended until November 14, 2010, and except for bicycles with non-quill-type stems, which are excluded from the certification requirement regarding the handlebar stem insertion mark at 16 CFR 1512.6(a) until further notice.

FOR FURTHER INFORMATION CONTACT: Matthew M. Lee, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *mlee@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 14 of the CPSA requires that every manufacturer of a product (and the private labeler, if the product bears a private label) that is subject to a consumer product safety rule, ban, standard, or regulation enforced by the Commission certify, based on testing, that its product complies with the applicable safety rule, ban, standard, or regulation. For nonchildren's products, the certification must be based on a test of each product or a reasonable testing program. For children's products, the certification must be based on testing conducted by a CPSC-accepted third party conformity assessment body (laboratory). The Commission announced the criteria and process for its acceptance of the accreditation of third party conformity assessment bodies to test children's products under 16 CFR part 1512 in a notice of requirements that appeared in the **Federal Register** on September 2, 2009. 74 FR 45428.

On February 9, 2009, the Commission published a notice in the **Federal Register** staying enforcement of the testing and certification requirements for many products, including bicycles. 74 FR 6396. The Commission committed to the stay for one year, explaining that the stay was necessary to "give us the time needed to develop sound rules and requirements as well as implement outreach efforts to explain these [new] requirements of the CPSIA and their applicability." 74 FR 6396, 6398. On December 28, 2009, the Commission published a notice in the **Federal Register** revising the terms of the stay. 74 FR 68588. In that notice, the Commission lifted the stay for some CPSC regulations and extended the stay for other CPSC regulations. Relevant for present purposes, the Commission stated that it "plans to keep the stay in effect for the bicycle regulations (16 CFR part 1512) as applicable to all bicycles, both non children's (sic) and children's, until May 17, 2010. With regard to bicycles, the Commission has determined that there is insufficient laboratory capacity for third-party testing of bicycles at this time * * *. Should the extension of this stay until May 17, 2010 prove insufficient, the bicycle manufacturers and laboratories must petition the Commission for additional relief no later than April 1, 2010." 74 FR 68588, 68590.

On April 1, 2010, the Bicycle Product Suppliers Association (BPSA) petitioned the Commission for an extension of the stay of enforcement as it relates to 16 CFR part 1512, the CPSC safety regulations for bicycles. The BPSA contended that laboratory capacity was still inadequate. It also asserted that 16 CFR part 1512 is "out of date in many respects," and urged the Commission to revise the regulation. Finally, BPSA maintained that the bicycle industry has a good record of compliance with part 1512 and so extending the stay would not increase risk to public health or safety. The CPSC invited the BPSA to meet to discuss the petition, and such a meeting was held on May 3, 2010.

II. Limited Extensions of Stay of Enforcement

The Commission has decided to extend the stay of enforcement of the testing and certification requirements imposed by section 14 of the CPSA with regard to the safety regulations in 16 CFR part 1512 (bicycles) until August 14, 2010, with two exceptions noted immediately below. As of May 12, 2010, there are five CPSC-accepted conformity assessment bodies accredited to test to some or most of the standards contained in 16 CFR part 1512. This limited extension of the stay will provide time for the development of additional laboratory capacity for the testing of children's bicycles. Nevertheless, bicycle manufacturers must certify based on testing that their products, both nonchildren's and children's, manufactured after August 14, 2010, comply with 16 CFR part 1512.

There are two exceptions to this extension of the stay. Because there are currently no CPSC-accepted conformity assessment bodies accredited to test to the bicycle reflector requirements at 16 CFR 1512.16, the Commission is extending the stay as it relates to bicycle reflectors and 16 CFR 1512.16 until November 14, 2010. The Commission is allowing this additional three-month period for the development of CPSC-accepted laboratory capacity for bicycle reflector testing.

In addition, the Commission is aware that bicycles with non-quill-type stems may not be able to comply with the insertion mark requirement of 16 CFR 1512.6(a). Bicycles with non-quill-type stems are hereby excluded from the requirement to certify compliance with the handlebar stem insertion mark requirement at 16 CFR 1512.6(a).

Dated: June 9, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–14328 Filed 6–16–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2008–C–0098]

Listing of Color Additives Exempt From Certification; Bismuth Citrate; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 27, 2010, for the final rule that appeared in the **Federal Register** of March 26, 2010. The final rule amended the color additive regulations by increasing the permitted use level of bismuth citrate as a color additive in cosmetics intended for coloring hair on the scalp.

DATES: The effective date for the final rule published in the **Federal Register** of March 26, 2010 (75 FR 14491) is confirmed as April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Felicia M. Ellison, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1264.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 2010 (75 FR 14491), FDA amended the color additive regulations in § 73.2110 (21 CFR 73.2110) by increasing the permitted use level of bismuth citrate as a color additive in cosmetics intended for coloring hair on the scalp.

FDA gave interested persons until April 26, 2010, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of March 26, 2010, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Office of Food Additive Safety, notice is given that no objections or requests for a hearing were filed in response to the March 26, 2010, final rule. Accordingly, the amendments issued thereby became effective April 27, 2010.

Dated: June 11, 2010.

Mitchell A. Cheeseman,

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2010–14598 Filed 6–16–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2010–N–0002]

New Animal Drugs for Use in Animal Feeds; Florfenicol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA provides for the manufacture of florfenicol Type B medicated swine feeds.

DATES: This rule is effective June 17, 2010.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, email: *cindy.burnsteel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., 56 Livingston Ave., Roseland, NJ 07068, filed a supplement to NADA 141–264 for use of NUFLOR (florfenicol) Antibiotic Type A Medicated Article for Swine by veterinary feed directive that provides for the manufacture of Type B medicated swine feeds. The supplemental NADA is approved as of May 13, 2010, and the regulations are amended in 21 CFR 558.4 to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

■ 2. In paragraph (d) of § 558.4, in the "Category II" table, in the "Type B maximum (100x)" column, in the entry for "Florfenicol", remove "Swine feed: n/a" and in its place add "Swine feed: 9.1 g/lb (2.0%)".

Dated: June 14, 2010.

Elizabeth Rettie,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2010–14611 Filed 6–16–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2010–0446]

Safety Zone, Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Milwaukee Harbor safety zone during eight separate periods between 10 p.m. on July 15, 2010 through 10 p.m. on July 25, 2010. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.935 will be enforced during eight separate periods between from 10 p.m. on July 15, 2010 through 10 p.m. on July 25, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call

or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATON: The Coast Guard will enforce the safety zone listed in 33 CFR 165.935, Safety Zone, Milwaukee Harbor, Milwaukee, WI, for the following events:

(1) *Festa Italiana fireworks display;* on July 15, 2010 from 10 p.m. through 10:45 p.m.

(2) *Festa Italiana fireworks display;* on July 16, 2010 from 10 p.m. through 10:45 p.m.

(3) *Festa Italiana fireworks display;* on July 17, 2010 from 10 p.m. through 10:45 p.m.

(4) *Festa Italiana fireworks display;* on July 18, 2010 from 10 p.m. through 10:45 p.m.

(5) *German Festival fireworks display;* on July 22, 2010 from 10:15 p.m. through 11 p.m.

(6) *German Festival fireworks display;* on July 23, 2010 from 10:15 p.m. through 11 p.m.

(7) *German Festival fireworks display;* on July 24, 2010 from 10:15 p.m. through 11 p.m.

(8) *German Festival fireworks display;* on July 25, 2010 from 9:15 p.m. through 10 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.935 Safety Zone, Milwaukee Harbor, Milwaukee, WI and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone.

The Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative may be contacted via VHF–FM Channel 16.

Dated: June 2, 2010.

L. Barndt,

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

[FR Doc. 2010–14584 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0452]

RIN 1625–AA00

Safety Zone; Festivals & Fireworks Celebration, East Moran Bay, Lake Huron, St. Ignace, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on East Moran Bay, Lake Huron, St. Ignace, MI. This zone is intended to restrict vessels from a portion of Lake Huron during the Festivals & Fireworks Celebration fireworks display taking place on ten separate occasions from June 26, 2010 through September 5, 2010. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. on June 26, 2010 until 11 p.m. on September 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0452 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0452 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 BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone 906–635–3222, e-mail *Gregory.C.Ford@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 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objective since immediate action is needed to protect person's and vessels against the hazards associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous detonations, dangerous projectiles and falling or burning debris. Additionally, the zone should have negligible impact on vessel transits due to the fact that vessels will be limited from the area for only two hours on the specified dates and vessels can still transit in the majority of East Moran Bay during the event. Accordingly, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

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.** Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sault Sainte Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. 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 Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup and launching of fireworks displays in conjunction with the Festivals & Fireworks Celebration fireworks displays. The fireworks display will occur between 9 p.m. and 11 p.m. on the following dates: June 26, July 10, July 17, July 24, July 31, August 7, August 14, August 21, August 28, and September 4, 2010. If a fireworks display is cancelled due to inclement weather, the fireworks display will occur between 9 p.m. and 11 p.m. on the day following the originally scheduled date. The safety zone for the fireworks will encompass all waters of Lake Huron within a 600-foot radius from the fireworks launch site in East Moran Bay, with its center in position: 45°52′16.92″ N. 084°43′18.48″ W.: [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

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 will restrict access to the area, the effect of the rule will not be significant because: vessels will be restricted from the zone for a minimal time and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

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 and operators of vessels intending to transit or anchor in a portion of East Moran Bay, Lake Huron, St. Ignace, MI between 9 p.m. and 11 p.m. on June 26, July 10, July 17, July 24, July 31, August 7, August 14, August 21, August 28, and September 4, 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 two hours on 10 different evenings from June 26, 2010 through September 5, 2010. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule establishes a safety 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0452 to read as follows:

§ 165.T09–0452 Safety Zone; Festivals & Fireworks Celebration, East Moran Bay, Lake Huron, St. Ignace, MI.

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Huron within a 600-foot radius from the fireworks launch site in East Moran Bay, with its center in position: 45°52′16.92″ N., 084°43′18.48″ W.: [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 9 p.m. on June 26, 2010 until 11 p.m. on September 5, 2010.

(1) This rule will be enforced on the following date and times:

(i) June 26, 2010 from 9 p.m. through 11 p.m., with an alternate date & time for inclement weather of June 27, 2010 from 9 p.m. through 11 p.m.

(ii) July 10, 2010 from 9 p.m. through 11 p.m. with an alternate date & time for inclement weather of July 11, 2010 from 9 p.m. through 11 p.m.

(iii) July 17, 2010 from 9 p.m. through 11 p.m. with an alternate date & time for inclement weather of July 18, 2010 from 9 p.m. through 11 p.m.

(iv) July 24, 2010 from 9 p.m. through 11 p.m. with an alternate date & time for inclement weather of July 25, 2010 from 9 p.m. through 11 p.m.

(v) July 31, 2010 from 9 p.m. through 11 p.m. with an alternate date & time for inclement weather of August 1, 2010 from 9 p.m. through 11 p.m.

(vi) August 7, 2010 from 9 p.m. through 11 p.m. with an alternate date & time for inclement weather of August 8, 2010 from 9 p.m. through 11 p.m.

(vii) August 14, 2010 from 9 p.m. through 11 p.m. with an alternate date & time for inclement weather of August 15, 2010 from 9 p.m. through 11 p.m.

(viii) August 21, 2010 from 9 p.m. through 11 p.m. with an alternate date & time for inclement weather of August 22, 2010 from 9 p.m. through 11 p.m.

(ix) August 28, 2010 from 9 p.m. through 11 p.m. with an alternate date & time for inclement weather of August 29, 2010 from 9 p.m. through 11 p.m.

(x) September 4, 2010 from 9 p.m. through 11 p.m. with an alternate date & time for inclement weather of September 5, 2010 from 9 p.m. through 11 p.m.

(2) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of any safety zone established under this section.

(3) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of a safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16.

Dated: June 4, 2010.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2010–14587 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0444]

Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor for annual fireworks events during nine separate periods between 8:45 p.m. on July 4, 2010 to 10 p.m. on July 31, 2010. This action is necessary and intended to ensure public safety during fireworks events. This rule will establish restrictions upon, and control movement of, vessels within the safety zone immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The safety zone will be enforced during nine separate periods between 8:45 p.m. on July 4, 2010 to 10 p.m. on July 31, 2010.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL, listed under 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks;* on July 4, 2010 from 8:45 p.m. through 9:30 p.m.

(2) *Navy Pier Fireworks;* on July 7, 2010 from 9:15 p.m. through 9:45 p.m.

(3) *Navy Pier Fireworks;* on July 10, 2010 from 10 p.m. through 10:30 p.m.

(4) *Navy Pier Fireworks;* on July 14, 2010 from 9:15 p.m. through 9:45 p.m.

(5) *Navy Pier Fireworks;* on June 17, 2010 from 10 p.m. through 10:30 p.m.

(6) *Navy Pier Fireworks;* on July 21, 2010 from 9:15 p.m. through 9:45 p.m.

(7) *Navy Pier Fireworks;* on July 24, 2010 from 10 p.m. through 10:30 p.m.

(8) *Navy Pier Fireworks;* on July 28, 2010 from 9:15 p.m. through 9:45 p.m.

(9) *Navy Pier Fireworks;* on July 31, 2010 from 10 p.m. through 10:30 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This document is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago IL and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative may be contacted via VHF–FM Channel 16.

Dated: June 2, 2010.

L. Barndt,

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

[FR Doc. 2010–14588 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0091]

RIN 1625–AA00

Safety Zone, Alligator River, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Alligator River at East Lake, North Carolina. The safety zone is intended to temporarily restrict vessel traffic movement in the zone area and is necessary to provide for the safety of mariners on navigable waters during maintenance on the U.S. Highway 64 Swing Bridge.

DATES: This rule is effective from 7 p.m. July 1, 2010 through 7 a.m. September 30, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0091 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0091 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 CWO4 Stephen Lyons, Waterways Management Division Chief, Coast Guard Sector North Carolina; telephone (252) 247–4525, e-mail *Stephen.W.Lyons2@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) because the publishing of an NPRM would be impracticable and contrary to public interest since immediate action is needed to ensure the public's safety during construction activity. Delaying the implementation of the safety zone would subject the public to the hazards associated with maintenance operations on the US Highway 64 Swing Bridge. The danger posed by marine traffic on the Alligator River makes safety zone regulations necessary to provide for the safety of construction support vessels and other vessels transiting the construction area. For the safety concerns noted, it is in the public interest to have these regulations in effect during construction. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of

navigational restrictions. On-scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

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**. Delaying the effective date would be contrary to public interest, since immediate action is needed to ensure the safety of human life and property from the hazards associated with the operation of heavy equipment in the waterway during bridge maintenance operations.

Basis and Purpose

The State of North Carolina Department of Transportation awarded a contract to Coastal Gunite Construction Company of Cambridge, MD to perform bridge maintenance on the U.S. Highway 64 Swing Bridge crossing the Alligator River, North Carolina at Atlantic Intracoastal Waterway Mile 84.2. The contract provides for cleaning, painting, and steel repair to begin on July 1, 2010 and will be completed by September 30, 2010. The contractor will require the swing bridge to remain in the closed position during painting. The Coast Guard will temporarily restrict access to this section of Alligator River during the painting of the swing when maintenance equipment will be obstructing the waterway.

Discussion of Rule

The temporary safety zone will encompass a 100 yard radius on the waters of the Alligator River centered at (35°54′3″ N/076°00′25″ W) a position directly under the U.S. Highway 64 Swing Bridge. All vessels are prohibited from transiting this section of the waterway while the safety zone is in effect. This zone will be in effect from 7 p.m. to 7 a.m. daily from July 1, 2010 through September 30, 2010. A daily opening will be provided at 1 a.m. if a two hour advanced notice is provided to the contractor by contacting the bridge at telephone number (252) 796–7261 or VHF Marine Band Radio channel 13. Entry into the zone at any other time during the closure period will not be permitted except as specifically authorized by the Captain of the Port or a designated representative. To seek permission to transit the area, mariners can contact Sector North Carolina at telephone number (252) 247–4570.

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 will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will only be in effect from 7 p.m. to 7 a.m. daily, (ii) a daily opening will be provided at 1 a.m. if a two hour advanced notice is provided to the contractor by contacting the bridge at telephone number (252) 796–7261 or VHF Marine Band Radio channel 13 (iii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iv) although the safety zone will apply to the section of the Alligator River directly under the U.S. Highway 64 Swing Bridge, vessel traffic can use alternate waterways to transit safely around the safety zone.

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 commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Alligator River from 7 p.m. to 7 a.m. from July 1, 2010 through September 30, 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 only be enforced daily from 7 p.m. to 7 a.m. and a daily opening will be provided at 1 a.m. if a two hour advanced notice is provided to the contractor by contacting the bridge at telephone number (252) 796–7261 or VHF Marine Band Radio channel 13. Although the safety zone will apply to this section of the Alligator River, vessel traffic can use alternate waterways to transit safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 temporary safety zone to protect the public from bridge maintenance operations. 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 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T05–0091 to read as follows:

§ 165.T05–0091 Safety Zone; Alligator River, NC.

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: The temporary safety zone will encompass a 100 yard radius on the waters of the Alligator River centered at (35°54′3″ N/076°00′25″ W) a position directly under the U.S. Highway 64 Swing Bridge.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at (252) 247–4570 or by VHF Marine Band Radio channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This zone will be in effect from 7 p.m. to 7 a.m. daily from July 1, 2010 through September 30, 2010. A daily opening will be provided at 1 a.m. if a two hour advanced notice is provided to the contractor by contacting the bridge at telephone number (252) 796–7261 or VHF Marine Band Radio channel 13.

Dated: May 21, 2010.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2010–14628 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0294]

RIN 1625–AA00

Safety Zone; Shore Thing & Independence Day Fireworks, Chesapeake Bay, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chesapeake Bay in the vicinity of Ocean View Beach Park, Norfolk, VA in support of the Shore Thing & Independence Day Fireworks event. This action is intended to restrict vessel traffic movement on the Chesapeake Bay

to protect mariners from the hazards associated with fireworks displays.

DATES: This rule is effective on from 9 p.m. on July 4, 2010, until 10 p.m. July 5, 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–2010–0294 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0294 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 proposed rule, call or e-mail LT Tiffany Duffy, Chief Waterways Management Division, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 11, 2010 we published a notice of proposed rulemaking (NPRM) entitled Shore Thing & Independence Day Fireworks, Chesapeake Bay, Norfolk, VA in the **Federal Register** (75 FR 26155). We received no comments on the proposed rule. No public meeting was requested, and none was 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.** Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

On July 4, 2010 Norfolk Festevents Ltd. will sponsor a fireworks display on the Chesapeake Bay at position 36°57′17″ N./076°15′00″ W. (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Chesapeake Bay within 210 feet of the fireworks display will be temporarily restricted.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register.**

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 access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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. The zone will only be in place for a limited duration and maritime advisories will be issued allowing the mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Chesapeake Bay from 9 p.m. to 10 p.m. on July 4, 2010 or July 5, 2010.

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 establishing a safety zone around a fireworks display and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0294 to read as follows:

§ 165.T05–0294 Safety Zone; Shore Thing & Independence Day Fireworks, Chesapeake Bay, Norfolk, VA.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Chesapeake Bay located within a 210 foot radius of the fireworks display at approximate position 36°57′17″ N/ 076°15′00″ W (NAD 1983) in the vicinity of Ocean View Beach Park, Norfolk, VA.

(b) *Definition.* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period.* This regulation will be enforced on July 4, 2010, from 9 p.m. until 10 p.m., with a rain date of July 5, 2010 from 9 p.m. until 10 p.m.

Dated: June 3, 2010.

M.S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 2010–14634 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0249]

RIN 1625–AA00

Safety Zones; City of Chicago's July 4th Celebration Fireworks, Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones on Lake Michigan near Chicago, Illinois. These zones are intended to restrict vessels from a portion of Lake Michigan due to multiple firework displays. These temporary safety zones are necessary to protect the surrounding public and their vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 8:45 p.m. to 9:15 p.m. on July 4, 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–2010–0249 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0249 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 temporary rule, contact or e-mail Petty Officer Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at (414) 747–7154 or *Adam.D.Kraft@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 April 28, 2010, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; City of Chicago's July 4th Celebration Fireworks, Chicago, Illinois in the **Federal Register** (75 FR 22330). We received 0 comments on the proposed rule. No public meeting was requested and none was 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.** Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this operation and immediate action is necessary to prevent possible loss of life or property from the dangers that are associated with firework displays.

Basis and Purpose

These temporary safety zones are necessary to protect vessels from the hazards associated with the City of Chicago's July 4th Celebration Fireworks. The Captain of the Port, Sector Lake Michigan, has determined that the City of Chicago's July 4th Celebration Fireworks presents a significant risk to public safety and property. The likely combination of congested waterways and a fireworks display presents a significant risk of serious injuries or fatalities.

Discussion of Comments and Changes

No comments were received concerning this rule. No substantive changes have been made to this rule as proposed.

Discussion of Rule

There will be two separate temporary safety zones for this event. The first zone will encompass all waters of Lake Michigan within Chicago Harbor bounded by a line drawn from 41°53′24″ N., 087°35′26″ W.; then south to 41°53′09″ N., 087°35′26″ W.; then east to 41°53′09″ N., 087°36′09″ W.; then north to 41°53′24″ N., 087°36′09″ W.; then west returning to the point of origin. The second zone encompasses all waters of Lake Michigan within the arc of a circle with a 1000-foot radius from a fireworks launch site located on a barge in position 41°58′17″ N., 087°38′25″ W. (NAD 83)

All persons and vessels shall comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

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 determination is based on the minimal time that vessels will be restricted from the zones and the zones are located in an area where the Coast Guard expects insignificant 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 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 might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan, Chicago, Illinois between 8:45 p.m. and 9:15 p.m. on July 4, 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 only be enforced while unsafe conditions exist. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

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. No comments were received concerning this rule. No substantive changes have been made to this rule as proposed.

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. No comments were received concerning this rule. No substantive changes have been made to this rule as proposed.

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. No comments were received concerning this rule. No substantive changes have been made to this rule as proposed.

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. No comments were received concerning this rule. No substantive changes have been made to this rule as proposed.

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. No comments were received concerning this rule. No substantive changes have been made to this rule as proposed.

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. No comments were received concerning this rule. No substantive changes have been made to this rule as proposed.

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. No comments were received concerning this rule. No substantive changes have been made to this rule as proposed.

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 a safety zone therefore paragraph (34)(g) of the Instruction applies.

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 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, 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.T09–0249 to read as follows:

§ 165.T09–0249 Safety Zone; City of Chicago's July 4th Celebration Fireworks, Lake Michigan, Chicago, Illinois.

(a) *Location.* The following two areas are temporary safety zones: (1) All U.S. waters of Lake Michigan within Chicago Harbor bound by a line drawn from 41°53′24″ N., 087°35′26″ W.; then south to 41°53′09″ N., 087°35′26″ W.; then east to 41°53′09″ N., 087°36′09″ W.; then north to 41°53′24″ N., 087°36′09″ W.; then west returning to the point of origin. (2) All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from a fireworks launch site located on a barge in position 41°58′17″ N., 087°38′25″ W. (NAD 83).

(b) *Effective period.* This regulation is effective from 8:45 p.m. until 9:15 p.m. on July 4, 2010. It will be enforced between 8:45 p.m. and 9:15 p.m. on July 4, 2010. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may terminate this operation at anytime.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. (2) This safety zone is closed to all vessel traffic except

as permitted by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. (3) The "on-scene representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. (4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16. 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, Sector Lake Michigan, or his or her on-scene representative.

Dated: June 3, 2010.

L. Barndt,

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

[FR Doc. 2010–14632 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0454]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks Event, Pagan River, Smithfield, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 420-foot radius safety zone on the navigable waters of the Pagan River in Smithfield, VA in support of the Fourth of July Fireworks event. This action is intended to restrict vessel traffic movement to protect mariners and spectators from the hazards associated with aerial fireworks displays.

DATES: This rule is effective from 9:30 p.m. to 10 p.m. on July 3, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0454 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0454 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 LT Tiffany Duffy, Waterways Management Division, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@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 any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters. Additionally, this temporary safety zone will be enforced for approximately one half-hour on Saturday, July 3, 2010 while the fireworks display is in progress. This safety zone should have a minimal impact on transiting vessels because mariners are not precluded from using any portion of the waterway except the area within the safety zone.

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 during the fireworks event, therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

On July 3, 2010, the Isle of Wight County, VA will sponsor a fireworks display on the navigable waters of the Pagan River shoreline centered on position 36°59′18″ N/076°37′45″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within 420 feet of the fireworks launch site.

Discussion of Rule

The Coast Guard is establishing a safety zone on the navigable waters of the Pagan River within the area bounded by a 420-foot radius circle centered on position 36°59′18″ N/ 076°37′45″ W (NAD 1983). This safety zone will be established in the vicinity of Smithfield, VA from 9:30 P.M. to 10 p.m.. on July 3, 2010. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

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 access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 specified portion of the Pagan River from 9:30 p.m. to 10 p.m. on July 3, 2010. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will be enforced for only one half-hour on July 3, 2010; (2) Vessel traffic will be able to navigate safely around the zone without significant impact to their transit plans; and (3) Before the effective period begins, we will issue maritime advisories.

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 establishing a safety zone around a fireworks display and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0454 to read as follows:

§ 165.T05–0454 Safety Zone: Fourth of July Fireworks Event, Pagan River, Smithfield, VA.

(a) *Regulated Area.* The following area is a safety zone: Specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of Clontz Park in Smithfield, VA and within 420 feet of position 36°59′18″ N/076°37′45″ W (NAD 1983).

(b) *Definition:* For the purposes of this part, Captain of the Port Representative: means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 638–6641.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This regulation will be in effect from 9:30 p.m. to 10 p.m. on July 3, 2010.

Dated: June 2, 2010.

M.S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2010–14626 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0369]

RIN 1625–AA00

Safety Zone; Stockton Ports Baseball Club/City of Stockton, 4th of July Fireworks Display, Stockton, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Weber Point off Stockton, CA in support of a July 4th fireworks display. This safety zone is 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 9:15 p.m. through 10 p.m. on July 4, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0369 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0369 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Ensign Allison A. Natcher, U.S. Coast Guard Sector San Francisco, at 415–399–7440 or e-mail *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 for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard finds that it would be impracticable to publish an NPRM with respect to this rule because the event would occur before the rulemaking process could be completed. Because of the 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. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Background and Purpose

Stockton Ports Baseball Club and the City of Stockton will sponsor the Stockton Ports Baseball Club/City of Stockton 4th of July Fireworks Display on July 4, 2010, on the navigable waters of Weber Point, off of Stockton, CA. The fireworks display is meant for entertainment purposes. The purpose of the safety zone is to establish a temporary restricted area on the waters surrounding the fireworks launch site during loading of the pyrotechnics, 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. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The fireworks launch site will be located in position 37°57′14.71″ N., 121°17′40.17″ W. (NAD 83). From 9:15 p.m. to 9:30 p.m., and from 9:45 p.m. to 10:00 p.m., the temporary safety zone applies to the navigable waters around the fireworks launch site within a radius of 100 feet. From 9:30 p.m. until 9:45 p.m., the safety zone will increase in size to encompass the navigable waters around the fireworks launch site within a radius of 1,000 feet.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site while the fireworks are set up, 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. This is due to the small area and short duration of the safety zone, the ability of ships to transit around the safety zone, and because 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 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 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, 3703; 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.T11–324 to read as follows:

§ 165.T11–324 Safety Zone; Stockton Ports Baseball Club/City of Stockton 4th of July Fireworks Display, Stockton, CA.

(a) *Location.* This temporary safety zone is established for the waters of Weber Point off of Stockton, CA. The fireworks launch site will be located in position 37°57′14.71″ N., 121°17′40.17″ W. (NAD 83).

From 9:15 p.m. to 9:30 p.m., and from 9:45 p.m. to 10 p.m., the temporary safety zone applies to the navigable waters around the fireworks launch site within a radius of 100 feet. From 9:30 p.m. until 9:45 p.m. on July 4, 2010, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site 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 9:15 p.m. through 10 p.m. on July 4, 2010.

Dated: June 8, 2010.

P.M. Gugg,

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

[FR Doc. 2010–14589 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0366]

RIN 1625–AA00

Safety Zone; City of Pittsburg Independence Day Celebration, Pittsburg, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Suisun Bay off Pittsburg, CA in support of a July 4th fireworks display. This safety zone is 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 8 p.m. through 10 p.m. on July 4, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0366 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0366 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Ensign Allison A. Natcher, U.S. Coast Guard Sector San Francisco, at (415) 399–7440 or e-mail *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 for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard finds that it would be impracticable to publish an NPRM with respect to this rule because the event would occur before the rulemaking process could be completed. Because of the 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. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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.** Publishing a NPRM and delaying its effective date would be impracticable because immediate action is needed to protect vessels and mariners from the safety hazards associated with a barged based fireworks display.

Background and Purpose

Pittsburg Power Company will sponsor the City of Pittsburg Independence Day Celebration on July 4, 2010, on the navigable waters of Suisun Bay, off of Pittsburg, CA. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks launch site during loading of the pyrotechnics, 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. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The Coast Guard is establishing a safety zone around the fireworks launch site, which will be located in position 38°02′32.09″ N, 121°53′19.07″ W (NAD 83). From 8 p.m. until 9:30 p.m., and from 9:50 p.m. until 10 p.m., the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet. From 9:30 p.m. until 9:50 p.m., the safety zone will increase in size to encompass the navigable waters around the fireworks launch site within a radius of 1,000 feet.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site while the fireworks are set up, 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. This is due to the small area and short duration of the safety zone, the ability of ships to transit around the safety zone, and because 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 affected portion of the areas off Pittsburg, 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under 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, 3307; 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.T11–325 to read as follows:

§ 165.T11–325 Safety Zone; City of Pittsburg Independence Day Celebration, Pittsburg, CA.

(a) *Location.* This temporary safety zone is established for the waters of Suisun Bay off of Pittsburg, CA. The fireworks launch site will be located in position 38°02′32.09″ N, 121°53′19.07″ W (NAD 83).

From 8 p.m. until 9:30 p.m., and from 9:50 p.m. until 10 p.m., the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet. From 9:30 p.m. until 9:50 p.m. on July 4, 2010, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site 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 8 p.m. through 10 p.m. on July 4, 2010.

Dated: June 7, 2010.

P.M. Gugg,

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

[FR Doc. 2010–14585 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0497]

RIN 1625–AA00

Safety Zone; Mackinac Island 4th of July Fireworks, Lake Huron, Mackinac Island, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Huron, Mackinac Island, Michigan. This zone is intended to restrict vessels from a portion of Lake Huron during the Mackinac Island 4th of July Fireworks display on July 4, 2010. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. on July 4, 2010, until 11 p.m. on July 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0497 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0497 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 BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone 906–635–3222, e-mail *Gregory.C.Ford@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 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objective since immediate action is needed to protect person's and vessels against the hazards associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous detonations, dangerous projectiles and falling or burning debris. Additionally, the zone should have negligible impact on vessel transits due to the fact that vessels will be limited from the area for only two hours and vessels can still transit in the majority of the area during the event. Accordingly, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

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.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sault Sainte Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water presents a significant risk of serious injuries or fatalities. 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 Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, and launching of fireworks in conjunction with the Mackinac Island 4th of July fireworks display. The fireworks display will occur between 9:45 p.m. and 11 p.m. on July 4, 2010. If the July 4th fireworks are cancelled due to inclement weather, the fireworks display will occur between 9:45 p.m. and 11 p.m. on July 5, 2010.

The safety zone will be enforced from 9 p.m. to 11 p.m. on July 4, 2010. If inclement weather postpones the event, the zone will be enforced from 9 p.m. to 11 p.m. on July 5, 2010.

The safety zone for the fireworks will encompass all waters of Lake Huron within a 500-foot radius of the fireworks launch site, centered approximately 460 yards south of Biddle Point, at position 45°50′32.82″ N, 084°37′03.18″ W: [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

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 will restrict access to the area, the effect of the rule will not be significant because of the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

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 and operators of vessels intending to transit or anchor in a portion of Lake Huron, Mackinac Island, Michigan between 9 p.m. and 11 p.m. on July 4, 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 two hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule establishes a temporary safety 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, and 160.5;

Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0497 to read as follows:

§ 165.T04–0497 Safety Zone; Mackinac Island 4th of July Fireworks, Lake Huron, Mackinac Island, MI.

(a) *Location.* The following area is a temporary safety zone: all waters of Lake Huron within a 500-foot radius from the fireworks launch site, centered approximately 460 yards south of Biddle Point, at position 45°50′32.82″ N, 084°37′03.18″ W: [DATUM: NAD 83].

(b) *Enforcement Period.* This regulation will be enforced on July 4, 2010, from 9 p.m. until 11 p.m., with a rain date of July 5, 2010, from 9 p.m. until 11 p.m.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of the safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16.

Dated: June 2, 2010.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2010–14586 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Mississippi County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1045			
Mississippi River	Approximately at River Mile 755	+238	City of Luxora, Unincorporated Areas of Mississippi County.
	Approximately at River Mile 818	+268	

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

ADDRESSES

City of Luxora
Maps are available for inspection at 204 North Main Street, Luxora, AR 72358.

Unincorporated Areas of Mississippi County
Maps are available for inspection at 200 West Walnut Street, Blytheville, AR 72315.

Yolo County, California, and Incorporated Areas Docket No.: FEMA–B–1035			
Ponding Area	Area northwest of intersection of Interstate 505/County Road 90 and Russell Boulevard/Grant Avenue.	#2	Unincorporated Areas of Yolo County.
	Area north of Moody Slough Road, west of County Road 89, and east of County Road 88.	#2	
	Area north of an unnamed road, west of County Road 89, and east of County Road 88.	#2	
Zone AE Area	Area north of King Road, south of Mills Road, and east of County Road 104.	+23	Unincorporated Areas of Yolo County.

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

ADDRESSES

Unincorporated Areas of Yolo County
Maps are available for inspection at the Yolo County Planning and Public Works Department, 292 West Beamer Street, Woodland, CA 95695.

Fairfield County, Connecticut (All Jurisdictions) Docket No.: FEMA–B–1040			
East Swamp Brook Farmill River.	Entire reach within City of Danbury	+293	City of Danbury, Town of Stratford.
	Approximately 175 feet downstream of State Route 110	+14	
	Approximately 2,400 feet downstream of Beard Saw Mill Road.	+70	
Five Mile River	At the upstream side of Old Rock Lane	+139	City of Norwalk.
	Approximately 750 feet upstream of Old Rock Lane	+139	
Horse Tavern Brook	At the upstream side of Park Avenue	+132	City of Bridgeport, Town of Trumbull.
	Approximately 670 feet upstream of Park Avenue	+132	
	Approximately 470 feet upstream of Old Town Road	+238	
	Approximately 1,070 feet upstream of Old Town Road	+239	
	Approximately 1,580 feet upstream of Old Town Road	+239	
	Approximately 1,820 feet upstream of Old Town Road	+240	
Housatonic River	Approximately 2,775 feet upstream of Merritt Parkway	+14	Town of Newtown, Town of Stratford.
	Approximately 3,650 feet upstream of Merritt Parkway	+14	
	At the confluence with the Halfway River	+108	
	Approximately 15,800 feet upstream of the confluence with the Halfway River.	+108	
Laurel Brook	Approximately 320 feet upstream of the confluence with Rippowam River (Upper Reach).	+245	City of Stamford.
	Approximately 40 feet upstream of Laurel Road	+274	
Mianus River	At the upstream side of Valley Road	+73	Town of Greenwich.
	Approximately 270 feet upstream of Valley Road	+73	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Noroton River	Approximately 1,860 feet downstream of State Route 15 ..	+117	City of Stamford, Town of Darien.
	Approximately 1,040 feet downstream of State Route 15 ..	+117	
Norwalk River	Entire reach within Town of Weston	+302	Town of Ridgefield, Town of Weston.
	Approximately 2,740 feet upstream of U.S. Route 7	+367	
	Approximately 3,500 feet upstream of U.S. Route 7	+373	
Rippowam River (Upper Reach)	Approximately 290 feet downstream of Cascade Road	+228	Town of New Canaan.
	Approximately 3,360 feet upstream of Cascade Road	+243	
Rooster River	At the upstream side of the railroad	+14	Town of Fairfield.
	At the downstream side of Brooklawn Avenue	+19	
Terehaute Brook	Approximately 1,720 feet downstream of Reservoir Street	+367	City of Danbury.
	At the upstream side of Reservoir Street	+373	
Tributary O at Intervale Road	Entire reach within Town of Stratford	+140	Town of Stratford.

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

ADDRESSES

City of Bridgeport
Maps are available for inspection at the Engineering Department, 45 Lyon Terrace, Room 216, Bridgeport, CT 06604.

City of Danbury
Maps are available for inspection at City Hall, Engineering Department, 155 Deer Hill Avenue, Danbury, CT 06810.

City of Norwalk
Maps are available for inspection at City Hall, Planning and Zoning Department, 125 East Avenue, Room 223, Norwalk, CT 06856.

City of Stamford
Maps are available for inspection at the Environmental Protection Board, 888 Washington Boulevard, 7th Floor, Stamford, CT 06904.

Town of Darien
Maps are available for inspection at the Town Hall, 2 Renshaw Road, Darien, CT 06820.

Town of Fairfield
Maps are available for inspection at the Fairfield Engineering Department, Sullivan Independence Hall, 725 Old Post Road, Fairfield, CT 06824.

Town of Greenwich
Maps are available for inspection at the Town Hall, Planning and Zoning Department, 101 Field Point Road, Greenwich, CT 06830.

Town of New Canaan
Maps are available for inspection at the Town Hall, Office of the Town Clerk, 77 Main Street, New Canaan, CT 06840.

Town of Newtown
Maps are available for inspection at the Town Offices, Land Use Agency, 31 Pecks Lane, Newtown, CT 06470.

Town of Ridgefield
Maps are available for inspection at the Town Hall Annex, Planning and Zoning Department, 66 Prospect Street, Ridgefield, CT 06877.

Town of Stratford
Maps are available for inspection at the Town Hall, Planning and Zoning Department, 2725 Main Street, Stratford, CT 06615.

Town of Trumbull
Maps are available for inspection at the Town Hall, Engineering Department, 5866 Main Street, Trumbull, CT 06611.

Town of Weston
Maps are available for inspection at the Town Hall, Office of the Town Clerk, 56 Norfield Road, Weston, CT 06883.

Cobb County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1049

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Chattahoochee River	Just upstream of the Morgan Falls Dam	+854	Unincorporated Areas of Cobb County.
	Approximately 1,000 feet downstream of the confluence with Willeo Creek.	+862	

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

ADDRESSES

Unincorporated Areas of Cobb County
Maps are available for inspection at 100 Cherokee Street, Marietta, GA 30090.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Forsyth County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1049			
Chattahoochee River	Just upstream of McGinnis Ferry Road	+908	Unincorporated Areas of Forsyth County.
	Just downstream of the Buford Dam	+921	
Dick Creek	At the confluence with the Chattahoochee River (backwater effects).	+909	Unincorporated Areas of Forsyth County.
James Creek	At the confluence with the Chattahoochee River (backwater effects).	+916	Unincorporated Areas of Forsyth County.

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

ADDRESSES

Unincorporated Areas of Forsyth County

Maps are available for inspection at 110 East Main Street, Cumming, GA 30040.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Fulton County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1049			
Autry Mill Creek	At the confluence with the Chattahoochee River (backwater effects).	*889	City of Johns Creek.
Chattahoochee River	Just upstream of the Morgan Falls Dam	*854	City of Johns Creek, City of Roswell, City of Sandy Springs, Unincorporated Areas of Fulton County.
	Just downstream of McGinnis Ferry Road	*907	
Johns Creek	At the confluence with the Chattahoochee River (backwater effects).	*890	City of Johns Creek.

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

ADDRESSES

City of Johns Creek

Maps are available for inspection at 1200 Findley Road, Suite 400, Johns Creek, GA 30097.

City of Roswell

Maps are available for inspection at 38 Hill Street, Roswell, GA 30075.

City of Sandy Springs

Maps are available for inspection at 7840 Roswell Road, Sandy Springs, GA 30350.

Unincorporated Areas of Fulton County

Maps are available for inspection at 141 Pryor Street, Suite 10044, Atlanta, GA 30303.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Gwinnett County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1049			
Brushy Creek	At the confluence with the Chattahoochee River	+906	Unincorporated Areas of Gwinnett County.
Chattahoochee River	Just above Holcomb Bridge Road	+884	City of Berkeley Lake, City of Duluth, City of Sugar Hill, City of Suwanee, Unincorporated Areas of Gwinnett County.
	Approximately 4,000 feet downstream from the Buford Dam.	+920	
Level Creek	At the confluence with the Chattahoochee River (backwater effects).	+911	Unincorporated Areas of Gwinnett County.
Mill Creek (Stream 6)	At the confluence with the Chattahoochee River (backwater effects).	+895	City of Berkeley Lake, Unincorporated Areas of Gwinnett County.
Richland Creek	At the confluence with the Chattahoochee River (backwater effects).	+917	Unincorporated Areas of Gwinnett County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Rogers Creek	At the confluence with the Chattahoochee River (backwater effects).	+899	City of Duluth, Unincorporated Areas of Gwinnett County.
Stream 1	At the confluence with the Chattahoochee River (backwater effects).	+886	Unincorporated Areas of Gwinnett County.
Stream 2	At the confluence with the Chattahoochee River (backwater effects).	+887	Unincorporated Areas of Gwinnett County.
Stream 3	At the confluence with the Chattahoochee River (backwater effects).	+889	Unincorporated Areas of Gwinnett County.
Stream 4	At the confluence with the Chattahoochee River (backwater effects).	+891	Unincorporated Areas of Gwinnett County.
Stream 5	At the confluence with the Chattahoochee River (backwater effects).	+894	Unincorporated Areas of Gwinnett County.
Stream 8	At the confluence with the Chattahoochee River (backwater effects).	+897	City of Duluth, Unincorporated Areas of Gwinnett County.
Stream 10	At the confluence with the Chattahoochee River (backwater effects).	+903	Unincorporated Areas of Gwinnett County.
Suwanee Creek	At the confluence with the Chattahoochee River (backwater effects).	+905	Unincorporated Areas of Gwinnett County.
Swilling Creek	At the confluence with the Chattahoochee River (backwater effects).	+896	City of Duluth, Unincorporated Areas of Gwinnett County.

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

ADDRESSES

City of Berkeley Lake
Maps are available for inspection at 4040 South Berkeley Road Northwest, Berkeley Lake, GA 30096.

City of Duluth
Maps are available for inspection at 3167 Main Street, 2nd floor, Duluth, GA 30096.

City of Sugar Hill
Maps are available for inspection at 4988 West Broad Street, Sugar Hill, GA 30518.

City of Suwanee
Maps are available for inspection at 373 Highway 23, Suwanee, GA 30024.

Unincorporated Areas of Gwinnett County
Maps are available for inspection at 75 Langley Drive, Lawrenceville, GA 30045.

Henderson County, Illinois, and Incorporated Areas
Docket No.: FEMA–B–1056

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Mississippi River	Just downstream of Main Street extended in Lomax, Illinois (approximately 395 miles upstream of the confluence with the Ohio River).	+531	Unincorporated Areas of Henderson County, Village of Gulfport, Village of Lomax.
	Approximately 400 feet upstream of 1100 N extended (approximately 403 miles upstream of the confluence with the Ohio River).	+534	

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

ADDRESSES

Unincorporated Areas of Henderson County
Maps are available for inspection at the Henderson County Courthouse, 307 Warren Street, Oquawka, IL 61469.

Village of Gulfport
Maps are available for inspection at the Henderson County Courthouse, 307 Warren Street, Oquawka, IL 61469.

Village of Lomax
Maps are available for inspection at the Village Hall, 861 Atchison Avenue, Lomax, IL 61454.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Pike County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–1047			
Tangipahoa River	Approximately 0.68 mile downstream of State Highway 575.	+233	Town of Osyka.
	Approximately 1,100 feet downstream of State Highway 575.	+236	

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

ADDRESSES

Town of Osyka
Maps are available for inspection at 215 West Liberty Street, Osyka, MS 39648.

Gage County, Nebraska, and Incorporated Areas Docket No.: FEMA–B–1024			
Big Blue River	Approximately 900 feet upstream of State Highway 8	+1,195	Unincorporated Areas of Gage County.
	Approximately 0.5 mile upstream of State Highway 8	+1,196	
Big Blue River Tributary 44	Upstream of South 25th Street	+1,259	City of Beatrice.
	Downstream of Scott Street	+1,273	
Big Blue River backwater on Bills Creek.	Approximately 1,200 feet downstream of South A Street	+1,217	City of Wymore.
	Approximately 600 feet downstream of South A Street	+1,217	

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

ADDRESSES

City of Beatrice
Maps are available for inspection at City Hall, 400 Ella Street, Beatrice, NE 68310.

City of Wymore
Maps are available for inspection at the City Office, 115 West East Street, Wymore, NE 68466.

Unincorporated Areas of Gage County
Maps are available for inspection at the County Highway Department, 823 South 8th Street, Beatrice, NE 68310.

Madison County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1040			
Little Darby Creek	Approximately 30,610 feet upstream of the confluence with Darby Creek.	+881	Village of West Jefferson.
	Approximately 38,850 feet upstream of the confluence with Darby Creek.	+894	

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

ADDRESSES

Village of West Jefferson
Maps are available for inspection at 28 East Main Street, West Jefferson, OH 43612.

Trumbull County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1035			
Duck Creek	At the mouth of the Mahoning River	+891	City of Warren.
	Approximately 600 feet downstream of Risher Street	+891	
Mahoning River	Approximately 8,500 feet upstream of I–80	+855	Village of McDonald.
	Approximately 17,600 feet upstream of I–80	+858	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Village of McDonald
Maps are available for inspection at 451 Ohio Avenue, McDonald, OH 44437.

City of Warren
Maps are available for inspection at 540 Laird Avenue Southeast, Warren, OH 44484.

Nelson County, Virginia, and Incorporated Areas
Docket No.: FEMA–B–1040

Davis Creek	Approximately 983 feet upstream of the confluence with the Rockfish River.	+538	Unincorporated Areas of Nelson County.
	Approximately 150 feet downstream of Perry Lane	+862	
East Branch Hat Creek	Approximately 215 feet upstream of the confluence with Hat Creek.	+674	Unincorporated Areas of Nelson County.
	At the intersection of Shaeffers Hollow Lane	+802	
Hat Creek	Approximately 730 feet upstream of the confluence with the Tye River.	+648	Unincorporated Areas of Nelson County.
	Approximately 610 feet downstream of East Branch Loop	+790	
Muddy Creek	Approximately 544 feet upstream of the confluence with Davis Creek.	+550	Unincorporated Areas of Nelson County.
	Approximately 160 feet downstream of Anderson Lane	+689	
Rockfish River	Approximately 400 feet downstream of the confluence with Ivy Creek.	+399	Unincorporated Areas of Nelson County.
	Approximately 2,200 feet downstream of Laurel Road	+458	
	Approximately 1,186 feet downstream of Rock Spring Road.	+477	
	Approximately 477 feet downstream of the confluence with South Fork Rockfish River.	+588	
Tye River	At Tye Brook Highway	+604	Unincorporated Areas of Nelson County.
	Approximately 2,300 feet downstream of the confluence with Hat Creek.	+641	
	Approximately 1,200 feet upstream of the confluence with Unnamed Tributary No. 6 to Tye River.	+734	
	Approximately 1,941 feet downstream of Carter Hill Road	+821	
	Approximately 2,100 feet upstream of State Route 682	+892	
	At the confluence with North Fork Tye River	+1,141	

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

ADDRESSES

Unincorporated Areas of Nelson County
Maps are available for inspection at 80 Front Street, Lovingston, VA 22949.

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

Sandra K. Knight,

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

[FR Doc. 2010–14636 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 75, No. 116
Thursday, June 17, 2010

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Contribution Elections and Contribution Allocations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to amend its regulations at 5 CFR part 1600. These changes implement the Agency's automatic enrollment program as authorized by the Thrift Savings Plan Enhancement Act of 2009.

DATES: Comments must be received on or before July 19, 2010.

ADDRESSES: You may submit comments using one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Thomas Emswiler, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change. We will post all substantive comments (including any personal information provided) without change (with the exception of redaction of SSNs, profanities, *et cetera*) on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Megan G. Grumbine at 202–942–1644 or Laurissa Stokes at 202–942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

On June 22, 2009, the President signed the Thrift Savings Plan Enhancement Act of 2009 ("the Act"), Public Law 111–31 (123 Stat. 1776, 1853). The Act authorized the Agency to add an automatic enrollment program for all Federal employees eligible for the Thrift Savings Plan. Members of the uniformed services were excluded from the automatic enrollment program. This proposed rule would conform the Agency's regulations to the Act and would set forth the details of the program.

Under the Agency's automatic enrollment program, all newly hired Federal employees who are eligible to participate in the TSP and those Federal employees who are rehired after a separation in service of 31 or more calendar days and who are eligible to participate in the TSP will automatically have 3 percent of their basic pay contributed to the TSP, unless they decline to contribute or decide to contribute at some other level by the end of the employee's first pay period (subject to the agency's processing standards). Otherwise, payroll offices will automatically deduct 3 percent of their basic pay and submit it to the TSP. Employees covered by the Federal Employees' Retirement System (and equivalent retirement systems) will also receive dollar for dollar matching contributions from their employing agencies as well as the Agency Automatic (1%) Contributions. Employees always have the option to change the percentage or amount of their contributions or terminate their contributions to the TSP.

The Government Securities Investment (G) Fund will remain the default investment fund for new employees. The G Fund will also be the default investment fund for rehired participants with a zero account balance as is currently the case. Therefore, unless an employee makes a contribution allocation and/or interfund transfer, all employee and agency contributions will be invested in the G Fund. (The contribution allocation on file will be used if the rehired employee has retained his or her TSP account.)

A participant may request a refund of his or her contributions made under the automatic enrollment program (and associated earnings) as long as the request for the refund is received within 90 days after the date the first contribution under the automatic enrollment program is processed. These refunds are permissible withdrawals as defined by 26 U.S.C. 414(w)(2). A married participant may request a refund under the automatic enrollment program without the Agency providing notice or obtaining the consent of his or her spouse. 5 U.S.C. 8351, 8435; 26 CFR 1.414(w)–1(d)(3).

A participant will no longer be considered to be participating in the automatic enrollment program if the participant files a contribution election. Consequently, if a participant makes a contribution election during the 90-day period, the participant will only be eligible to withdraw those contributions attributable to the automatic enrollment program.

A participant who requests a refund will receive the amount of any employee contributions made under the automatic enrollment program (adjusted for allocable gains and losses through the date of distribution). The Agency will report the amount of a refund as a non-periodic payment on Form 1099–R for the year in which it was distributed, but the amount will not be subject to the 10-percent early withdrawal penalty tax. 26 CFR 1.414(w)–1(d)(1). The Agency will process and distribute a refund request in accordance with the Agency's ordinary procedures for processing and distributing withdrawals. The participant's Agency Automatic (1%) Contributions will remain in his or her account. However, the matching contributions associated with the employee contributions made while the participant was automatically enrolled and their associated earnings will be forfeited to the TSP. 26 CFR 1.414(w)–1(d)(2), 72 FR 63144, 63148.

After the expiration of the 90-day period, the participant will only be able

to make a withdrawal under the Agency's normal withdrawal program.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986, Public Law 99–335, 100 Stat. 514, and administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on State, local, and Tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and Tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

List of Subjects in 5 CFR Part 1600

Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the Agency proposes to amend 5 CFR part 1600 as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS AND CONTRIBUTION ALLOCATIONS

1. The authority citation for part 1600 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432(a), 8432(b)(1)(A), 8432(j), 8474(b)(5) and (c)(1).

2. Revise the heading to part 1600 to read as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS, CONTRIBUTION ALLOCATIONS, AND AUTOMATIC ENROLLMENT PROGRAM

3. Add subpart E to read as follows:

Subpart E—Automatic Enrollment Program

Authority: Sec. 102, Pub. L. 111–31, div. B. tit. I, 123 Stat. 1776, 1853 (5 U.S.C. 8432(b)(2)(A)).

§ 1600.34 Automatic enrollment program.

(a) All newly hired Federal employees who are eligible to participate in the Thrift Savings Plan and those Federal employees who are rehired after a separation in service of 31 or more calendar days and who are eligible to participate in the TSP will automatically have 3 percent of their basic pay contributed to the TSP (default employee contribution) unless they elect to not contribute or elect to contribute at some other level by the end of the employee's first pay period (subject to the agency's processing timeframes).

(b) After being automatically enrolled, a participant may elect to terminate default employee contributions or change his or her contribution percentage or amount at any time.

§ 1600.35 Refunds of default employee contributions.

(a) A participant may request a refund of any default employee contributions made on his or her behalf (i.e., the contributions made while under the automatic enrollment program) provided the request is received within 90 days after the date that the first default employee contribution was processed. The election must be made on the TSP's refund request form and must be received by the TSP's record keeper prior to the expiration of the 90-day period.

(1) The distribution of a refund will be reported as income to the participant on IRS Form 1099–R, but it will not be subject to the additional tax under 26 U.S.C. 72(t) (the early withdrawal penalty tax).

(2) A participant who requests a refund will receive the amount of any default employee contributions (adjusted for allocable gains and losses).

(3) Processing of refunds will be subject to the rules set out at 5 CFR part 1650.

(b) A participant will no longer be considered to be covered by the automatic enrollment program if the participant files a contribution election. Consequently, if a participant makes a contribution election during the 90-day period, the participant will only be eligible to receive as a refund an amount equal to his or her default employee contributions (adjusted for allocable gains and losses).

(c) After the expiration of the period allowed for the refund, any withdrawal must be made pursuant to 5 U.S.C. 8433 and 5 CFR part 1650.

(d) A married participant may request a refund of default employee contributions without obtaining the consent of his or her spouse or having the TSP notify the spouse of the request.

(e) The rules applicable to frozen accounts (5 CFR 1650.3) and applicable to deceased participants (5 CFR 1650.6) also apply to refunds of the default employee contributions.

§ 1600.36 Matching contributions.

(a) A participant is not entitled to keep the matching contributions and their associated earnings that are attributable to refunded default employee contributions.

(b) The matching contributions and associated earnings attributable to refunded default employee contributions shall be forfeited to the TSP and used to offset administrative expenses.

§ 1600.37 Employing agency notice.

Employing agencies shall furnish all new employees and all rehired employees covered by the automatic enrollment program a notice that accurately describes:

(a) That default employee contributions equal to 3 percent of the employee's basic pay will be deducted from his or her pay and contributed to the TSP on the employee's behalf if the employee does not make an affirmative election;

(b) The employee's right to elect to not have default employee contributions made to the TSP on his or her behalf or to elect to have a different percentage or amount of basic pay contributed to the TSP;

(c) That the default employee contributions will be invested in the G Fund unless the employee makes a contribution allocation and/or an interfund transfer; and

(d) The employee's ability to request a refund of any default employee contributions (adjusted for allocable gains and losses) and the procedures to request such a refund.

[FR Doc. 2010–14583 Filed 6–16–10; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22690; Directorate Identifier 2005–NE–35–AD

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems Five-Blade Propeller Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain McCauley Propeller Systems propeller assemblies. That AD currently requires removing certain propeller hubs from service at new, reduced life limits and eddy current inspections (ECIs) of the propeller hub. This proposed AD would require removing certain propeller hubs from service before they exceed 6,000 hours time-since-new (TSN). This proposed AD results from a report of a crack in a propeller hub. We are proposing this AD to prevent cracked propeller hubs, which could cause failure of the propeller hub, blade separation, and loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by August 16, 2010.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *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.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209, *telephone:* (316) 946–4148; *fax:* (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–22690; Directorate Identifier 2005–NE–35–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

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.

Discussion

The FAA proposes to amend 14 CFR part 39 by superseding AD 2005–24–08, Amendment 39–14388. (70 FR 71756, November 30, 2005). That AD requires:

- Removing any propeller hub from service that is currently, or ever was, operated on an engine with a water-methanol assist system, not later than 6,000 hours time-in-service (TIS).
- Removing any other propeller hub from service not later than 18,000 hours TIS.
- Removing any propeller hub from service that exceeds its life limit on the effective date of this AD, within 50 hours TIS after the effective date of this AD.
- That any propeller hub removed from service after exceeding its life limit must not be returned to service on any installation.
- For all installed propeller hubs, performing an ECI within 200 hours TIS or 60 days after the effective date of this AD, whichever occurs first.
- Thereafter, for all installed propeller hubs with 12,000 or more hours TIS, performing repetitive ECIs within 1,800 hours TIS or 12 months, whichever occurs first.

That AD was the result of three reports of cracked propeller hubs. That condition, if not corrected, could result in failure of the propeller hub, blade separation, and loss of control of the airplane.

Actions Since AD 2005–24–08 Was Issued

Since that AD was issued, we received a report of a cracked propeller hub. The cracked hub was found during the propeller inspection or overhaul processes on a propeller assembly removed from a Jetstream 41 airplane. The cracked hub has 7,807 hours TSN. The life limit of the hub is 18,000 hours TSN. The crack was found on the rear of the hub, on the propeller mounting flange. The crack originated from the bottom of a large (0.63-inch) dowel hole. To date, we have received no other field reports of cracked hubs or occurrences of propeller hub failure and separation attributed to this particular unsafe condition.

Relevant Service Information

We reviewed and approved the technical contents of McCauley Alert Service Bulletin (ASB) No. ASB250A, dated February 12, 2010. This ASB introduces new lower life limits for the propeller hubs identified in this AD.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require:

- Removing from service the hub of any propeller assembly, P/N B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, or C5JFR36C1104/L114HCA–0, if the hub exceeds 6,000 hours TSN on the effective date of this AD, within 250 hours TIS after the effective date of this AD.

• Removing from service the hub of any propeller assembly, P/N B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, or C5JFR36C1104/L114HCA–0, if the hub has fewer than 6,000 hours TSN, not later than 6,000 hours TSN.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 30 propeller assemblies installed on airplanes of U.S. registry. We also estimate that it would take about 42 work-hours per propeller assembly to perform the proposed actions, and that the average labor rate is $85 per work-hour. Required parts would cost about $6,000 per propeller assembly. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $287,100.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14388. (70 FR 71756, November 30, 2005) and by adding a new airworthiness directive to read as follows:

McCauley Propeller Systems: Docket No. FAA–2005–22690; Directorate Identifier 2005–NE–35–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 16, 2010.

Affected ADs

(b) This AD supersedes AD 2005–24–08, Amendment 39–14388.

Applicability

(c) This AD applies to McCauley Propeller Systems propeller assemblies, part numbers (P/Ns) B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0. These propeller assemblies are installed on BAE Systems (Operations) Limited Jetstream Model 4100 series airplanes.

Unsafe Condition

(d) This AD results from a report of a cracked propeller hub. We are issuing this AD to prevent cracked propeller hubs, which could cause failure of the propeller hub, blade separation, and loss of control of the airplane.

Compliance

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

Propeller Hub Reduced Life Limits

(f) For any propeller assembly, P/N B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, or C5JFR36C1104/L114HCA–0, with a hub that exceeds 6,000 hours time-since-new (TSN) on the effective date of this AD, remove the propeller hub from service within 250 hours time-in-service after the effective date of this AD.

(g) For any propeller assembly, P/N B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, or C5JFR36C1104/L114HCA–0, with a hub with fewer than 6,000 hours TSN, remove the propeller hub from service not later than 6,000 hours TSN.

Prohibition of Hubs Exceeding Life Limit

(h) After the effective date of this AD, don't install any hub removed from any propeller assembly that was removed by paragraphs (f) or (g) of this AD into any propeller assembly.

Alternative Methods of Compliance

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

Related Information

(j) Contact Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209, *telephone:* (316) 946–4148; fax: (316) 946–4107, for more information about this AD.

Issued in Burlington, Massachusetts, on June 14, 2010.

Peter A. White,

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

[FR Doc. 2010–14706 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0407; Airspace Docket No. 10–AGL–7]

Proposed Amendment of Class E Airspace; Williston, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Williston, ND. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Sloulin Field International Airport, Williston, ND. The FAA is taking this action to enhance the safety and management of

Instrument Flight Rules (IFR) operations at the airport. Adjustments to the geographic coordinates of the airport also would be made.

DATES: 0901 UTC. Comments must be received on or before August 2, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0407/Airspace Docket No. 10–AGL–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd, Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0407/Airspace Docket No. 10–AGL–7." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR) part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Sloulin Field International Airport, Williston, ND. Adjustments to the geographic coordinates would be made in accordance with the FAA's National Aeronautical Charting Office. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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 that 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 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is 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 would add additional controlled airspace at Sloulin Field International Airport, Williston, ND.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 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 FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

AGL ND E5 Williston, ND [Amended]

Sloulin Field International Airport, ND
(Lat. 48°10′41″ N., long. 103°38′32″ W.)
Williston VORTAC
(Lat. 48°15′12″ N., long. 103°45′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Sloulin Field International Airport, and within 4 miles each side of the Williston VORTAC 317° radial extending from the 6.6-mile radius to 12.7 miles northwest of the airport, and within 4 miles each side of the 304° bearing from the airport extending from the 6.6-mile radius to 12.1 miles northwest of the airport, and within 4 miles each side

of the 124° bearing from the airport extending from the 6.6-mile radius to 13.4 miles southeast of the airport, and within 3.8 miles each side of the Williston VORTAC 135° radial extending from the 6.6-mile radius to 12.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within a 21.8-mile radius of the Williston VORTAC extending from the Williston VORTAC 172° radial clockwise to V–430, and within 39.2 miles of the Williston VORTAC extending from V–430 clockwise to V–71, and within a 60-mile radius of the Williston VORTAC extending from V–71 clockwise to the Williston VORTAC 172° radial, excluding those portions within Federal airways.

Issued in Fort Worth, TX on June 9, 2010.

Richard J. Kervin,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–14697 Filed 6–16–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0354; Airspace Docket No. 10–AAL–10]

Proposed Establishment of Class E Airspace; Port Clarence, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Port Clarence Coast Guard Station (CGS), AK. The United States Coast Guard operates into this airstrip and has developed a military-use instrument approach procedure. This instrument approach development at the Port Clarence CGS Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before August 2, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0354/ Airspace Docket No. 10–AAL–10 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0354/Airspace Docket No. 10–AAL–10." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition, in person in the Federal Docket Management System Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Alaska Flight Services Information Area Group. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Port Clarence, AK, to accommodate a new instrument approach procedure at the Port Clarence CGS Airport. This Class E airspace would provide adequate controlled airspace upward from 700 feet and 1,200 feet above the surface for the safety and management of IFR operations at Port Clarence CGS Airport. The 1,200-foot controlled airspace would extend into the Norton Sound Low Offshore Airspace Area and that airspace will be redefined in a future Offshore Airspace action.

The Class E airspace areas designated as 700/1,200-foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that 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 United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish controlled airspace at Port Clarence, Alaska, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS 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 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 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Port Clarence, AK [New]

Port Clarence CGS Airport, AK
(Lat. 65°15′13″ N., long. 166°51′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Port Clarence CGS Airport, AK, and within 1.5 miles either side of the 180° bearing from the Port Clarence CGS Airport, extending from the 6.4-mile radius to 13.2 miles south of the Port Clarence CGS Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Port Clarence CGS Airport, AK, excluding that portion extending outside the Anchorage Arctic CTA/FIR (PAZA) boundary.

Issued in Anchorage, AK, on May 28, 2010.

Michael A. Tarr,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–14693 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

RIN 1510–AB26

Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: Federal law requires that, unless waived by the Secretary of the Treasury (Secretary), all Federal payments, other than payments made under the Internal Revenue Code of 1986, must be made electronically, that is, by electronic funds transfer (EFT). Direct deposit is the primary method that the Federal Government uses to make EFT payments. The Department of the Treasury (Treasury), Financial Management Service (FMS), is proposing to amend its regulation that describes the responsibilities of Federal agencies and recipients with respect to the electronic delivery of Federal payments and establishes the circumstances under which waivers from the EFT requirement are available.

The proposed rule would generally require individuals to receive Federal nontax payments by EFT, effective March 1, 2011, except that there would be a delayed effective date to March 1, 2013, for two categories of individuals, namely: Individuals receiving Federal payments by check on March 1, 2011, and individuals whose claims for Federal benefits are filed before March 1, 2011, and who request check payments when they file.

For Federal benefit recipients, this means that individuals whose claims for Federal benefits are filed on or after March 1, 2011, would receive their benefit payments by direct deposit. Individuals receiving their payments by direct deposit prior to March 1, 2011, would continue to do so. Individuals who do not choose direct deposit of their payments to an account at a financial institution would be enrolled in the Direct Express® Debit MasterCard® card program, a prepaid card program established pursuant to terms and conditions approved by FMS. Beginning on March 1, 2013, all recipients of Federal benefit and other non-tax payments would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

DATES: Comments on the proposed rule must be received by August 16, 2010.

ADDRESSES: You can download this proposed rule at the following Web site: *http://www.fms.treas.gov/eft.* You may also inspect and copy this proposed rule at: Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

In accordance with the U.S. Government's eRulemaking Initiative, FMS publishes rulemaking information on www.regulations.gov. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL–FMS–2009–0003, should only be submitted using the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions on the Web site for submitting comments. FMS recommends using this method to submit comments since mail can be subject to delays caused by security screening.
- *Mail:* Walt Henderson, Director, EFT Strategy Division, Financial Management Service, 401 14th Street, SW., Room 303, Washington, DC 20227. Please note that mail may be delayed due to security screening.

The fax and e-mail methods of submitting comments on rules to FMS have been discontinued.

Instructions: All submissions received must include the agency name

("Financial Management Service") and docket number FISCAL–FMS–2009–0003 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Director, EFT Strategy Division; Natalie H. Diana, Senior Counsel; or Ronda Kent, Senior Counsel, at *eft.comments@fms.treas.gov* or (202) 874–6619.

SUPPLEMENTARY INFORMATION:

I. Background

Statutory Authority and Existing Regulation

Section 3332, title 31 United States Code, as amended by subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (Section 3332), generally requires that all nontax Federal payments be made by electronic funds transfer (EFT), unless waived by the Secretary. The Secretary must ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution "at a reasonable cost" and with "the same consumer protections with respect to the account as other account holders at the same financial institution." *See* 31 U.S.C. 3332(f), (i)(2).

Part 208 of title 31, Code of Federal Regulations (Part 208), implements the requirements of 31 U.S.C. 3332. Part 208 currently sets forth requirements for accounts to which Federal payments may be sent by EFT. "Federal payment" means any payment made by an agency, including, but not limited to, Federal wage, salary, and retirement payments; vendor and expense reimbursement payments; benefit payments; and miscellaneous payments. *See* 31 CFR 208.2(g). Federal payments include payments made to representative payees and other authorized payment agents. *See* 31 CFR 210.5(b)(1). For Part 208 purposes, "agency" means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States. *See* 31 CFR 208.2(a).

Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account (ETA) at a financial institution that offers such accounts, and establishes the responsibilities of Federal agencies and recipients under the regulation. Part 208 also sets forth a number of waivers to the general requirement that Federal payments be delivered by EFT. *See* 31 CFR 208.4. Among the waivers included in the existing regulation are waivers for situations in which an individual determines that payment by EFT would impose a hardship due to a physical or mental disability or a geographic, language or literacy barrier, or would impose a financial hardship. *See* 31 CFR 208.4(a). Treasury proposes to eliminate the waivers contained in section 208.4(a) because of the availability of the Direct Express® [1] card and for other reasons described below. Treasury seeks comments about examples of exceptional circumstances where specific types of individual EFT waivers could be needed, even with the availability of the Direct Express® card for Federal benefit recipients.

The Secretary's waiver authority would remain unchanged, and Federal agencies would continue to have the flexibility to waive payment by direct deposit or other EFT method in the circumstances described in paragraphs (b) through (g) of § 208.4, namely, for certain payments to payees in a foreign country where the infrastructure does not support EFT, for certain disaster or military situations, for situations in which there may be a security threat or for valid law enforcement reasons, for non-recurring payments, and for unusual situations that require urgent payment and the Government would be seriously injured unless payment is made by a method other than EFT.

Treasury Efforts To Increase Direct Deposit

Direct deposit is the primary method that the Federal Government uses to make EFT payments. In fiscal year 2009, Treasury disbursed more than 80% of its payments electronically. The remaining payments were made by paper check, costing taxpayers millions of dollars more than if those payments had been made electronically and causing avoidable payment-related problems for many check recipients. Because the majority of the Government's check payments are delivered to Federal benefit recipients, primarily Social Security beneficiaries, and in light of the many benefits of direct deposit for recipients of recurring payments, Treasury has focused particular attention on encouraging current Federal benefit check recipients to switch to direct deposit. Treasury's Go Direct® campaign, sponsored with the Federal Reserve Banks, highlights the advantages to a Federal benefit recipient who opens an account at a financial institution and elects to receive his or her benefits via direct deposit to the account. As part of the campaign, Treasury established a Go Direct® campaign toll-free call center and Web site to facilitate enrollments via telephone at (800) 333–1795 (English) or (800) 333–1792 (Spanish), online at *www.GoDirect.gov,* or through an individual's financial institution. The Go Direct® campaign collaborates with more than 1,800 community-based organizations and financial institutions around the country that assist in delivering messages about the benefits of direct deposit, especially to those with bank or credit union accounts. Treasury estimates that more than 4.3 million direct deposit enrollments have been achieved since 2005 as a result of the campaign's activities. However, even though Treasury is successfully converting millions of check recipients to direct deposit as a result of the Go Direct® campaign, more than 11 million Federal benefit recipients still receive checks each month.

According to Treasury research conducted in 2007 (SSA & SSI Check Recipient Survey, OMB Control No. 1510–0074), 28% of Social Security check recipients and 59% of Supplemental Security Income (SSI) check recipients did not have bank accounts. Based on November 2007 Treasury check payment data, this indicated there were approximately 2.1 million Social Security recipients and 1.8 million SSI recipients who did not have bank accounts at that time. Treasury recognized that one of the barriers to increased use of direct deposit was that the estimated 4 million Social Security and SSI benefit recipients lacked an account at a bank or credit union, despite the greater availability of low-cost and no-cost accounts for individuals who receive direct deposit payments. Therefore, in 2008, Treasury implemented a program in which Social Security and SSI benefit recipients can elect to receive their payments to a Direct Express® Debit MasterCard® card account. The Direct Express® card is a prepaid MasterCard®

[1] Direct Express® is a registered service mark of the Financial Management Service, U.S. Department of the Treasury. As explained below, the Direct Express® Debit MasterCard® card is issued by Comerica Bank, pursuant to a license by MasterCard International Incorporated. MasterCard® and the MasterCard® Brand Mark are registered trademarks of MasterCard International Incorporated.

debit card issued by Comerica Bank, which Treasury designated as its financial agent for this purpose.

Treasury also recognized that another barrier to the use of direct deposit was the concern that direct deposit may expose the recipient to the risk that his or her benefit payments might be improperly garnished for debts owed to creditors. As a result, Treasury designed the Direct Express® card program to ensure that individuals who receive their benefit payments via the card are not at risk for improper garnishment of the benefits.

In addition, Treasury has collaborated with the Federal benefit agencies to propose new regulations (75 FR 20299, Apr. 19, 2010) to address the improper garnishment of Federal benefit payments when they are directly deposited to an account. Treasury expects the garnishment regulations to be finalized prior to the implementation dates in this proposed rule. Moreover, Treasury is committed to the continued protection from garnishment of exempt benefits as offered by the Direct Express® card program, and will continue to take steps necessary to ensure that benefit recipients are afforded the protections required by law.

For non-benefit payments, Treasury continues to expand the use of electronic payments and direct deposit by developing processes and programs designed to facilitate electronic disbursements and receipts of all payment types. For example, Treasury's International Treasury Services program (ITS.gov) provides international payment services to Federal agencies in nearly 200 countries, and the Automated Standard Application for Payments (ASAP.gov) allows grantee organizations receiving Federal funds to directly deposit pre-authorized funds to their accounts.

II. Proposed Change to Regulation

Summary of Proposal

For the reasons discussed below, we are seeking to increase the use of direct deposit by individuals receiving Federal benefit and other payments. The proposed rule would generally require [2] individuals to receive Federal nontax payments by EFT, effective March 1, 2011.

Individuals receiving Federal payments by check on March 1, 2011, however, could continue to do so through February 28, 2013. In addition, individuals who file claims for Federal benefits before March 1, 2011, and who request check payments when they file, would be permitted to receive payments by check through February 28, 2013. Individuals who file claims for benefits on or after March 1, 2011, would receive their payments by direct deposit. Individuals receiving their payments by direct deposit prior to March 1, 2011, would continue to do so.

Individuals may choose to receive their payments by direct deposit to their account at a financial institution and provide their bank account information for this purpose. Individuals who do not choose direct deposit of their payments to an account at a financial institution would be enrolled in the Direct Express® card program, a prepaid debit card program established pursuant to terms and conditions approved by FMS. The Direct Express® card would be made available to any recipient of Federal benefit payments, including individuals who have an account at a financial institution but prefer to receive their payments via the Direct Express® card. Beginning on March 1, 2013, all recipients of Federal benefit and other payments, including those then receiving their payments by check, would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

Accordingly, Federal nontax payment recipients would not be able to receive payments by check as of the dates listed above. We are proposing these changes primarily for three reasons: (1) For payment recipients, electronic payments are safer, easier and more convenient than paper checks; (2) the increased availability of electronic banking products, such as prepaid debit cards, including the Direct Express® card issued by Treasury's financial agent under terms and conditions approved by Treasury, makes it possible for Federal benefit recipients to receive and access their payments electronically at no or little cost and with the same or better consumer protections than those available with more traditional banking products; and (3) the Government's cost of delivering payments by check is substantially higher than delivering payments by direct deposit, and check delivery costs will continue to grow as the nation's baby boomers retire over the next two decades. Treasury seeks comments on all aspects of the proposed rule, including examples of exceptional circumstances where specific types of individual EFT waivers could be needed, the costs to recipients for using their benefit payments received by paper check as compared to those received by EFT, and alternative phase-in approaches.

Advantages of Direct Deposit for Individuals

The predominant method for delivering Federal payments by EFT is direct deposit through the Automated Clearing House (ACH) network to an account at a financial institution designated by the recipient. The ACH network is a nationwide EFT system through which financial institutions exchange and settle electronic debit and credit transactions. The Federal government is the largest single user of the ACH system, originating tens of millions of direct deposit transactions each month.

Electronic payments provide individuals with several advantages as compared to receiving payments by check. Direct deposit and other electronic payments are credited to recipients' accounts on the day payment is due, so the funds generally are available sooner than with check payments. Individuals receiving Federal payments electronically rarely have any delays or problems with their payments. In contrast, based on payment claims filed with Treasury, nine out of ten problems with Treasury-disbursed payments are related to paper checks even though checks constitute only 19 percent of all Treasury-disbursed payments made by the Government.

Consumers recognize the benefits of direct deposit. In response to a 2009 survey sponsored by Treasury and the Federal Reserve Banks (Baby Boomer Survey, OMB Control No. 1510–0074), 96 percent of those who use direct deposit reported positive experiences, with 86 percent reporting "very positive" experiences. As more people have become accustomed to electronic banking, and as the industry has continued to improve and expand its electronic services to the customer, more people now report positive experiences with direct deposit. Almost 90 percent of those surveyed in 2009 agreed that direct deposit is the safest way to receive payments, and 93 percent recognized the convenience of direct deposit (Baby Boomer Survey, OMB Control No. 1510–0074). Although the survey population was not limited to Federal check recipients, the study nevertheless illustrates how positively the direct deposit experience is viewed. Treasury expects Federal check recipients to similarly view the direct deposit experience as a positive one.

In contrast to the direct deposit experience, each year approximately half a million individuals call Treasury to request claims packages related to

[2] Agencies would continue to be permitted to waive payment by EFT in certain circumstances as authorized by the Secretary in § 208.4(b)–(g) of this part.

problems with check payments. For example, in fiscal year 2009, more than 670,000 Social Security and SSI checks were reported lost or stolen. Each year, Treasury investigates more than 70,000 cases of altered or fraudulently endorsed checks, totaling $64 million in estimated value. When checks are misrouted, lost in the mail, stolen, or fraudulently signed, Treasury must send replacement checks to the recipient. This can result in a delay in payment of weeks or months if fraud or counterfeiting is involved, thereby creating a hardship for benefit recipients who rely on these payments for basic necessities such as food, rent, or medication. Individuals who move or travel for extended periods of time may also experience delays in receiving their checks if they do not provide timely forwarding address information.

Receiving payments by check rather than direct deposit also can increase the risk of identity theft. Although Treasury checks contain minimal information about a recipient, people intent on committing fraud nevertheless can use a stolen Treasury check, along with other stolen or fake identification documents, to open an account in the recipient's name or otherwise impersonate a check payee. A Treasury check that has been endorsed, but not cashed, offers further opportunities for identity theft.

The benefits of direct deposit and, in contrast, the everyday problems associated with check payments are particularly apparent in disaster and emergency situations. As Hurricanes Katrina and Rita dramatically illustrated in 2005, in the extraordinary circumstances of a disaster or emergency, the delivery of checks may be delayed or disrupted at the very time when people urgently need funds in order to pay for food, clothing and shelter. Moreover, even where Treasury checks can be delivered without undue delay to disaster victims, individuals who have been displaced from their homes may be unable to establish their identities due to lost or inaccessible documentation. As a result, financial institutions may be unwilling to cash Treasury checks for these individuals, because they cannot determine the identity of the individual or whether a Treasury check that an individual is seeking to cash has been stolen and fraudulently endorsed. Finally, check payments may raise security concerns in disaster situations, since individuals who cash checks may be carrying significant amounts of cash in order to make purchases.

Additional potential benefits associated with the proposed rulemaking are described in the Regulatory Impact Assessment, below.

Evolution of Banking Products and Services

Since the adoption of Part 208 in 1998, banking services have dramatically expanded and evolved. There are more low-cost and no-cost accounts for benefit recipients offered by financial institutions and other financial service providers than were available during the 1990s when Part 208 was promulgated. Reloadable prepaid debit cards, which were a small specialty product in the 1990s, are now widely available and can be used at a vast number of merchant locations across the country, not only to purchase goods and services but also to obtain cash through cashback transactions at point-of-sale (POS) locations.

A growing number of State agencies have moved aggressively away from check payments or paper-based vouchers to branded prepaid cards as an electronic payment option. For example, since 2004, all States have been delivering Supplemental Nutrition Assistance Program (SNAP) benefits, formerly known as food stamps, using an electronic benefits transfer system similar to a prepaid card system. More than 40 States are now using prepaid card programs (or planning to use them) to deliver various types of payments to the public, including State assistance payments, child support payments to custodial parents, workers compensation and unemployment insurance benefits. While some States are allowing individuals to choose between cards and checks, some States have made the cards mandatory.

Globally, electronic payments and the use of prepaid cards continue to expand. The volume of prepaid debit card and mobile phone transactions has been growing worldwide. Central banks and other governments are seeking ways to increase electronic payments and reduce paper-based financial transactions. One dramatic example is the proposal by the United Kingdom Payments Council to eliminate all check transactions throughout the United Kingdom by October 31, 2018.

The Direct Express® Card

In June 2008, Treasury introduced the Direct Express® Debit MasterCard® card, a low cost debit card developed exclusively for Federal benefit recipients (initially, for Social Security and SSI payment recipients). As of April 4, 2010, more than one million of the more than 10 million eligible Social Security and SSI check recipients had signed up for the voluntary card program.

There are no monthly fees and most services are free, so it is possible for an individual to use the Direct Express® card for free. There are no fees for cardholders to sign up for or activate the card; receive deposits; make purchases at retail locations, online or by telephone; get cash at retail locations and financial institutions; or check the card's balance at an ATM, by telephone or online. Transaction history and other account information are available at no cost online or by telephone, but if desired, a cardholder may receive a monthly paper statement for a minimal fee. There are no fees for declined transactions and, in rare instances when overdrafts occur, there are no overdraft fees.

Cardholders can choose to receive free automated text, email or telephone "low balance" alerts or "deposit notifications" when money is deposited to their card account. Cardholders may close their Direct Express® card account at any time without a fee. There are no inactivity fees and there is no charge for bank teller cash withdrawals at MasterCard® member banks. The free services and minimal fees are fully disclosed on the Direct Express® Web site (*http://www.USDirectExpress.com*), in materials available to interested applicants, and in materials that are sent to new cardholders along with the card. Fee and features information are also available by calling the Direct Express® toll-free call center.

Cardholders may make purchases anywhere Debit MasterCard® is accepted, including millions of retail locations worldwide, online, or by telephone. Similarly, cardholders may make cash withdrawals and check their account balances at ATMs. A cardholder is allowed one free ATM cash withdrawal for every Federal payment the cardholder receives, valid until the end of the month following the month of receipt. For subsequent ATM cash withdrawals, a cardholder pays a fee to the card issuer of $.90 per ATM withdrawal in the United States. ATM owners often charge ATM users additional fees, known as "surcharge fees;" however, a Direct Express® cardholder may make cash withdrawals at more than 53,000 Direct Express® card surcharge-free network ATMs without paying any surcharge fees. Treasury seeks comments from the public about whether there are sufficient numbers of ATMs in remote and rural areas, and whether the ability to get cash back at POS and make cash withdrawals at MasterCard® member banks reduces the need for ATM access.

Direct Express® cardholders are protected by Regulation E (12 CFR part 205), which generally provides certain protections to a cardholder whose card is lost or stolen, subject to reporting requirements. In fact, Direct Express® cardholders have 90 days to report unauthorized transactions rather than the typical 60 days offered by most financial institutions. Card balances are covered by deposit insurance by the Federal Deposit Insurance Corporation (FDIC) to the extent allowed by law and, as discussed above, Direct Express® cardholders are not at risk for an improper garnishment or the related freezing of funds on the card. More information about the Direct Express® card, including a list of all fees and the terms and conditions of card use, can be found at *http://www.USDirectExpress.com.*

Currently, benefit recipients may sign up for the Direct Express® card in a variety of ways. They may call the Direct Express® toll-free call center or visit the Direct Express® Web site. In addition, a Social Security or SSI recipient may sign up for the card at the recipient's local Social Security Administration office or by calling the Social Security Administration's toll-free national 800 number services. In May 2010, Treasury's Go Direct® call center began accepting calls from Veterans who receive compensation and pension benefit payments and wish to sign up for the Direct Express® card. Treasury is exploring additional cost-effective, secure, and easy ways to enroll beneficiaries in the Direct Express® card program, and will work with Federal agencies to minimize any administrative burden to them as additional benefit payments are accepted into the program.

To date, the Direct Express® card has been made available only to recipients of Social Security and SSI payments. In May 2010, Treasury began offering the Direct Express® card to Veterans compensation and pension check recipients as part of Treasury's plans to expand the program to accommodate other benefit recipients. Under the proposed rule, any benefit recipient would be eligible to receive a Direct Express® card.

Statutory Requirement for Account Access

Section 3332(f) requires all Federal nontax payments to be made by EFT, except as waived by the Secretary for certain limited circumstances. *See* 31 U.S.C. 3332(f) and (j)(3). In fulfilling this statutory mandate, the Secretary must ensure that recipients of Federal payments required to be made by EFT have access to an account at a financial institution at a reasonable cost, and that recipients be given the same consumer protections with respect to the account as other account holders at the same financial institution. *See* 31 U.S.C. 3332(i)(2).

When Treasury originally published a final rule in 1998 implementing Section 3332, Treasury simultaneously developed the Electronic Transfer Account (ETA) account, which was designed to meet these requirements. Although the ETA continues to meet the needs of some benefit recipients, it is not available on a nationwide basis and does not include some of the more useful features that have become available with prepaid debit cards in recent years. By offering the Direct Express® card, Treasury meets the requirements of Section 3332(i) to ensure that payment recipients have access to an account at a reasonable cost and with the same consumer protections as other account holders at the financial institution that issues the card.

According to research conducted in March 2009 (Direct Express—Cardholder Satisfaction and Usage Survey, OMB Control No. 1510–0074), 95 percent of Direct Express® cardholders are satisfied with the card. Eight in ten satisfied cardholders cite convenience, safety or immediate access to money as reasons for their satisfaction. Eighty-six percent of those surveyed said they would recommend the card to a friend or family member who receives Federal benefits.

The Direct Express® card not only meets the statutory "reasonable cost" and "same consumer protection" requirements of Section 3332, it exceeds those requirements. As discussed above, the Direct Express® card carries no monthly fee and can be used at no cost in many cases. In the above-referenced survey of Direct Express® cardholders, three out of four of the cardholders indicated that fees associated with the card are equal to or less than what they paid before. The Direct Express® card offers more extensive consumer protections than those generally afforded to account holders at financial institutions, including other account holders at Comerica Bank, which issues the card. Direct Express® cards are covered by FDIC insurance and the Federal Reserve's Regulation E (12 CFR part 205), as well as MasterCard's "zero liability" policy. In addition, cardholders are not at risk for overdraft fees or improper garnishments or the related freezing of funds. Finally, cardholders have 90 days to report unauthorized transactions, which exceeds the 60 days required under Federal law and provided as the accepted industry standard by most financial institutions.

Cost Savings of Direct Deposit

Despite the general requirement that Federal payments be made electronically, Treasury continues to print and mail many millions of checks each year, at a substantially higher cost to the Government than if those payments were delivered by EFT. The potential cost savings as a result of the proposed rulemaking to the Government and taxpayers are significant, and are described in detail in the Regulatory Impact Assessment, below.

Technical Revision

We are proposing to remove the current § 208.6, which describes deposit account requirements for Federal payment recipients. These provisions are contained in 31 CFR 210.5, and do not need to be duplicated in this part 208. Section 208.6 will be replaced with a new section 208.6 making the Direct Express® card available to Federal payment recipients.

III. Section-by-Section Analysis

Proposed new § 208.2(c) would add a definition of the "Direct Express® card" as meaning the debit prepaid card issued to recipients of Federal benefits by Treasury's financial agent pursuant to requirements established by Treasury. The Direct Express® card features are explained above and on the Direct Express® card Web site at *http://www.USDirectExpress.com.*

Proposed redesignated § 208.2(e), formerly § 208.2(d), would clarify that the definition of "electronic benefits transfer" includes disbursement through a Direct Express® card account. As has been the case, "electronic benefits transfer" (EBT) continues to include, but is not limited to, disbursement through an ETA℠ and a Federal/State EBT program.

Proposed § 208.4 is revised to eliminate the ability of an individual to claim a waiver from receiving payments electronically based on the individual's determination, in his or her sole discretion, that payment by direct deposit would impose a hardship or because the individual does not have an account with a financial institution. Benefit recipients who are receiving their payments from an agency by check before March 1, 2011, would be allowed to continue to receive those payments from that agency by check through February 28, 2013. In addition, individuals who have filed claims for Federal benefits before March 1, 2011, and who requested check payments

when they filed, would be permitted to receive payments by check through February 28, 2013. Individuals who file claims for Federal benefit payments on or after March 1, 2011, would receive their payments by direct deposit. Individuals receiving their benefit payments by direct deposit on or before March 1, 2011, would continue to do so. Beginning on March 1, 2013, all benefit recipients would receive their payments by direct deposit—either to an account at a financial institution or to a Direct Express® card account.

The Secretary's waiver authority would remain unchanged, and Federal agencies would continue to have the flexibility to waive payment by direct deposit or other EFT method in the circumstances described in paragraphs (b) through (g) of § 208.4, namely, for certain payments to payees in a foreign country where the infrastructure does not support EFT, for certain disaster or military situations, for situations in which there may be a security threat or for valid law enforcement reasons, for non-recurring payments, and for unusual situations that require urgent payment and the Government would be seriously injured unless payment is made by a method other than EFT.

Proposed § 208.6 is revised to remove the general account requirements for Federal payments made electronically to an account at a financial institutions. These requirements are contained in 31 CFR 210.5 and do not need to be duplicated in Part 208. Proposed § 208.6 states that any individual who receives a Federal benefit, wage, salary, or retirement payment will be eligible for a Direct Express® card account.

Proposed § 208.7 is revised to state that agencies shall put into place procedures that allow recipients to provide the information necessary: (i) For the delivery of their payments by EFT to an account at a financial institution, or (ii) to enroll for a Direct Express® card account. Agencies would no longer need to notify individuals about their right to invoke a hardship waiver. FMS will work with agencies to ensure that they have the information they need to effectively explain the features and fees of the Direct Express® card to prospective cardholders.

Proposed § 208.8 is revised to state that payment recipients are required to provide a Federal agency with sufficient information to receive payments electronically. To receive a payment by direct deposit to an account at a financial institution, the recipient would need to provide his or her account information. To enroll for a Direct Express® card account, recipients would need to provide sufficient demographic information to allow for an account to be established, including information needed for identity verification purposes.

Proposed § 208.11 is revised to conform to the technical revision and delete the reference to § 208.6.

Appendices A and B containing Model ETA℠ Disclosure Notices are removed because they would no longer apply. ETA℠ accounts remain available from financial institutions that continue to offer them. For more information about ETA℠ accounts, visit *www.eta-find.gov.*

IV. Procedural Analysis

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Regulatory Planning and Review

It has been determined that this regulation is a significant regulatory action as defined in Executive Order 12866 in that this rule would have an annual effect on the economy of $100 million or more, and this rule raises novel policy issues arising out of the legal mandate in 31 U.S.C. 3332. Accordingly, this proposed regulation has been reviewed by the Office of Management and Budget. The Regulatory Impact Assessment prepared by Treasury for this regulation is provided below.

SUMMARY OF ESTIMATED BENEFITS AND COSTS

Benefit	$125 million.
Cost	Not estimated.
Net Benefits	Not estimated.

The analysis used nominal dollars in 2009.

1. Description of Need for the Regulatory Action

a. Statutory and Regulatory History

This rulemaking is necessary to expand compliance with the electronic funds transfer (EFT) provisions of section 3332, title 31 United States Code (Section 3332). In 1996, Congress enacted subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (DCIA), which amended Section 3332 to generally require that all nontax Federal payments be made by EFT, unless waived by the Secretary of the Treasury (Secretary). The Secretary must ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution "at a reasonable cost" and with "the same consumer protections with respect to the account as other account holders at the same financial institution." *See* 31 U.S.C. 3332(f), (i)(2).

To implement Section 3332 as Congress intended, Treasury promulgated Part 208 of title 31, Code of Federal Regulations (Part 208). Part 208 currently sets forth requirements for accounts to which Federal payments may be sent by EFT; provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account (ETA) at a financial institution that offers such accounts; and establishes the responsibilities of Federal agencies and recipients under the regulation. Part 208 also sets forth a number of waivers to the general requirement that Federal payments be delivered by EFT. *See* 31 CFR 208.4.

In conjunction with the publication of Part 208, Treasury developed the ETA, a low-cost account offered by participating financial institutions for those individuals who wish to receive their Federal payments by direct deposit. The ETA was established with the intention that it would eventually become available nationwide, and thereby comply with the statutory mandate that any person required to receive payment by EFT have access to an account at a financial institution at a reasonable cost and with standard consumer protections. However, the ETA is not available nationwide, and, as a result, does not meet the statutory requirement related to account access.

Any financial institution that wishes to offer the ETA may do so by entering into a financial agency agreement agreeing to offer the ETA in accordance with the terms and conditions established by Treasury. *See* Notice of Electronic Transfer Account Features, 64 FR 38510 (July 16, 1999). A participating financial institution must open an ETA for any individual who requests one, with some limited exceptions, provided that the individual authorizes the direct deposit of his or her Federal benefit, wage, salary or retirement payments. A financial institution may charge an account fee of up to $3.00 per month, and may charge other account-related fees as usually and customarily charged to other retail customers. ETA cardholders must be allowed to withdraw funds at least four

times per month without incurring fees. Checks are not offered with ETAs. Account holders access their funds through online debit at ATM, commonly referred to as "PIN debit," and point-of-sale (POS) networks. Offline (signature) debit is not permitted. Treasury pays a participating financial institution a fee of $12.60 for each ETA account established.

The hardship waivers in Part 208 were necessary because the ETA was not (and is not) available to all benefit recipients across the country. In addition, because the ETA does not permit signature debit and does not include bill payment capability as a required feature, the ETA cardholders have limited options in paying for goods and services with an ETA. They cannot use the ETA, for example, to make online and telephone purchases. The limited payment capability of the ETA resulted in a need for hardship exceptions for geographic, financial, and physical disability reasons, since individuals might not have convenient or feasible access to physical POS or ATM locations. Moreover, the ETA allows monthly and other fees which, although limited, could still pose a financial hardship for some benefit recipients. This meant that a waiver for financial hardship was also necessary.

Since its inception in 1999 through March 2010, fewer than 245,000 ETA accounts have been opened, and as of March 2010, there are fewer than 118,000 active ETA accounts. Anecdotal evidence suggests that, with some exceptions, the ETA is not a cost-effective product for financial institutions. According to a 2002 report by the Government Accountability Office (GAO), although many financial institutions believed that the ETA was a good product for the target market, the financial institutions were reluctant to offer the account because they did not see the product as profitable. *See,* "Electronic Transfers: Use by Federal Payment Recipients Has Increased but Obstacles to Greater Participation Remain," GAO–02–913, page 31 (Sept. 12, 2002) (*www.gao.gov/new.items/d02913.pdf*). From the consumer perspective, reasons for lack of interest include the inability to write checks, limited availability of ETAs, lack of awareness of ETAs, a difficult enrollment process, and a personal preference for doing business without a bank account. *Id.,* at 35–36.

GAO has issued at least two reports on the Federal Government's efforts to increase the use of electronic payments rather than checks. *See,* for example, 2002 GAO report cited above, and "Electronic Payments: Many Programs Electronically Disburse Federal Benefits, and More Outreach Could Increase Use," GAO–08–645 (June 23, 2008) (*www.gao.gov/new.items/d08645.pdf*). In these referenced reports, GAO recognizes the advantages of electronic payments, but also recognizes the two major historical obstacles to removing the Part 208 individual waivers. First, there are a high number of check recipients who do not have a bank account or who lack convenient access to an account at a reasonable cost with appropriate consumer protections. GAO–02–913, pages 16–24 (Sept. 12, 2002); GAO–08–645, pages 19–20, 33 (June 23, 2008). Second, consumer concerns about the improper freezing and seizure of Federal benefit funds typically exempt from garnishment has led to resistance to Treasury's efforts to remove the Part 208 individual waivers to EFT requirements. GAO–08–645, pages 20–22.

b. Technology Changes in the Banking Industry

The technological developments and widespread acceptance of debit and prepaid card products during the last decade make it feasible and advantageous for Treasury to revise its existing implementing regulation to expand the scope of individuals subject to the EFT requirements. Specifically, the development and implementation of the Direct Express® card, a MasterCard® prepaid debit card developed by Treasury exclusively for Federal benefit recipients, means that Treasury can now comply with the requirement of Section 3332 to ensure that individuals required to receive Federal payments by EFT have access to an account at a financial institution that is reasonably priced and subject to standard consumer protections.

Reloadable prepaid debit cards, which were a small specialty product in the 1990s, are now widely available and can be used at a vast number of merchant locations across the country, not only to purchase goods and services, but also to obtain cash through cashback transactions at POS locations. With the expansion of the Internet and other technological advances, consumers have the ability to make online purchases with a debit card, as well as the ability to pay for goods and services over the telephone, resulting in the mitigation of some past obstacles to electronic payment acceptance. Even for those without access to the Internet, or who buy goods and use services from vendors who do not accept debit card payments, debit cards can be used to purchase money orders, thereby eliminating the step of having to cash a check or carry large amounts of cash to complete necessary financial transactions.

The "2007 Federal Reserve Payments Study, Noncash Payment Trends in the United States: 2003–2006," sponsored by the Federal Reserve System (released December 10, 2007) (*http://www.frbservices.org/files/communications/pdf/research/2007_payments_study.pdf*) highlights the growing acceptance of debit cards in the United States. According to the study, debit cards now surpass credit cards as the most frequently used payment type. The Federal Reserve noted that the highest rate of growth was in automated clearing house (ACH) payments, which grew about 19 percent per year, followed closely by debit card payments. The annual use of debit cards increased by about 10 billion payments over the survey period to 25.3 billion payments in 2006, an annual growth rate of transactions of 17.5% from 2003 to 2006. Many financial service providers offer general prepaid branded reloadable cards intended for recipients of wages, incentive or bonus payments, State benefits and child support payments, and other types of high volume or regularly recurring payments. Many States offer or require the use of electronic payment cards for those who receive State benefits, such as temporary assistance to needy families.

Treasury's experience with offering electronic payment card products dates back to 1989, and illustrates how Treasury's products have evolved and how acceptance of these products has grown. In 1989, Treasury offered a debit card product, known as the SecureCard, on a pilot basis in Baltimore, Maryland, at no cost to SSI recipients. The undeveloped nature of the POS system at that time presented the primary challenge in that pilot. To make the card useful, Treasury installed POS equipment at various local merchants, at a substantial cost to the Government. In 1992, Treasury initiated the Direct Payment Card pilot for Social Security and SSI recipients in Texas, which had a better developed POS infrastructure, and subsequently extended the pilot to Social Security recipients in Argentina. From 1992 through 1997, approximately 46,000 recipients enrolled, and the program was well-received by recipients. Building on the success of the Direct Payment Card pilot, in 1996, Treasury joined a Federal-State electronic benefits transfer (EBT) program known as the Benefit Security Card program. The Benefit Security Card was offered to Federal and/or State benefit recipients in eight southeastern States, known as the Southern Alliance

of States, which included Alabama, Arkansas, Florida, Georgia, Kentucky, Missouri, North Carolina, and Tennessee. Treasury's Benefit Security Card program allowed benefit recipients to access their Federal and/or State benefits via a single debit card. When Treasury terminated the card program in January 2003, approximately 51,000 Federal benefit recipients were enrolled in the program. Although customers were pleased with the product, Treasury and most States were concerned about cardholder costs, which were scheduled to increase at the time Treasury terminated the program. At the end of 2006, Treasury initiated a small Direct Express® card program to gauge the market for a branded debit card, reloadable only with Federal benefit payments. As part of the pilot, Treasury sent letters to 35,000 Social Security and SSI check recipients in Chicago and southern Illinois, offering them the opportunity to sign up for a Direct Express® card to receive their Federal benefit payments electronically. In addition, Treasury included information about the program in check envelopes mailed to all Illinois Social Security and SSI check recipients. The card features offered for the pilot program were similar to the current Direct Express® card product, although the fees were slightly higher.

2. Provision

Treasury proposes a two-phased approach for implementation of its proposed rule. The first phase would require all new benefit recipients to sign up for direct deposit to a bank account of the recipients' choice or to a Direct Express® card account, beginning March 1, 2011. The second phase would begin on March 1, 2013, at which time all recipients of Federal benefit and other nontax payments would receive their payments by direct deposit, either to a bank account or to a Direct Express® card account.

Those receiving their benefit payments by check before March 2011, could continue to do so through February 28, 2013, after which those recipients would convert to direct deposit. For Federal benefit recipients, this means that individuals who file claims for Federal benefits before March 1, 2011, and who request check payments when they file, would be permitted to receive payments by check through February 28, 2013. Individuals who file claims for benefits on or after March 1, 2011, would receive their payments by direct deposit. Individuals receiving their payments by direct deposit prior to March 1, 2011, would continue to do so.

3. Baseline

a. Amount of Federal Disbursement

In fiscal year 2009, Treasury disbursed more than 80% of its nontax payments electronically, or more than 750 million payments. Despite the general requirement that Federal payments be made electronically, and Treasury's efforts to persuade check recipients to convert to direct deposit, Treasury nevertheless continues to print and mail many millions of checks each year, at a substantially higher cost to the Government than if those payments were delivered by EFT. For example, of the 146 million checks disbursed for nontax payments, in fiscal year 2009, more than 136 million of them were Federal benefit checks mailed to 11 million benefit recipients, causing avoidable payment-related problems for many check recipients, and resulting in extra costs to taxpayers of more than $125 million that would not have been incurred had those payments been made by EFT. Social Security (retirement, disability, and survivors benefits) and SSI payments represent more than 92 percent, or more than 125 million, of those benefit check payments. The remaining 11 million benefit check payments are made to recipients of civil service retirement, railroad retirement, Black Lung, and Veterans benefits. Although the direct deposit payments rate has increased since 1996, when it was 58%, the rate has climbed only slowly since fiscal year 2005 when it first reached 80%.

b. Affected Population

As noted above, in fiscal year 2009, Treasury disbursed 136 million checks to 11 million benefit recipients. Treasury estimates that approximately 4 million of those recipients do not have bank accounts.

Treasury recognizes the demographic differences between payment recipients who are more willing to accept direct deposit and those who are not. Treasury also recognizes that there are a variety of reasons why check recipients do not switch to direct deposit. Because the majority of its check payments are made to Social Security and SSI recipients, Treasury's research focuses on this population. During implementation of its proposed rule, Treasury will continue its research efforts to ensure that the needs of all check recipients are adequately addressed and take appropriate action.

According to Treasury research conducted in 2004 ("Understanding the Dependence on Paper Checks—A Study of Federal Benefit Check Recipients and the Barriers to Boosting Direct Deposit," OMB Control No. 1510–0074), the average age of a Social Security check recipient was 66 years old. Sixty-one percent of the Social Security check recipients were female; 39% were male. Thirty-five percent of the Social Security check recipients had not completed high school, while 26% had some college education or beyond. Sixty percent of Social Security recipients were retired; 27% did not have bank accounts; 12% received some other form of government assistance; 27% had a disability.

Comparatively, the average age of a SSI check recipient was 50. Seventy percent of the SSI check recipients were female; 30% were male. Fifty-one percent of the SSI recipients had not completed high school, while 15% had some college education or beyond. Only 21% of SSI recipients were retired; 68% did not have a bank account; 42% received some other form of government assistance, and 42% had a disability.

According to Treasury research in 2007 (SSA & SSI Check Recipient Survey, OMB Control No. 1510–0074), the check recipient population demographics had not changed significantly. The 2007 survey found that 28% of Social Security check recipients did not have a bank account, but that 9% more SSI recipients had bank accounts than in 2004 (in 2007, 59% of SSI recipients did not have a bank account).

The above-referenced Treasury research shows that younger benefit recipients convert to direct deposit at a faster rate than older benefit recipients. Younger benefit recipients who have had their payments for less than a year are signing up for direct deposit at rates that far exceed their proportions in the population. Close to 50% of those Social Security and SSI check recipients who converted to direct deposit had been receiving their benefits for less than one year. Conversely, only 16% of Social Security check recipients and 15% of SSI recipients who had been receiving their payments nine (9) years or longer signed up for direct deposit.

Treasury and the Social Security Administration found that, in fiscal year 2009, almost 80% of new enrollees signed up for direct deposit either to an existing bank account or to a Direct Express® card account. Since September 2008, the Social Security Administration has been offering new Social Security and SSI recipients the option of signing up for a Direct Express® card, in addition to direct deposit at a financial institution, at the time they enroll for benefits. Social Security is also allowing individuals to sign up at local offices and by

telephone. The Direct Express® card has been a major contributor in the decline of Social Security and SSI check payments over the last two years, but has had an especially significant impact on the SSI check payment volume. The average monthly payment amount for an SSI check recipient is $496, whereas the average monthly payment amount for a Social Security check recipient is $838. There has been a year-over-year decrease in SSI checks of 6.91% in March 2010, compared to March 2009, which is significantly greater than the 3.81% decline in March 2009, compared to March 2008.

Treasury seeks comments for Treasury's consideration about examples of exceptional circumstances where specific types of individual EFT waivers could be needed, even with the availability of the Direct Express® card for Federal benefit recipients.

4. Assessment of Potential Costs and Benefits

a. Potential Costs

There are potential short-term costs associated with the proposed rulemaking. First, there are intangible emotional costs for individuals who are fearful or resistant to direct deposit. In its 2004 research, Treasury learned that there are some key differences among Social Security check recipients, SSI check recipients, and those that receive their benefit payments by direct deposit. Although these differences do not necessarily explain why certain individuals are more resistant than others to receiving payments by direct deposit, the data helps Treasury properly target its public education campaign. For example, because the data described below shows that Social Security check recipients are more likely than SSI check recipients to have a bank account, Treasury can direct its resources to informing Social Security check recipients about the benefits of directly depositing payments to an existing bank account. For SSI recipients who are less likely to have a bank account, Treasury can focus its Direct Express® card information to that population.

Compared to SSI check recipients, Social Security check recipients are older (average age 66), more likely to have a bank account, more likely to be male and retired, less likely to have a disability, less likely to receive some other form of government assistance, less likely to depend on their benefit as their sole source of income, and more likely to be Caucasian. SSI recipients are likely to be younger (average age 50), less likely to have a bank account, more likely to have a representative payee acting on their behalf, more likely to be African-American, more likely to be female, more likely to live in a city, more likely to receive some other form of benefit payment, and more likely to depend on others for assistance with daily chores and errands. Direct deposit recipients are more technologically savvy than either Social Security or SSI check recipients. They are more likely to own a cell phone or to use a personal computer and the Internet. Compared with check recipients, direct deposit beneficiaries responding to the survey were more likely to have confidence in banks, to believe that computers are secure, and to feel that ATMs are safe.

Despite these demographic differences, Treasury has found that the reasons for resistance to direct deposit among check recipients have remained fairly constant over the years. Many people express a desire to see the physical payment in check form. Others feel a greater sense of control when handling checks, and many, especially those receiving SSI, believe that receiving checks helps them to better manage their money and maintain their standard of living. Barriers that need to be overcome can be grouped into four general categories: informational (those who do not understand how direct deposit works); emotional (those who just prefer to receive checks); inertia (those who are receptive to electronic payments, but need to be motivated to sign up); and mechanical (those who do not have bank accounts, and in some cases, do not want bank accounts).

Treasury expects most recipients to pay less for EFT payments than for check payments. While some individuals may be able to cash government checks at no cost, there are often fees of up to $20 or more for cashing a check. The Direct Express® card program is structured so that there are several ways for cardholders to access their funds and use their card without paying any fees. The Direct Express® card account fees compare favorably to those charged by financial service providers offering general purpose reloadable cards, which often charge fees for sign-up, monthly maintenance, ATM withdrawals, balance inquiries, and customer service calls. Cardholders may use their card to make purchases and get cash back at a POS location without paying a fee; obtain cash from any MasterCard® member bank teller window without paying a fee; and make one free ATM cash withdrawal for each benefit payment deposited to the card account (the free ATM cash withdrawal is available until the end of the month following the month of deposit). If the cardholder makes a withdrawal using an ATM within the Direct Express® surcharge-free ATM network, the cardholder will not pay a surcharge fee to an ATM owner. In addition, there are many other features that cardholders can access without paying a fee, including unlimited customer service calls (with or without live operators); optional automated low balance alerts or deposit notifications; and online or telephone transaction history and other account information. There is no fee to sign up for the card, close the account, or to obtain one replacement card per year. Importantly, there are no overdrafts, minimum balance requirements, or credit requirements to sign up for the card. The few fees that are charged for the card include $.90 for ATM transactions after free ATM transactions are used, $.75 per month for optional paper statements, fees for using the card outside the United States, and replacement cards beyond the free replacement card. Treasury seeks comments on the costs to recipients for using their benefit payments received by paper check as compared to those received by EFT.

Treasury expects to continue to incur expenditures for the public education related to the implementation of any new rules and to temporarily expand its telephone and online direct deposit enrollment center to accommodate those converting from check payments to direct deposit to comply with the new rules, whether the conversion is to an account at a financial institution or to a Direct Express® card account. However, such expenditures will taper off after the new rules are fully implemented, since direct deposit enrollment in the future will occur at the time of benefit enrollment. Federal benefit agencies may incur costs to temporarily expand customer service centers to accommodate recipients' questions and enrollments until the new rules are fully implemented.

Treasury expects increased costs for its call center and Web site used to enroll check recipients into direct deposit, although these costs are expected to drop off after 2013, when the proposed rule would be fully implemented. The education costs, expected to range from $3 million to $4.5 million per year, through 2013, are costs that Treasury would have incurred even without the proposed rulemaking, and for potentially longer than the next 3–5 years. Similarly, Treasury expects benefit paying agencies to incur some initial costs for customer service training for customer service representatives responsible for

educating new enrollees and current check recipients about the new rules, but these costs are expected to be more than offset by the cost savings expected once customer service centers no longer have to respond to individual inquiries related to check problems. The one-time costs to increase customer service capacity at the Treasury enrollment center (both telephone and online) could total as high as $20 million from the effective date of the final rule through 2013. After 2013, Treasury expects these costs to drop off significantly.

The Go Direct® campaign, sponsored by Treasury and the Federal Reserve Banks, highlights the need for this educational program. Despite the success of the campaign with more than 4.3 million direct deposit enrollments achieved since 2005 as a result of the campaign's activities, more than 11 million Federal benefit recipients still receive checks each month. Treasury research shows that the likelihood of current check recipients switching to direct deposit remained generally unchanged from 2004 to 2007, with 55% of banked Social Security check recipients surveyed in 2007 being very unlikely to change to direct deposit, down from 59% in 2004. The percentage of banked Social Security check recipients likely to switch to direct deposit went from 27% in 2004 to 28% in 2007. Comparatively, 40% of banked Supplemental Security Income (SSI) check recipients were likely to switch to direct deposit in 2007, up only one percentage point since 2004. While Treasury research shows that direct deposit education has a positive impact on the likelihood of a check recipient to switch to direct deposit, the effort is time consuming, administratively burdensome, costly, and resource-intensive. During the period July 2009 through June 2010, Treasury spent $4.5 million on its Go Direct® campaign, and expects to spend another $4 million during the period July 2010 through June 2011. Prior years' costs have ranged from $5 million to $10 million for Treasury to establish and sustain its presence in target markets to promote and encourage check recipients to convert to direct deposit.

Finally, and less directly, financial institutions may experience some costs associated with converting their check recipient customers to direct deposit, but Treasury does not expect this to be a significant burden since financial institutions already enroll a significant number of direct deposit recipients through Treasury's Go Direct® campaign.

b. Potential Benefits

The potential benefits of the proposed rulemaking to the Government and taxpayers are significant. As noted above, in fiscal year 2009, Treasury mailed more than 136 million Federal benefit checks to approximately 11 million benefit recipients, resulting in extra costs to taxpayers of more than $125 million that would not have been incurred had those payments been made by EFT. Without the proposed rule change and given the current trends, the number of checks that Treasury prints and mails each year is expected to increase significantly over the coming years, primarily as a result of the aging of the baby boomer generation. Beginning in 2008, the first wave of 78 million baby boomers became eligible for Social Security benefits. Even as the more technologically-savvy baby boomers enter the rolls, the direct deposit rate for fiscal year 2010 through April remained at about 80% for new Social Security enrollees, relatively unchanged from fiscal year 2009, and only slightly higher than fiscal year 2008. With the increase in retiring baby boomers, Treasury expects to issue approximately 60 million new payments each year to approximately 5 million newly enrolled recipients (based on Social Security Administration actuarial data). Of those 60 million payments, an estimated 9 million would be made by check based on the current overall direct deposit/check ratio (85 percent/15 percent) for Social Security payments. By 2020, the Social Security Administration projects there will be 18.6 million more Social Security beneficiaries than in fiscal year 2009, which would result in more than 223 million additional payments each year. At the current direct deposit/check ratio, this would mean 33.5 million additional checks each year beginning in 2020, at a cost of $31 million each year, leading to a total annual cost of more than $156 million more than if those payments were made by direct deposit.

These projected cost savings do not take into account future increased costs in postage, paper, and salaries; the cost of issuing benefit checks other than Social Security and SSI; or the costs agencies incur in handling inquiries and authorizing replacement checks. For example, the Social Security Administration expects administrative savings resulting from a drop in non-receipt and lost check actions. The Social Security Administration also expects to save money by eliminating the "Payment Delivery Alert System," which is a joint effort among the Social Security Administration, Treasury, and the U.S. Postal Service to locate and deliver delayed Social Security and SSI checks.

Those who receive their payments by direct deposit do not have to worry about a lost or stolen check, or carrying around large amounts of cash that can be easily lost or stolen. Each year, approximately half a million individuals call Treasury to request claims packages related to problems with check payments. For example, in fiscal year 2009, more than 670,000 Social Security and SSI checks were reported lost or stolen. Each year, Treasury investigates more than 70,000 cases of altered or fraudulently endorsed checks, totaling $64 million. When checks are misrouted, lost in the mail, stolen, or fraudulently signed, Treasury must send replacement checks to the recipient. This can result in a delay in payment, especially if fraud or counterfeiting is involved, thereby creating a hardship for benefit recipients who rely on these payments for basic necessities such as food, rent, or medication. In contrast, individuals receiving Federal payments electronically rarely have any delays or problems with their payments. Nine out of ten problems with Treasury-disbursed payments are related to paper checks even though checks constitute only 19 percent of all Treasury-disbursed payments made by the Government.

These projected savings also do not account for the costs that would no longer be incurred by banks and credit unions for cashing checks and reimbursing the Government when there are alterations, forgeries, or unauthorized indorsements of Federal benefit checks. In fiscal year 2009, it cost the banking industry $69.3 million to reimburse the Treasury for checks that had been fraudulently altered or counterfeited, or contained a forged or unauthorized indorsement.

5. Alternative Approaches Considered

Treasury considered three alternative approaches to achieving the benefits of direct deposit other than the approach proposed in this rulemaking notice.

First, Treasury could have proposed to eliminate the individual EFT waivers sooner for everyone, i.e., eliminate the waivers for all benefit recipients on the same effective date, but Treasury was concerned about the impact of such a rule on payment recipients if it had an inadequate amount of time to educate the public about the rule's requirements and benefits. It is important for Treasury and benefit agencies to be prepared to respond to recipients' inquiries about

the new rules, which requires sufficient time to train agency customer service representatives, educate those affected by the new rules, and to implement any process changes that may be required. Treasury will work closely with the agencies to ensure that implementation requirements are understood and can be addressed in the time frame proposed.

Second, Treasury also considered phasing in the elimination of the individual EFT waivers over a longer period of time. Treasury is concerned that such a delay results in additional costs to individuals who will be delayed in realizing the benefits of direct deposit. Treasury intends to begin its public education campaign immediately upon the promulgation of a final rule. Treasury will monitor the progress of its campaign, and adjust the campaign as necessary to ensure maximum effectiveness. In addition, a delayed implementation results in additional costs to the Government and taxpayers. For every year that Treasury delays full implementation of the EFT rule, the government spends at least $125 million more for check payments than it would otherwise spend if recipients were receiving EFT payments. Treasury seeks comments on alternative phase-in approaches based on research evidence and increased effectiveness.

Finally, Treasury considered whether to institute a formal application process for individuals seeking to invoke a waiver to the EFT requirement. Treasury is concerned that such an approach would require the unnecessary development of a new bureaucratic infrastructure to process the applications, and would impose administrative burdens on both Government agencies and benefit recipients. The availability of the Direct Express® card negates the need for the existing waivers. Agencies retain the ability to waive EFT requirements for classes of payments for various reasons. Finally, in an unusual or exceptional circumstance, the Secretary has the authority to waive the EFT requirement, but Treasury does not anticipate invoking this authority except in rare situations.

6. Other Issues

a. Financial Agent

Building on the "lessons learned" in previous programs and the Direct Express® card program pilot, Treasury issued an announcement in 2007 seeking a financial institution qualified to act as a Treasury-designated financial agent to provide debit card services for Federal benefit recipients nationwide, through the Direct Express® card program. Treasury has unique legal authority to designate a financial institution as its financial agent to disburse Federal benefit payments electronically, which includes the establishment of an account meeting certain requirements, maintenance of an account, the receipt of Federal payments electronically, and the provision of access to funds in the account on the terms specified by Treasury. *See* 12 U.S.C. 90; 31 CFR 208.2. Fifteen financial institutions responded, and after careful review of the applications, Treasury selected Comerica Bank as its agent based on various criteria, including the proposed cardholder fees. Treasury considered, but rejected, selecting multiple financial agents (although it has the option to do so in the future) primarily to ensure that the selected financial agent would be able to maintain a sufficient volume of active accounts in order to cost-effectively sustain a program with the lowest possible cardholder fees. The financial agent selection process used by Treasury enabled Treasury to obtain debit card services with the most value for benefit recipients, including, among other things, better consumer protections than those offered by most prepaid card products, a surcharge-free ATM network of more than 53,000 surcharge-free ATMs, free low balance alerts and deposit notification, unlimited free customer service calls, and the ability to use the debit card product to access Federal benefit payments without incurring a fee. Treasury provides oversight to confirm that its financial agent operates the Direct Express® card program to provide maximum value at a reasonable cost to cardholders. Treasury has begun offering paper check recipients of Veterans compensation and pension benefits the option of using the Direct Express® card, and plans to expand the card program to other types of Federal payments, including civil service retirement, railroad retirement, and more. This would allow Federal payment recipients to receive multiple types of Federal payments to a single Direct Express® card account.

b. Garnishment

Treasury has also addressed the garnishment issue, that is, the concerns about the improper freezing and seizure of benefit funds exempt from garnishment. On April 19, 2010, Treasury and the four major benefit paying agencies—Office of Personnel Management, Railroad Retirement Board, Social Security Administration, and Department of Veterans Affairs—published a joint notice of proposed rulemaking to address concerns associated with the garnishment of exempt Federal benefit payments. 75 FR 20299 (Apr. 19, 2010). The rule, as proposed, would establish straightforward, uniform procedures for financial institutions to follow in order to minimize the hardships encountered by Federal benefit payment recipients whose accounts are frozen pursuant to a garnishment order. The rule would require financial institutions to exempt from freezing or seizure an amount equivalent to benefit payments deposited to an account within the 60 days prior to a financial institution's receipt of a garnishment order. The rule will protect benefit recipients with regular, recurring benefit payments that are directly deposited to an account at a financial institution.

Until the garnishment rule is finalized, the Direct Express® card offers another solution to address concerns about improper garnishment. Currently, the Direct Express® card accepts only exempt benefits, thus making it easier for the Direct Express® card issuer to identify all of the funds in an individual's account as consisting of exempt funds and then react accordingly to garnishment orders. Treasury will not allow a Direct Express® card account to commingle non-exempt and exempt funds until a final garnishment rule is promulgated or, alternatively, the card issuer offers protections similar to those proposed by Treasury and the other benefit agencies.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule applies to individuals who receive Federal payments, and does not directly impact small entities. Accordingly, an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the

rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 208

Accounting, Automated Clearing House, Banks, Banking, Electronic funds transfer, Financial institutions, Government payments.

For the reasons set out in the preamble, we propose to amend 31 CFR part 208 as follows:

PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

1. The authority citation for part 208 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503; Pub. L. 104–208, 110 Stat. 3009.

2. In § 208.2, redesignate paragraphs (c) through (o) as paragraphs (d) through (p), respectively, add new paragraph (c), and revise redesignated paragraph (e) to read as follows:

§ 208.2 Definitions.

* * * * *

(c) *Direct Express® card* means the prepaid debit card issued to recipients of Federal benefits by a Financial Agent pursuant to requirements established by Treasury.

* * * * *

(e) *Electronic benefits transfer (EBT)* means the provision of Federal benefit, wage, salary, and retirement payments electronically, through disbursement by a financial institution acting as a Financial Agent. For purposes of this part, EBT includes, but is not limited to, disbursement through an ETA℠, a Federal/State EBT program, or a Direct Express® card account.

* * * * *

3. Revise § 208.4(a) to read as follows:

§ 208.4 Waivers.

* * * * *

(a) Where an individual is receiving Federal payments from an agency by check prior to March 1, 2011, the individual may continue to receive those payments by check through February 28, 2013. In addition, an individual who files a claim for Federal benefit payments prior to March 1, 2011, and who requests payment of those benefits by check at the time he or she files the claims, may receive those payments by check through February 28, 2013.

* * * * *

4. Revise § 208.6 to read as follows:

§ 208.6 Availability of the Direct Express® Card.

Any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open a Direct Express® card account. The offering of a Direct Express® card account shall constitute the provision of EBT services within the meaning of Public Law 104–208.

5. Revise § 208.7 to read as follows:

§ 208.7 Agency responsibilities.

Each agency shall put in place procedures that allow each recipient to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient's financial institution, or to sign up for a Direct Express® card account to be held by the recipient.

6. Revise § 208.8 to read as follows:

§ 208.8 Recipient responsibilities.

Each recipient who is required to receive payment by electronic funds transfer shall provide to an agency the information requested by the agency in order to effect payment by electronic funds transfer.

7. Revise the third sentence in § 208.11 to read as follows:

§ 208.11 Accounts for disaster victims.

* * * Treasury may deliver payments to these accounts notwithstanding any other payment instructions from the recipient and without regard to the requirements of §§ 208.4 and 208.7 of this part and § 210.5 of this chapter.

* * *

Appendixes A and B to Part 208 [Removed]

8. Remove Appendix A and Appendix B to Part 208.

Dated: June 10, 2010.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2010–14614 Filed 6–16–10; 8:45 am]

BILLING CODE 4810–35–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–9163–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Rocky Mountain Arsenal Federal Facility

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete portions of the On-Post Operable Unit (OU3), specifically the Central and Eastern Surface Areas including surface media and structures (CES), and the surface media of the entire Off-Post Operable Unit (OU4) (OPS) of the Rocky Mountain Arsenal Federal Facility (RMA) from the National Priorities List (NPL) and requests public comment 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 Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that all appropriate response actions at these identified parcels under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However this deletion does not preclude future actions under Superfund.

This partial deletion pertains to the surface media (soil, surface water, sediment) and structures (both former structures that have been demolished and structures retained for future use) within the CES and the surface media of the entire OPS. The rest of the On-Post OU (Figure 1), including groundwater below RMA that is west of E Street, and the groundwater that comprises the Off-Post OU (*see* Section IV and Figure 1) will remain on the NPL and response activities will continue at those OUs. The groundwater media east of E Street (with the exception of a small area below the northwest corner of Section 6) was previously deleted from the NPL as part of the Internal Parcel Partial Deletion in 2006 (71 FR 43071).

DATES: Comments must be received by July 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–

SFUND–1987–0002, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: chergo.jennifer@epa.gov.*
- *Fax:* 303–312–7110.
- *Mail:* Ms. Jennifer Chergo, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202–1129.
- *Hand Delivery:* 1595 Wynkoop Street, Denver, Colorado, 80202–1129. 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–1987–0002. 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:

—EPA's Region 8 Superfund Records Center, 1595 Wynkoop Street, Denver, Colorado, 80202–2466. Hours: 8 a.m. to 4 p.m. by appointment (call 303–312–6473), Monday through Friday, excluding legal holidays; and the

—Joint Administrative Records Document Facility, Rocky Mountain Arsenal, 5650 Havana Street, Building 129, Commerce City, Colorado 80022–1748. Hours: 12 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, or by appointment (call 303–289–0983).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Chergo, Community Involvement Coordinator (8OC), U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202–1129; telephone number: 1–800–227–8917 or 303–312–6601; fax number: 303–312–7110; e-mail address: *chergo.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the CES and OPS of the RMA Site, Commerce City, Colorado, from the NPL and requests comment on this proposed action. 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 those 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 RMA Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (Nov. 1, 1995)). As described in 40 CFR 300.425(e)(3), a portion of a site deleted from the NPL remains eligible for further remedial actions if warranted by future conditions.

EPA will accept comments on the proposal to partially delete this site for thirty (30) days after publication of this document in the **Federal Register**.

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 CES and OPS of the RMA Site and demonstrates how they meet the deletion criteria.

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, 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. 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. Deletion Procedures

The following procedures apply to the deletion of the CES and OPS of the RMA Site:

(1) EPA consulted with the State before developing this Notice of Intent for Partial Deletion.

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of Colorado, through the CDPHE, has concurred with the deletion

of the CES and OPS of the RMA Federal Facility Site, from the NPL.

(5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in a major local newspaper, the Denver Post. The newspaper announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond accordingly to the comments before making a final decision to delete the CES and OPS. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the CES and OPS of the RMA Site, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

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 future response actions, should future conditions warrant such actions.

IV. Basis for Intended Partial Deletion

The following information provides EPA's rationale for deleting the CES and OPS of the RMA Federal Facility from the NPL.

Site Background and History

The Rocky Mountain Arsenal Federal Facility (RMA), EPA ID No. CO5210020769, is located in Commerce City—approximately eight miles northeast of downtown Denver—in Adams County, Colorado. RMA was established in 1942 by the U.S. Army to manufacture chemical warfare agents and incendiary munitions for use in World War II. Following the war and through the early 1980s, the facilities continued to be used by the U.S. Army. Beginning in 1946, some facilities were leased to private companies to manufacture industrial and agricultural chemicals. Shell Oil Company, the principal lessee, manufactured pesticides at the site from 1952 to 1982. Common industrial and waste disposal practices resulted in contamination of structures, soil, surface water, and groundwater. As a result of this contamination, RMA was proposed to the NPL, excluding the Basin F surface impoundment, on October 15, 1984, (49 FR 40320). On July 22, 1987, RMA was finalized on the NPL and expanded to include Basin F (52 FR 27620 and 52 FR 27643).

RMA is located at the western edge of the Colorado Plains, consisting of a rolling terrain characterized by grasslands, shrublands, wetlands, aquatic habitats, and extensive weedy areas. Regional surface drainage is northwest into the South Platte River which eventually joins the North Platte River in Nebraska. The RMA Site consists of 30 OUs (numbers 0 through 29) including 24 Interim Response Actions (IRA) conducted between October 1985 and June 1996 as part of the On-Post (OU 3) remediation and 4 IRAs completed in 1993 for remediation of the Off-Post (OU 4). The IRAs were conducted to prevent or minimize further migration of groundwater contaminants and eliminate potential releases from source areas through isolation or destruction of the contaminants. Each of the OUs is described below.

OU 00: South Adams County—Installation of temporary granular activated carbon filters (GAC) at the South Adams County plant to address trichloroethene in the potable water supply (1986).

OU 01: Klein Water Treatment Plant—Groundwater treatment plant constructed on RMA property (Section 33) to treat off-post contaminant plumes along the western boundary of RMA (1989).

OU 02: Chemical Sales—Remedial investigation of off-post groundwater plumes which resulted in identification of the Chemical Sales Company Superfund Site located upgradient (south) of RMA (1990).

OU 03: On-Post—Addresses soil and groundwater contamination within the fenced 27 square miles of RMA proper (ongoing). OUs 6 through 29 contributed to remediation of the On-Post OU and were completed prior to or integrated into the On-Post OU as part of the 1996 On-Post ROD.

OU 04: Off-Post—Addresses contamination north and northwest of the RMA proper site. OUs 00 through 02 and OU 5 contributed to remediation of the Off-Post OU and were completed prior to or integrated into the Off-Post OU as part of the 1995 ROD.

OU 05: Off-Post Groundwater Intercept and Treatment System IRA—Treatment plant constructed to address contaminant plumes that had migrated off post prior to installation of the boundary treatment systems (1993).

OU 06: North Boundary Groundwater Treatment System IRA—Recharge trenches were added along the entire length of the North Boundary Treatment System slurry wall and operational improvements were made to the existing system (1993).

OU 07: Basin F Groundwater Treatment System IRA—Extraction of contaminated groundwater migrating from the Basin F area for treatment at the Basin A Neck Treatment System (1990).

OU 08: Abandoned Well Closure IRA—Old or deteriorating farm wells and unused on-post wells were grouted closed (1990).

OU 09: Basin A Neck Groundwater Treatment System IRA—Groundwater treatment plant constructed to treat contaminant plumes migrating through paleochannels from the Basin A area (1990).

OU 10: Basin F Liquids & Sludges IRA—Containment of 600,000 cubic yards of Basin F sludges/soil in a lined, 16-acre storage area with a leachate collection system (1989).

OU 11: Building 1727 Sump IRA—Treatment of liquid in the Building 1727 Sump with activated alumina and GAC to remove contaminants (1989).

OU 12: Hydrazine IRA—The hydrazine facility was demolished and the debris disposed at an off-site hazardous waste landfill. The area was regraded and revegetated (1992).

OU 13: Fugitive Dust Suppression IRA—Reapplication of a dust suppressant was applied to Basin A (1991).

OU 14: Sanitary Sewer IRA—Sanitary sewer manholes were plugged to eliminate potential transport of contaminated groundwater that may have entered the sewer system

through cracks or loose connections (1992).

OU 15: Asbestos IRA—Continuation of the Army's survey and removal of friable asbestos from on-post structures (1996).

OU 16: M–1 Settling Basins IRA—The objective was to treat the M–1 Settling Basins sludge using in situ vitrification (ISV). However, due to technology complications with the ISV, implementation of the IRA was suspended (1991).

OU 17: CERCLA Wastewater Treatment Plant IRA—Facility constructed to treat wastewater generated by investigative activities and implementation of response actions (1992).

OU 18: Motorpool IRA—An extraction well system was constructed to remove a trichlorethene plume emanating from the Motorpool area for treatment at the Irondale Containment System (1990). A soil vapor extraction system was operated in 1991 to remove volatile contaminants from the soil.

OU 19: Rail Classification Yard IRA—An extraction well system was constructed to remove a dibromochloropropane plume emanating from the Rail Yard area for treatment at the Irondale Containment System (1991).

OU 20: Lime Settling Basins IRA—A soil cover was constructed over the Lime Settling Basins to minimize infiltration of precipitation through the basin waste (1993).

OU 21: South Tank Farm Plume IRA—Continued monitoring of groundwater plumes to assess if additional action was necessary (1994).

OU 22: Army Trenches IRA—Continued monitoring of groundwater plumes to assess if additional action was necessary (1994).

OU 23: Shell Trenches IRA—A slurry wall was constructed to isolate the trenches from surrounding groundwater and a soil cover placed over the trenches to minimize infiltration of precipitation through the trench waste (1994).

OU 24: Northwest Boundary Containment System IRA—Additional extraction, reinjection, and monitoring wells were installed to increase treatment capacity (1993).

OU 25: Basin F Liquid (SQI) IRA—Incineration of 11 million gallons of basin liquids and decontamination waters (1995).

OU 26: Chemical Process-Related Activities IRA—Decontamination and disposal of process related equipment and piping for both agent and non-agent manufacturing processes in the North Plants and South Plant facilities (1996).

OU 27: Underground Storage Tank IRA—Content characterization, deactivation, excavation, decontamination, and removal of underground storage tanks (1995).

OU 28: Waste Management IRA—Temporary management of hazardous waste in storage at RMA or generated by the response actions, and not addressed by another IRA (1996).

OU 29: Polychlorinated Biphenyls (PCB) IRA—Inventory and remediate PCB-contaminated structures and soil (1996).

The original On-Post Operable Unit (OU 3) encompassed 27 square miles (16,990 acres) and was bounded by 56th Avenue and the former Stapleton International Airport on the south, Buckley Road and Denver International Airport on the east, Quebec Parkway and Commerce City on the west, Colorado Highway 2 and the Off-Post OU on the northwest, and 96th Avenue and the Off-Post OU on the north (Figure 1). In the 1980s, it was observed that over 300 species of wildlife, including bald eagles, utilize much of the natural environment that remains at RMA. In recognition of these unique urban wildlife resources at RMA, President George H.W. Bush signed the 1992 Rocky Mountain Arsenal National Wildlife Refuge Act (Public Law 102–402). Most of the RMA On-Post OU, including the CES, is designated to become part of a National Wildlife Refuge upon completion of the site-wide remedy.

Between 2003 and 2006, EPA conducted four partial deletions from the On-Post OU consisting of 13,406 acres of surface media so that property transfer could be expedited. Of the property deleted to date, 917 acres were sold to Commerce City for commercial development, 12 acres were transferred to South Adams County Water and Sanitation District for the Klein Treatment Facility, 126 acres were transferred to local governments for road-widening, and 12,188 acres have been transferred to the National Wildlife Refuge. Another 163 acres were retained by the Army, primarily for water treatment systems. While EPA has not conducted any partial deletions for the Off-Post OU, EPA did issue a Ready for Reuse (RfR) Determination in September 2009 for a portion of the Shell Oil Company property (approximately 294 acres) that is within or adjacent to the Off-Post OU. EPA's determination indicated that the Shell RfR Property "is ready for use for any purpose allowed under local land use and zoning laws." While there has been no redevelopment/reuse of the Shell RfR Property thus far, the area around the Shell RfR Property and Off-Post OU has undergone primarily residential development in recent years.

The proposed partial deletion for the OPS includes the entire surface media of the Off-Post OU (OU 4) without exclusions. Of the 3,584 acres (5.6 square miles) of the On-Post OU (OU 3) that remain on the NPL, the proposed partial deletion for the CES includes 2,500 acres (3.9 square miles) of surface media (soil, surface water, and sediment), as shown in Figure 1, and structures (both former structures that have been demolished and structures retained for future use) within the On-Post OU. The entire CES proposed for partial deletion will be transferred from the Army to the U.S. Fish and Wildlife Service (USFWS) for expansion of the RMA National Wildlife Refuge. The portions of the On-Post OU not proposed for deletion, also shown in Figure 1, include the following:

- Cover areas (Hazardous Waste Landfill (HWL), Enhanced Hazardous Waste Landfill (ELF), Basin F, and Integrated Cover System (ICS)) including drainages;
- Three areas of groundwater treatment (Railyard Extraction and Treatment System, Lime Basins Mass Removal System, and the South Tank Farm Mass Removal System);
- Three laydown areas (areas used to stage equipment and construction materials or conduct support activities during remedy implementation); and
- *Two structures:* The CERCLA Wastewater Treatment Facility and the Landfill Wastewater Treatment System (LWTS).

The following information provides EPA's rationale for deletion of the CES and OPS of the RMA Site from the NPL:

Remedial Investigation/Feasibility Study (RI/FS) and Selected Remedy

On-Post OU (OU 3). Prior to the selection of remedial alternatives for the On-Post OU, an RI/FS was conducted to provide information on the type and extent of contamination, human and ecological risks, and feasibility of remedial actions suitable for application at RMA. The RI, completed in January 1992, studied five environmental media at the RMA Site, including soils, water, structures, air, and biota. The RI identified approximately 3,000 acres of contaminated soil, 15 groundwater plumes, and 798 structures. The FS was

finalized in October 1995 for the On-Post OU.

On June 11, 1996, the Army, EPA, and the State of Colorado signed the "Record of Decision for the On-Post Operable Unit" (On-Post ROD). The On-Post ROD formally established the cleanup approach to be taken and specified individual remedial actions to be implemented for soil, structures, and groundwater. In general, the remedial action objectives were to prevent or limit potential exposure of humans and biota and any further contamination of the surface water, groundwater, or air due to releases from the soils, sediments, and structures at the On-Post OU. The overall remedy for the On-Post OU includes extraction and treatment of the contaminated groundwater plumes, demolition of 750 structures with no designated future use, excavation and disposal of soil and demolition debris with a cumulative contamination concentration presenting an excess cancer risk to human health of greater than $1x10^{-4}$ or a Hazard Index greater than 1.0 for non-cancer risks (collectively referred to as human health exceedance (HHE) soils), as well as munitions debris, in two state-of-the-art hazardous waste landfills to be built within the On-Post OU; and excavation and consolidation of debris and soil presenting a risk to biota (biota soil) in the Basin A, South Plants, and Basin F project areas. The excavated HHE soil areas were backfilled with on-post borrow material and revegetated. The On-Post ROD also requires continued use restrictions for the CES that restrict "current and future land use, specifies that the U.S. government shall retain ownership of RMA, and prohibits certain activities such as agriculture, use of on-post groundwater as a drinking source, and consumption of fish and game taken at RMA."

Multiple changes to the On-Post ROD have been made during implementation of the remedy over the past 14 years through Explanations of Significant Differences (ESD) and two ROD Amendments. With regard to the CES, there are 13 ESDs which document changes in the project boundaries, volumes of soil excavated, and associated costs for each of the implementation projects. These changes have included significant increases in excavated HHE soils at the Section 35 Soil project and excavated biota soils at the Munitions (Testing) Soil project. Of note, any contaminated soils to be contained under soil covers at the North Plants, Secondary Basins, and South Plants Balance of Areas projects were excavated based on additional sampling efforts and the 1- and 2-foot soil cover requirements were eliminated. These boundary, volume, and cover changes have resulted in an estimated increase of $123.5 million for the combined individual projects while the overall On-Post RMA remedy cost has remained unchanged at $2.2 billion.

Off-Post OU (OU 4). The Off-Post OU followed the same investigative process and an RI for the Off-Post study area that evaluated groundwater, soil, surface water, sediment, air and biota was completed in 1988 with an addendum issued in 1992. The RI identified two plume groups encompassing 590 acres in the Off-Post area and wind-deposited contamination in surface soils immediately north of the On-Post boundary in the southeast portion of Section 14 and the southwest portion of Section 13. The Off-Post Endangerment Assessment/Feasibility Study (EA/FS) was issued in 1992 and the Off-Post ROD was signed by the Army, EPA, and the State of Colorado on December 19, 1995. The Off-Post remedy includes extraction and treatment of the contaminated groundwater plumes, and closure of poorly constructed wells that could be acting as migration pathways. For settlement purposes, though the health risks present in the soils were within EPA's acceptable cancer risk range (less than 1×10^{-4}) for residential use, Shell agreed to revegetate approximately 160 acres of soil to enhance the degradation of low-level pesticide residues. The Off-Post ROD also required institutional controls to prevent the use of groundwater exceeding remediation goals. There have been no remedy modifications related to the OPS.

Post-RODs Investigations

On-Post OU (OU 3). Since the signing of the On-Post ROD on June 11, 1996, three main studies have been conducted that are relevant to the deletion of the On-Post CES. These include the "Summary and Evaluation of Potential Ordnance/Explosives and Recovered Chemical Warfare Materiel Hazards at the Rocky Mountain Arsenal" completed in 2002 (Summary Team), the "EPA Denver Front Range Dioxin Study" completed in 2001, and a two-part Residual Ecological Risk (RER) Assessment that was completed in 2003. Each of these on-post investigations is described below:

Summary and Evaluation of Potential Ordnance/Explosives and Recovered Chemical Warfare Materiel Hazards at the Rocky Mountain Arsenal (2002). This effort was conducted in response to the unexpected discovery of ten M139 bomblets as part of the Miscellaneous Structures Demolition and Removal Project—Phase I in the Section 36 Boneyard (central portion of the RMA Site). Using state-of-the-art computer imaging, mapping technology, and software capability which had not existed previously, a comprehensive RMA-wide evaluation for the potential presence of ordnance and explosives as well as recovered chemical warfare materiel hazards was completed. The evaluation identified six additional areas for remedial action, all in the CES, and concluded that the future discovery of additional sites with ordnance/explosives or recovered chemical warfare materiel hazards is highly unlikely. Remediation of four of the Summary Team sites (BT29–1, BT29–2, BT30–01, and BT32–11) was completed in 2004 and is documented in the Construction Completion Report (CCR) for the Burial Trenches Soil Remediation Project, Part II. Remediation of the fifth Summary Team site (ESA–4a) was completed in 2008 and is documented in the CCR for the Munitions (Testing) Soil Remediation Project, Part II. Remediation of the sixth Summary Team site (CSA–2c) was completed in 2008 and is documented in the Munitions (Testing) Soil Remediation Project, Part III.

Dioxin Study. In 2001, EPA conducted a four-part Denver Front Range Dioxin Study which determined that the concentration of dioxins at most of the RMA Site, including the CES, was not statistically different from values observed in open space and agricultural areas within the Denver Front Range area. Therefore, there is no significant health risk from dioxin in soils to future Refuge workers, volunteers, or visitors.

RER Assessment. As required by the ROD, a RER assessment was completed in 2003 addressing both terrestrial and aquatic health risks. The Terrestrial Residual Ecological Risk Assessment was completed in 2002. This report concluded that no significant excess terrestrial residual risks will remain after the ROD-required cleanup actions for soil, including additional areas of excavation and tilling identified as part of remedial design refinement as required by the ROD, are completed. The Aquatic Residual Risk Assessment was completed in 2003. The Assessment presented an evaluation of risks to the great blue heron, shorebirds and waterbirds and concluded that there are no significant risks to aquatic birds in the South Lakes beyond those already identified for remediation in the ROD.

Off-Post OU (OU 4) Indoor Air Evaluation. Since the signing of the Off-Post ROD in 1995, one study has been conducted for the Off-Post OU. Based on EPA guidance issued in 2002 and 2003,

EPA conducted an indoor air evaluation of volatile organic compounds for the entire Off-Post OU using the Johnson and Ettinger Model (GW–SCREEN) as implemented by EPA. Estimated indoor air concentrations and potential cancer and non-cancer risks were calculated for theoretical inhalation exposure to vapors emanating from groundwater at a depth that varies from less than 5 feet to 27.5 feet. Where the depth to groundwater was less than 11 feet, slab on grade foundations were assumed; otherwise, the future residential scenario assumed the residences would be constructed with basements. The result of the assessment indicated that modeled concentrations were below human health risk criteria, that no further evaluation of the vapor intrusion pathway was warranted, and that there was no need to implement intrusion controls in buildings overlying the groundwater plumes in the Off-Post OU.

Response Actions

Remedial Action for the CES of the On-Post (OU 3)

Surface media: The surface media of the CES consists of soil, sediment, and surface water within approximately 3.9 square miles (2,500 acres) in the central and eastern portions of the RMA On-Post OU. Areas with similar contamination were combined into individual projects based upon evidence gathered during the RI. This resulted in 18 separate soil/sediment cleanup projects within the CES including portions of Sections 1, 2, 3, 4, 6, 10, 19, 20, 23, 24, 25, 26, 29, 30, 31, 32, 34, 35, and 36. Completion of these 18 remediation projects is documented in individual project CCRs. The following is a brief summary of these projects and the soil contamination that was remediated within the CES.

- The Basin F/Basin F Exterior Soil Remediation Project included the excavation of soil from three pesticide-contaminated sites within Section 26 of the CES (NCSA–4a, 4b, and 5c). HHE soil was excavated from all three sites and disposed in the HWL. Biota risk soil was excavated from two of these sites (NCSA–4a and NCSA–4b) and consolidated in Basins A and F. This work, completed in 2008, is documented in two CCRs: Basin F/Basin F Exterior Remediation Project—Part 1 and Basin F/Basin F Exterior Remediation Project—Part 1, Phase 2.
- The Burial Trenches Soil Remediation Project included the excavation of soil from six chromium- and lead-contaminated soil sites within Sections 29, 30, 31, and 32 of the CES (BT29–1, BT29–2, BT30–1, BT32–10, BT32–11, ESA–2c). All six sites contained ordnance and explosives, munitions debris and related soil, as well as asbestos-containing material, general construction-related debris and trash that was excavated and disposed in the HWL. This work, completed in 2004, is documented in the CCRs for the Burial Trenches Soil Remediation Project—Part I and Part II.
- A portion of the Complex (Army) Disposal Trenches Subgrade Construction Project is located within Section 36 of the CES. This project consisted of surface grading to provide permanent stormwater drainage off of the adjacent RCRA–Equivalent Cover. No contaminated soils were identified in Section 36 for excavation as part of the Complex Trenches Subgrade Project. The grading, completed in 2008, is documented in the CCR for the Complex (Army) Disposal Trenches Remediation Project, Subgrade Construction.
- The Corrective Action Management Unit (CAMU) Soil Remediation Project included the excavation of soil from one site (site "CAMU") within Sections 23, 24, 25, and 26 in the CES. This site consisted of pesticide-contaminated, biota risk soils and miscellaneous debris that was excavated and consolidated in Basin A. This work, completed in 2000, is documented in CCRs for the CAMU Soils Remediation Project, and the CAMU Soils Remediation Completion and Support Project.
- The Existing (Sanitary) Landfills (ESL) Remediation Project included the excavation of contaminated soil from four sites within the CES: one site in Section 1 (P1 soil site adjacent to SSA–4) and three sites in Section 36 (CSA–1d, CSA–2d, and P1 soil site adjacent to CSA–1d). As documented in the CCR for the Section 1 Existing (Sanitary) Landfills Remediation Project, completed in 2006, biota risk soil was excavated from the P1 soil site adjacent to SSA–4 and consolidated in Basin A. As documented in the CCR for the Section 36 ESL Project, completed in 2004, HHE soil, biota risk soil, and trash and debris were excavated from site CSA–1d and disposed in the HWL; munitions debris was excavated from site CSA–2d and disposed in the HWL; and additional biota risk soil was excavated from the P1 soil site adjacent to CSA–1d and consolidated in Basin A.
- The Miscellaneous Northern Tier Soil Remediation Project included the excavation of one site in Section 25 of the CES (NPSA–4) that contained HHE soil contaminated with chloroacetic acid. As documented in the CCR for the Miscellaneous Northern Tier Soil Remediation Project, completed in 2006, HHE soil was excavated and disposed in the HWL and biota risk soil was excavated and consolidated in Basin A.
- The Miscellaneous RMA Structures Demolition and Removal Project included the excavation of two sites in Section 25 of the CES (BA9A Parcel 3 and 25CC–3). As documented in the CCR for the Miscellaneous RMA Structures Demolition and Removal Project—Phase III, completed in 2009, ACM-contaminated soil, trash, debris, and munitions debris was excavated from the two sites and disposed in the Enhanced Hazardous Waste Landfill (ELF). Some of the ACM-contaminated soil was also disposed off-site at a permitted, CERCLA off-site rule approved landfill.
- The Miscellaneous Southern Tier Soil Remediation Project included excavation of three sites within the CES (SSA–2a, SSA–2b, and a P1 soil site adjacent to SSA–2a) where former process water and wastewater ditches in Sections 1 and 2 contained HHE and biota risk soils contaminated with aldrin, dieldrin, and heavy metals. This work, completed in 2006, is documented in the CCR for the Miscellaneous Southern Tier Soil Remediation Project. A subsequent project, the Sand Creek Lateral Project, involved excavation of additional contaminated soil from two of the Miscellaneous Southern Tier Soil Remediation sites including site SSA–2b located in Section 1 and site SSA–2a located in Section 2. As documented in the CCR for the Sand Creek Lateral Project, completed in 2008, additional HHE soil was excavated from these two sites and disposed in the HWL and ELF, and biota risk soil was excavated and consolidated in Basin A.
- The Munitions (Testing) Soil Remediation Project included 11 sites within Sections 19, 20, 25, 29, 30, 31, and 32 of the CES (BT32–10, CSA–2c, ESA–1b, ESA–1c, ESA–1d, ESA–4a, ESA–4b, MT29–1, MT–DREZ, BA 9A Parcel 2, and BA10 Burn Area). As documented in the CCRs for the Munitions (Testing) Soil Remediation Project, Parts I, II, III, and IV, completed in 2009, munitions debris and related soil, asbestos-containing material, mercury-contaminated biota risk soil, and miscellaneous debris were excavated from all these sites and disposed in the HWL and the ELF. Biota risk soil and miscellaneous debris was excavated and consolidated in Basin A.
- The North Plants Structures Demolition and Removal Project included seven soil remediation sites in Section 25 of the CES (NPSA–1, NPSA–3, NPSA–5, NPSA–6, NPSA–8c, NPSA–9f, and a P1 soil site associated with NPSA–1). HHE soil, biota risk soil, a

chemical sewer system, and a sanitary sewer system were present in the North Plants area where the nerve agent GB, also called Sarin, was manufactured. As documented in the CCR for the North Plants Structure Demolition and Removal Project, completed in 2004, HHE soil and chemical sewers were excavated from three remedy sites within the CES (NPSA–1, 5 and 6) and disposed in the HWL. Over 6,000 linear feet of sanitary sewer line was removed from the North Plants manufacturing area and also disposed in the HWL. In addition, biota risk soil and miscellaneous debris was excavated from six remedy sites within the CES (NPSA–3, 5, 6, 8c, 9f and the P1 soil site associated with NPSA–1) and consolidated in Basin A.

• The Residual Ecological Risk Soil Project included excavation or tilling with sampling of biota risk soil from 18 remedy sites within Sections 1, 2, 24, 26, 35, and 36 (1CN–2, 1WC–1, 2NW–4, 6NW–3, 24SW–1, 26NW–5, 26SE–6, 26SW–1, 26WC–2, 35NC–7, 35SW–2, 35SW–3, 35WC–4, 36EC–1, 36NE–3, 36NW–4, Ditch 2d backfill, Basin F Area 1) and 8 Borrow Areas within Sections 1, 6, 23, 24, 25, 26, 30, 31, 35, and 36 (Borrow Areas 3, 4, 5, 6, 7, 8, 9 and 11) of the CES. These soils were contaminated with low levels of pesticides, primarily aldrin and dieldrin, which presented a residual health risk to biota. As documented in the CCRs for the Residual Ecological Risk Soil Remediation Project—Part 1 and Part 2, completed in 2009, soil at the 18 RER sites was either excavated and consolidated in Basin A, Basin F, or in South Plants, or tilled to an 18 inch depth with follow-up sampling. Biota risk soil was removed from the eight borrow areas and used as daily cover in the HWL, ELF, and Basin A consolidation area, as well as gradefill at depths at least two feet below final grade in areas that will remain in Army control.

• The Sanitary and Chemical Sewer Plugging Project consists of two project phases that were conducted independently of each other. Phase I included plugging manholes associated with sanitary sewer lines in Sections 2, 24, 25, 26, and 35 of the CES. These sewer lines potentially served as conduits for the transport of contaminated groundwater and, therefore, the ROD required that the manholes be plugged with grout. As documented in the CCR for this project, completed in 1998, 62 sanitary sewer manholes in the CES were plugged. Subsequent to this plugging project, 37 of the plugged manholes were excavated as part of implementation of soil remediation projects.

• The Sanitary Sewer Manhole Plugging Project—Phase II included plugging additional manholes in Sections 3, 4 and 35 of the CES. As documented in the CCR for this project, completed in 2009, 21 sanitary sewer manholes in the CES were plugged with grout. There are three manholes in Section 35 which will remain open to support an existing future use structure.

• The Secondary Basins Soil Remediation Project included the excavation of soil from six pesticide-contaminated sites within Section 26 of the CES including two former liquid disposal basins (NCSA–2a and –2b), one ditch (NCSA–2d) between the two basins, and adjacent surface soil areas (NCSA–4b, Surface Soil site, P1 Soil Area). As documented in the CCR for the Secondary Basins Soil Remediation Project, completed in 2004, HHE soil was excavated from four of these sites NCSA–2a, –2b, –2d, and the Surface Soil site and disposed in the HWL. Biota risk soil and miscellaneous debris were excavated from all six sites and consolidated in Basin A. In 2009, additional HHE soil was excavated from the ditch (NCSA–2d) and disposed in the ELF. This additional excavation is documented in the CCR for the Secondary Basins Soil Remediation Project, NCSA–2d (Basin F Drainage Ditch) Contingent Soil Volume (CSV) (NCSA–2d CSV Project).

• The Section 26 Human Health Exceedance and Biota Exceedance Soil Removal Project included the excavation of soil from one pesticide-contaminated site (NCSA–4b) within Section 26 of the CES. As documented in the CCR for the Section 26 Human Health Exceedance and Biota Exceedance Soils Removal Project, completed in 2000, HHE soil was excavated from this site and disposed in the HWL, and the biota risk soil was excavated and either consolidated in Basin A or used as daily cover in the HWL. In 2003, additional contaminated soil was excavated at this site where low level biota risk soil was identified. The additional excavation is documented in an Addendum to the Section 26 Human Health Exceedance and Biota Exceedance Soils Removal Project CCR.

• The Section 35 Soil Remediation Project included excavation of soil from nine sites within the CES that were contaminated by liquid waste from a former retention/detention basin including a basin located in Section 35 (NCSA–5b), former process water and wastewater ditches in Sections 2 and 35 (NCSA–1c, NCSA–5a, NCSA–5c, NCSA–5d, NCSA–6a), and areas surrounding the ditches (Surficial Biota, Surficial P1, Additional Surficial P1). As documented in the CCR for the Section 35 Soil Remediation Project, completed in 2004, HHE soil, chemical sewers, and associated debris were excavated and disposed in the HWL, and biota risk soil was excavated and consolidated in Basin A. A subsequent project, the Sand Creek Lateral Project, included additional work at three sites within Section 35 of the CES including two of the Section 35 Soil Remediation sites (NCSA–5b and –5c) and a section of sanitary sewer (NCSA–8a). As documented in the CCR for the Sand Creek Lateral Project, completed in 2008, HHE soil was excavated from NCSA–5b and –5c and disposed in the HWL and the ELF, and biota risk soil was excavated and consolidated in Basin A. The sanitary sewer (NCSA–8a) was removed and consolidated in Basin A.

• The Section 36 Balance of Areas Soil Remediation Project included the excavation of soil from six sites within Section 36 of the CES (CSA–1d, –2b, –3, –4, P1 East, and P1 North). As documented in CCRs for the Section 36 Balance of Areas Soil Remediation Project (Parts 1 and 2), completed in 2009, HHE soil, munitions debris, chemical sewers and associated debris from two sites (CSA–3 and –4) were excavated and disposed in the HWL. Biota risk soil and miscellaneous debris from four sites (CSA–1d and –2b, P1 East and P1 North) were excavated and disposed in Basin A. Part 2 of the project also included grading in Sections 31 and 36 to construct permanent stormwater drainages off of the adjacent Complex (Army) Trenches RCRA–Equivalent Cover and the Shell Disposal Trenches 2–Foot Cover.

• The South Plants Balance of Areas and Central Processing Area Soil Remediation Project included 16 remedy sites located in Sections 1 and 2 of the CES (SPSA–2b, –2e, –4a, –4b, –5b, –6, –7a, –7b, –7c, –8a, –8b, –8c, –9a, –9b, –10, and a P1 soil area outside of Borrow Area 11) which contained chemical sewers, HHE and biota risk soils contaminated with pesticides, chloroacetic acid, volatile organic compounds, metals, and mercury, as well as the potential for chemical warfare agents, munitions debris and unexploded ordnance. As documented in the CCRs for the South Plants Balance of Areas and Central Processing Area Soil Remediation Project—Phase 1 and Phase 2, completed in 2009, HHE soil, chemical sewers, and associated debris, and munitions debris from 12 of the sites (SPSA–2b, –2e, –4a, –4b, –5b, –6, –7c, –8a, –8b, –9a, –9b, –10) were

excavated and disposed in the HWL. Biota risk soil was excavated from all of the sites excluding SPSA–10 and consolidated under the South Plants Covers or in Basin A. Structural debris from foundation demolition was consolidated within the South Plants soil cover areas.

Structures: All but one of the 750 ROD-identified "no future use" structures within the On-Post OU have been demolished. The remaining ROD structure is the CERCLA Wastewater Treatment Facility in Section 36, which was constructed to treat remedy-generated wastewater. The CERCLA facility currently treats groundwater from the Groundwater Mass Removal Project and is excluded from this proposed partial deletion. One other structure, the LWTS facility, built as part of the remedy to treat wastewater from the on-post landfills, is being decommissioned and is also excluded from this proposed partial deletion.

Demolition and removal of structures within the CES was accomplished by several projects. The remedial action for structures included demolition of the structures and foundations; removal and disposal of debris, substations, roads and parking areas; removal and disposal or recycling of underground storage tanks, structural steel and other metal components; backfilling and grading; and revegetation of the excavated areas. The demolition of most structures is documented in the following project CCRs.

(1) South Plants Structure Demolition and Removal Project Phase 1 and Phase 2 (2002);

(2) South Plants Balance of Areas and the Central Processing Area Soil Remediation Project Phase 2 (2009);

(3) North Plant Structure Demolition and Removal Project (2004); and

(4) Miscellaneous RMA Structure Demolition and Removal Projects—Phases I, II and III (2009).

Groundwater: The proposed partial deletion of the CES does not include groundwater; however, the following groundwater remedy projects are or were located within the CES footprint of the RMA Site. The Section 36 Bedrock Ridge Groundwater Plume Extraction System, constructed in 2008, is an ongoing project which extracts contaminated groundwater flowing from the Basin A and South Plants areas for treatment at the Basin A Neck Groundwater Treatment System. The North of Basin F IRA intercept system was permanently shut down in 2004 due to declining flows, biofouling, declining well capacity, and decreasing contaminant concentrations. The Confined Flow System Well Closure project, completed in 2000, included the closure of 15 wells in the CES which extended into the deeper, confined-low aquifer.

In addition, the portion of the On-Post OU that currently remains on the NPL includes several groundwater remedy components that are not within the proposed CES deletion area and will remain part of the NPL site. These include:

- The Rail Yard Treatment System, located in Section 3, is an ongoing project which treats contaminated groundwater associated with the Rail Yard.
- The Lime Basins and South Tank Farm Groundwater Mass Removal extraction systems, located in Section 36 and Section 1 respectively, are part of an ongoing project that extracts contaminated groundwater for treatment at the CERCLA Wastewater Treatment Facility.
- The CERCLA Wastewater Treatment Facility, located in Section 35, is an ongoing project which treats contaminated groundwater from the Lime Basins and South Tank Farm areas as part of the Groundwater Mass Removal Project.

Use of the groundwater and surface water for potable purposes from the entire original On-Post OU, including the CES, is prohibited by the FFA and On-Post ROD. The FFA and On-Post ROD also prohibit residential development, agricultural activities, and hunting and fishing for consumptive purposes throughout the original On-Post OU. These restrictions will continue to be prohibited even after the CES is transferred to the U.S. Department of Interior and are enforced by the Army through an "Interim Rocky Mountain Arsenal Institutional Control Plan" approved in 2003 and revised in 2006 and 2008.

Remedial Action for the OPS of the Off-Post (OU 4)

Soil: The Off-Post OU of the RMA Site is located directly north and northwest of the On-Post OU. To date, none of the Off-Post OU has been deleted. As agreed in the Off-Post ROD, though the health risks present in the soils were within EPA's acceptable cancer risk range for residential use (less than 1×10^{-4}), Shell completed tilling and seeding of approximately 160 acres in Sections 13 and 14 of the OPS for settlement purposes to enhance the degradation of low-level pesticide residues. This activity is documented in the "Final Inspection/Implementation Report for the Off-Post Tillage Task" completed in 1997.

Groundwater: The proposed partial deletion of the OPS does not include groundwater; however, the following groundwater remedy components are or were within the OPS footprint of the RMA Site. The Off-Post Groundwater Intercept and Treatment System (OGITS), constructed in 1993, is an ongoing project that treats contaminated groundwater plumes that flow off-post to the north and northwest of RMA. The Off-Post Well Abandonment project, completed in 1999, included the closure of 7 wells in the Off-Post OU that extended into the deeper, confined flow aquifer. Institutional controls to prevent the use of groundwater exceeding remediation goals as well as deed restrictions on the Shell Property have been in place since 1996.

Cleanup Goals

Cleanup goals for the On-Post OU were established based upon a scenario for potential contaminant exposure incurred by a biological worker, *e.g.,* a wildlife biologist working in the field, in consideration of the anticipated future land use of the On-Post OU as a National Wildlife Refuge. Soils and structures with a cumulative contamination concentration presenting an excess cancer risk to human health of greater than 1×10^{-4} or a Hazard Index greater than 1.0 for non-cancer risks were identified for excavation/demolition and on-site disposal. To confirm that the ROD-delineated soil contamination areas and depths met remedial action objectives, the On-Post ROD provided for excavation of an additional 150,000 cy of soil beyond that estimated in the selected remedy. For the entire On-Post OU, this volume was identified using 1,014 confirmatory samples as well as visual observations (*e.g.,* for staining, debris, and odors). For the CES, more than 100 samples were collected and roughly 22,000 cy of additional soil was excavated.

Operation and Maintenance (O&M)

No O&M is required for any of the proposed CES and OPS partial deletion areas. However, the Army is responsible for O&M of the On-Post internal groundwater treatment facilities, and Off-Post OGITS until contaminant concentrations are below remedial action levels, as well as continued maintenance of groundwater wells for long-term groundwater monitoring. Long-term access to groundwater wells within the On-Post OU is delineated in Public Law 102–402 and the "Interim Rocky Mountain Arsenal Institutional Control Plan." Long-term access to the groundwater wells in the Off-Post OU is

provided through a license agreement between the Army and Shell.

Five-Year Review

Pursuant to CERCLA Section 121(c) and § 300.430(f)(4)(ii) of the NCP, the next five-year review will be completed in 2011 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. Because the CES and OPS are subject to restrictions on land and water use, they will be included in future, RMA-wide five-year reviews.

Two site-wide, five-year reviews have been conducted to date including the Five-Year Review Report completed in January 2001 and the Five-Year Review Report completed in December 2007. The 2005 Five-Year Review identified 13 issues requiring followup actions, none of which affected the protection of human health or the environment for the Off-Post or On-Post OUs. Seven of these actions were related to improving reporting and coordination, and clarification of remedy requirements. Other issues concerned the incomplete capture of groundwater at the Bedrock Ridge Extraction System, operating problems of the primary sump system in Cell 2 of the Basin F Wastepile, modification of the OGITS extraction system, the discovery of fuel contamination in the groundwater below the North Plants area, and updating portions of the groundwater treatment systems including site-specific treatment criteria known as Practical Quantitation Limits (PQLs), and updating monitoring well networks. None of the issues impacted the CES or OPS, though actions regarding the groundwater monitoring networks may indirectly affect small portions of the CES and OPS.

All but three of the followup actions have been completed. Modification of the OGITS extraction system has been completed and the start-up data is being reviewed. A pilot study for assessing the North Plants Fuel Release has been approved and is ongoing. The PQL study was initiated in 2009 and submittals from laboratories are under review.

A fourth extraction well was installed at the Bedrock Ridge Extraction System and, in 2008, was determined to be adequately capturing the groundwater plume. The Basin F Wastepile Remediation Project, completed in 2009, included the excavation of the Wastepile and the liner system, and disposed the waste in the ELF, thereby eliminating any continuing concerns regarding the sump system.

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. Since 1988, each of the parties involved with the Arsenal cleanup has made extensive efforts to ensure that the public is kept informed on all aspects of the cleanup program. More than 100 fact sheets about topics ranging from historical information to site remediation have been developed and made available to the public. Upon completion of the 30 calendar day public comment period for this proposed partial deletion of the RMA Site, EPA Region 8, in consultation with the State and the Army, will evaluate each comment and any significant new data received before issuing a final decision concerning the proposed partial deletion.

CES of the On-Post (OU 3): Following the release and distribution of the draft Detailed Analysis of Alternatives report for the On-Post OU (a second phase of the FS), the Army held an open house for about 1,000 community members. The open house provided opportunity for individual discussion and understanding of the various technologies being evaluated for cleanup of the On-Post RMA Site. The Proposed Plan for the On-Post OU was issued for public review from October 16, 1995, through January 19, 1996. A public meeting was held on November 18, 1995, attended by approximately 50 members of the public, to obtain public comment on the Proposed Plan. Minimal comments were received on the alternatives presented for the projects in the Central Area of the On-Post OU. Specifically, the comments requested that the health and safety of nearby communities be protected from air emissions during excavation and demolition activities and that potential dioxin contamination of the entire RMA Site be evaluated.

The designs for the each of the 29 remediation projects within the CES (18 soil remediation projects and 11 structure demolition projects) were provided to the public for a thirty calendar day review and comment period at both the 30 percent and 95 percent design completion stages (45 separate public comment periods). Most designs were also presented for discussion at the RMA Restoration Advisory Board which is composed of community stakeholders, regulatory agencies, the Army, Shell Oil Company, and USFWS. No written comments regarding the excavation/demolition approach or the proposed health and safety controls for each project were received.

OPS of the Off-Post (OU 4): An expanded Community Relations outreach was implemented to ensure community members had the opportunity to comment on the Proposed Plan for the Off-Post OU. In January 1993, all documents supporting an expected Proposed Plan were made available for public review in local libraries. A direct mailing to more than 1200 local citizens was made. The RI, RI Addendum, EA/FS, and Proposed Plan for the Off-Post OU were issued for public review on March 21, 1993, and was extended until June 21, 1993. On April 28, 1993, a public meeting was held to obtain public comment of the Proposed Plan. Comments received focused on requests for expanded groundwater treatment, incorporation of a surface soil remedy, and concerns over the selection of a DIMP cleanup standard.

The Draft Final ROD (1993) was revised in consideration of comments received from the city and county governments, environmental action groups and private citizens. Settlement discussions involving municipalities, local health departments, special districts, and citizen groups were held from late 1994 until April 1, 1995, to discuss the final remedies for both the On-Post and Off-Post OUs.

Determination That the Criteria for Deletion Have Been Met

EPA, with concurrence from the State of Colorado, dated March 22, 2010, has determined that all appropriate CERCLA response actions have been completed for the CES and OPS of the RMA Site to protect public health and the environment and that no further response action by responsible parties is required. Based on the extensive investigations and risk assessment performed for the CES and the OPS of the RMA Site, there are no further response actions planned or scheduled for these areas.

There are no known hazardous substances remaining in the CES above health-based levels with respect to anticipated uses of and access to the site which are identified in the FFA, On-Post ROD, and Public Law 102–402. Similarly, no known hazardous substances remain in the OPS above health-based levels with respect to anticipated uses of and access to the site which are limited through deed restrictions. As a result, all completion requirements for the CES and OPS have been achieved as outlined in OSWER

Directive 9320.2–09A–P and the NCP. Therefore, EPA proposes to delete the CES and OPS portions of the RMA Site from the NPL.

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.

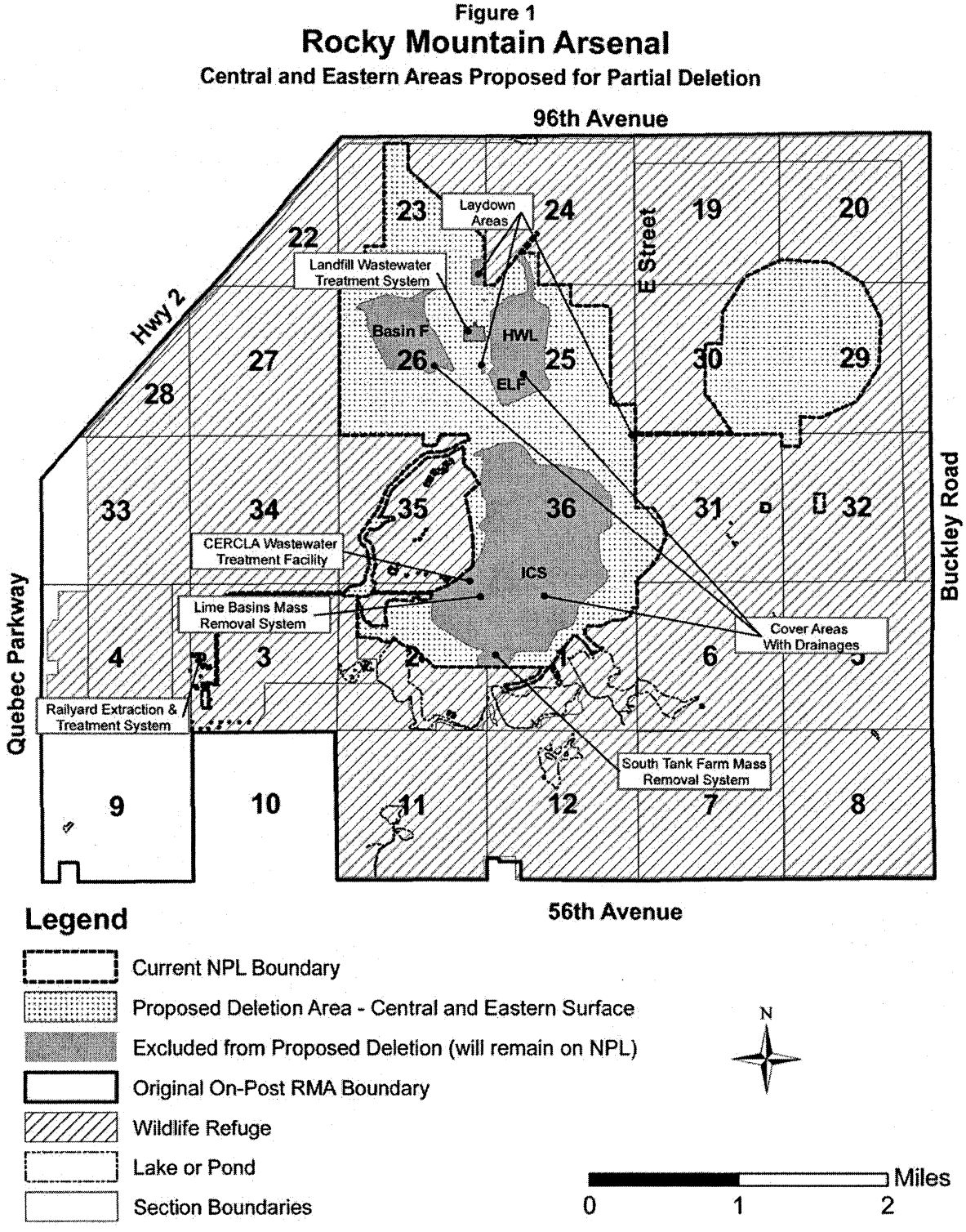
Dated: June 10, 2010.

Carol Rushin,

Deputy Regional Administrator, Region 8.

BILLING CODE 6560–50–P

Figure 1



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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1114]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: Comments are to be submitted on or before September 15, 2010.

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

You may submit comments, identified by Docket No. FEMA–B–1114, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

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

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

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Elmore County, Alabama, and Incorporated Areas				
Tallapoosa River	Approximately 3.0 miles downstream of the Thurlow Dam.	None	+210	City of Tallassee.
	Approximately 1.7 mile downstream of the Thurlow Dam.	None	+214	

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Tallassee

Maps are available for inspection at 3 Freeman Avenue, Tallassee, AL 36078.

Darke County, Ohio, and Incorporated Areas

Indian Creek	Approximately 300 feet upstream of the confluence with Swamp Creek.	None	+968	Village of Versailles.
	Approximately 1,000 feet upstream of the confluence with Swamp Creek.	None	+968	
Painter Creek	Approximately 50 feet upstream of State Highway 49	None	+1,030	Unincorporated Areas of Darke County.
	Just downstream of Hollansburg-Sampson Road	None	+1,049	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Darke County

Maps are available for inspection at 520 South Broadway Street, Greenville, OH 45331.

Village of Versailles

Maps are available for inspection at 177 North Center Street, Versailles, OH 45380.

Cass County, Texas, and Incorporated Areas

Black Bayou	Just upstream of FM 251	None	+227	Unincorporated Areas of Cass County.
	Approximately 1 mile upstream of U.S. Route 59	None	+237	
Hurricane Creek	Approximately 250 feet upstream of East Pinecrest Drive.	None	+237	Unincorporated Areas of Cass County.
	Just downstream of North Holly Street	None	+269	
South Tributary to Black Bayou.	At the confluence with Black Bayou	None	+228	Unincorporated Areas of Cass County.
Approximately 800 feet downstream of Salmon Road	None	+239		

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Cass County

Maps are available for inspection at the Cass County Courthouse, 604 Highway 8 North, Linden, TX 75563.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Hood County, Texas, and Incorporated Areas				
Brazos River	Approximately 3.4 miles upstream of the Bend Dam ..	+696	+695	City of Granbury, Unincorporated Areas of Hood County.
	At the northern county boundary	+711	+710	
Lambert Branch	Just upstream of U.S. Route 377	None	+790	Unincorporated Areas of Hood County.
	Approximately 1,830 feet upstream of Holmes Drive ..	None	+819	
Stream LB–2	Just upstream of U.S. Route 377	None	+774	Unincorporated Areas of Hood County.
	Approximately 550 feet upstream of Ross Lane	None	+833	

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

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Granbury

Maps are available for inspection at City Hall, 116 West Bridge Street, Granbury, TX 76048.

Unincorporated Areas of Hood County

Maps are available for inspection at 100 East Pearl Street, Granbury, TX 76048

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

Dated: June 4, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–14558 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register

Vol. 75, No. 116

Thursday, June 17, 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

Office of the Secretary

Notice of the Specialty Crop Committee's Stakeholder Listening Session

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of stakeholder listening session.

SUMMARY: The notice announces the Specialty Crop Committee's Stakeholder Listening Session. The document contained the wrong date for the meeting.

FOR FURTHER INFORMATION CONTACT: David Kelly, (202) 720–4421.

Correction

In the **Federal Register** of June 9, 2010, in FR Doc. 2010–13798, on pages 32735–32736, in the date section, correct to read as follows:

DATES: The Specialty Crop Committee will hold the stakeholder listening session on July 21st, 2010 from 9 a.m.–3 p.m.

Dated: June 10, 2010.

Yvette Anderson,

Federal Register Liaison Officer for Agriculture Research Service.

[FR Doc. 2010–14504 Filed 6–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–10–0042; CN–10–004]

Tobacco Inspection and Grading Services: Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection in support of the Fair and Equitable Tobacco Reform Act of 2004 (U.S.C. Chapter 518), the Rural Development, Food and Drug Administrative, and Related Agencies Appropriations Act for 2002 (Appropriations Act), and the Tobacco Inspection Act and Regulations Governing the Tobacco Standards.

DATES: Comments received by August 16, 2010 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Interested persons are invited to submit written comments concerning this proposal to Shethir Riva, Chief, Research and Promotion, Cotton and Tobacco Programs, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically through *http://www.regulations.gov.* All comments should reference the docket number and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at *http://www.regulations.gov* or at the Cotton and Tobacco Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington, DC 20250 during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shethir Riva, Chief, Research and Promotion, Cotton and Tobacco Programs, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., Room 2637–S, Washington DC 20250–0224, telephone (202) 720–3193, facsimile (202) 690–1718, or e-mail at *Shethir.riva@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recording Requirements for 7 CFR part 29.

OMB Number: 0581–0056.

Expiration Date of Approval: December 30, 2010.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Tobacco Inspection Act (7 U.S.C. 511–511s) requires that all tobacco sold at designated auction markets in the U.S. be inspected and graded. The Appropriations Act (7 U.S.C. 511s note) requires that all tobacco eligible for price support in the U.S. be inspected and graded. The Fair and Equitable Tobacco Reform Act of 2004 (7 U.S.C. 518–519a) eliminated price supports and marketing quotas for all tobacco beginning with the 2005 crop year. Mandatory inspection and grading of domestic and imported tobacco was eliminated as well as the mandatory pesticide testing of imported tobacco and the tobacco market news program. The Tobacco Inspection Act also provides for interested parties to request inspection, pesticide testing, and grading services on a permissive basis. The information collection requirements authorized for the programs under the Tobacco Inspection Act and the Appropriations Act include: application for inspection of tobacco, application and other information used in the approval of new auction markets or the extension of services to designated tobacco markets, and the information required to be provided in connection with auction and nonauction sales.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.60 hours per response.

Respondents: Primarily tobacco companies, tobacco manufacturers, import inspectors, and small businesses or organizations.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 48.

Estimated Number of Responses: 2415.

Estimated Total Annual Burden on Respondents: 3851.

Comments are invited on: (1) 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) 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; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments also may be sent to Shethir Riva, Chief, Research and Promotion, Cotton and Tobacco Programs, Agricultural Marketing Service, USDA, 1400 Independence Ave., SW., Washington DC 20250–0224. All comments received will be available for public inspection during regular business hours at the same address or through *http://www.regulations.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 11, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–14571 Filed 6–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0063]

Notice of Revision and Request for Extension of Approval of an Information Collection; Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit from Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to revise an information collection associated with regulations for the interstate movement of regulated nursery stock and fruit from quarantined areas to prevent the spread of citrus canker and to request an extension of approval of the information collection.

DATES: We will consider all comments that we receive on or before August 16, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0063*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0063, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0063.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on regulations for the interstate movement of regulated nursery stock and fruit from quarantined areas to prevent the spread of citrus canker, contact Ms. Lynn Evans-Goldner, National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734-7228. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit from Quarantined Areas.

OMB Number: 0579-0317.

Type of Request: Revision and extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as citrus canker, that are new to or not widely distributed within the United States.

Citrus canker is a plant disease that affects plant and plant parts, including fresh fruit of citrus and citrus relatives (family *Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

APHIS regulations to prevent the interstate spread of citrus canker are contained in "Subpart—Citrus Canker" (7 CFR 301.75-1 through 301.75-14). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide, among other things, conditions under which regulated nursery stock and fruit may be moved interstate. The interstate movement of regulated nursery stock and fruit from quarantined areas involves information collection activities, including cooperative agreements, certificates, and limited permits.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

This information collection includes information collection requirements currently approved by OMB control numbers 0579-0317, "Citrus Canker; Interstate Movement of Regulated Nursery Stock from Quarantined Areas," and 0579-0325, "Citrus Canker; Movement of Fruit from Quarantined Areas." After OMB approves and combines the burden for both collections under a single collection (0579-0317), "Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit from Quarantined Areas," the Department will retire number 0579-0325.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection

technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0019836 hours per response.

Respondents: Citrus growers; packinghouses.

Estimated annual number of respondents: 450.

Estimated annual number of responses per respondent: 498.5288.

Estimated annual number of responses: 224,338.

Estimated total annual burden on respondents: 445 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of June 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–14657 Filed 6–16–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0051]

Notice of Request for Extension of Approval of an Information Collection; Importation of Clementines, Mandarins, and Tangerines from Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of clementines, mandarins, and tangerines from Chile to prevent the introduction of plant pests.

DATES: We will consider all comments that we receive on or before August 16, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0051*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0051, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0051.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of clementines, mandarins, and tangerines from Chile, contact Mr. David Lamb, Import Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale MD 20737; (301) 734-0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Clementines, Mandarins, and Tangerines from Chile.

OMB Number: 0579-0242.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-50).

In accordance with these regulations, clementines, mandarins, and tangerines from Chile may be imported only under certain conditions to prevent the introduction of plant pests into the United States. These conditions involve the use of information collection activities, including a phytosanitary certificate, trust fund agreement, permit, production site registration, and shipping documents.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.4984615 hours per response.

Respondents: Growers, shippers, and Chilean plant health officials.

Estimated annual number of respondents: 44.

Estimated annual number of responses per respondent: 7.3863636.

Estimated annual number of responses: 325.

Estimated total annual burden on respondents: 162 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of June 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–14655 Filed 6–16–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year (FY) 2010

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; correction.

SUMMARY: This notice announces the timeframe to submit pre-applications for section 514 Farm Labor Housing (FLH) loans and section 516 FLH grants for the construction of new off-farm FLH units and related facilities for domestic farm laborers. The intended purpose of these loans and grants is to increase the number of available housing units for domestic farm laborers. This notice describes the method used to distribute funds, the application process, and submission requirements.

FOR FURTHER INFORMATION CONTACT: Henry Searcy, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0781 (Room 1263–S), USDA Rural Development, 1400 Independence Ave., SW., Washington, DC 20250–0781, *telephone:* (202) 720–1753 (This is not a toll free number), or via e-mail: *Henry.Searcy@wdc.usda.gov.* If you have questions regarding Net Zero Energy Consumption and Energy Generation please contact Meghan Walsh, National Office Architect, Program Support Staff at (202) 205–9590 or via e-mail: *Meghan.walsh@wdc.usda.gov.*

Amendment

In the **Federal Register** of Monday, May 10, 2010, Vol. 75, No. 89, on page 25834 in the second column, should read: "Individual requests may not exceed $3 million (total loan and grant)."

Dated: June 11, 2010.

Tammye Treviño,

Administrator, Housing and Community Facilities Programs.

[FR Doc. 2010–14579 Filed 6–16–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) met at the Trinity County Office of Education in Weaverville, California, on June 7, 2010, at 6:30 p.m. The purpose of the meeting was to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 and vote on projects for recommendation to the Forest Supervisor of the Shasta-Trinity National Forest for final approval.

DATES: Monday, June 7, 2010.

ADDRESSES: Trinity County Office of Education, 201 Memorial Drive, Weaverville, California 96093.

FOR FURTHER INFORMATION CONTACT: Resource Advisory Committee Coordinator Rita Vollmer at (530) 226–2595 or *rvollmer@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting was open to the public. Public input sessions were provided and individuals had the opportunity to address the Trinity County Resource Advisory Committee.

Dated: June 9, 2010.

Brenda Tracy,

Public Use Staff Officer, Shasta-Trinity National Forest.

[FR Doc. 2010–14423 Filed 6–16–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on July 22 at 7 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: July 22, 2010.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Federal Official (DFO), District Ranger, Plains Ranger District, Lolo National Forest at (406) 826–3821.

SUPPLEMENTARY INFORMATION: Agenda topics include reviewing new RAC project proposals, reviewing progress on current projects, and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, and Sanders County Ledger.

Dated: May 20, 2010.

Randy Hojem,

DFO, Plains Ranger District, Lolo National Forest.

[FR Doc. 2010–14619 Filed 6–16–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on August 12 at 7 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: August 12, 2010.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Federal Official (DFO), District Ranger, Plains Ranger District, Lolo National Forest at (406) 826–3821.

SUPPLEMENTARY INFORMATION: Agenda topics include recommendations on new RAC project proposals, reviewing progress on current projects, and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, and Sanders County Ledger.

Dated: May 20, 2010.

Randy Hojem,

DFO, Plains Ranger District, Lolo National Forest.

[FR Doc. 2010–14618 Filed 6–16–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0065]

Notice of Availability of a Pest Risk Analysis for the Importation of Fresh Mango Fruit From Pakistan Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of fresh mango fruit from Pakistan into the continental United States. Based on that analysis, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the pest risk. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before August 16, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0065*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0065, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0065.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56-1 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56-3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are imported as a commercial consignment.

APHIS received a request from the Government of Pakistan to allow the importation of fresh mango fruits, *Mangifera indica* L., into the continental United States. Currently, fresh mango fruit is not authorized for entry from Pakistan. We completed a pest risk assessment to identify pests of quarantine significance that could follow the pathway of importation if such imports were to be allowed. Based on the pest risk assessment, we then completed a risk management document to identify phytosanitary measures that could be applied to mitigate the risks of introducing or disseminating the identified pests via the importation of fresh mango fruit from Pakistan. We have concluded that fresh mango fruit can safely be imported into the continental United States from Pakistan using one or more of the five designated phytosanitary measures listed in § 319.56-4(b). Therefore, in accordance with § 319.56-4(c), we are announcing the availability of our pest risk analysis for public review and comment. The analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis that you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh mango fruit from Pakistan in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for the importation of fresh mango fruit from Pakistan into the continental United States subject to the requirements specified in the risk management document.

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 14th day of June 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–14650 Filed 6–14–10: 4:15 pm]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0024]

Secretary's Advisory Committee on Animal Health

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are giving notice that the Secretary of Agriculture intends to establish the Secretary's Advisory Committee on Animal Health for a 2-year period. The Secretary of Agriculture has determined that the

Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. Michael R. Doerrer, Chief Operating Officer, Veterinary Services, APHIS, 4700 River Road Unit 58, Riverdale, MD 20737; (301) 734-5034; (*Michael.R.Doerrer@aphis.usda.gov*).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary's Advisory Committee on Animal Health (the Committee) is to advise the Secretary of Agriculture on means to prevent, conduct surveillance, monitor, control, or eradicate animal diseases of national importance. In doing so, the committee will consider public health, conservation of natural resources, and the stability of livestock economies.

Done in Washington, DC, this 11th day of June 2010.

Pearlie S. Reed,

Assistant Secretary for Administration.

[FR Doc. 2010–14659 Filed 6–16–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0025]

Secretary's Advisory Committee on Animal Health; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that the Secretary has established the Advisory Committee on Animal Health for a 2-year period. The Secretary is soliciting nominations for membership for this Committee.

DATES: Consideration will be given to nominations received on or before August 2, 2010.

ADDRESSES: Nominations should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Michael R. Doerrer, Chief Operating Officer, Veterinary Services, APHIS, 4700 River Road Unit 58, Riverdale, MD 20737; (301) 734-5034; (*Michael.R.Doerrer@aphis.usda.gov*).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary's Advisory Committee on Animal Health (the Committee) is to advise the Secretary of Agriculture on means to prevent, conduct surveillance, monitor, control, or eradicate animal diseases of national importance. In doing so, the committee will consider public health, conservation of natural resources, and the stability of livestock economies.

The Designated Federal Official shall select a Chairperson and Vice Chair upon consultation with the members of the committee. We are soliciting nominations from interested organizations and individuals. An organization may nominate individuals from within or outside its membership.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, consistent with USDA policies, will be followed in making all appointments to the Committee. To ensure that recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women and persons with disabilities.

Done in Washington, DC, this 11th day of June 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–14660 Filed 6–16–10; 8:45 am]

BILLING CODE 3410–34–S

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, June 25, 2010; 11:30 a.m. EDT.

PLACE: Via Teleconference. Public Dial In: 1–800–597–7623, Conference ID # 82122192.

Meeting Agenda

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda

II. State Advisory Committee Issues

- Florida SAC

III. Program Planning

- Consideration of Discovery Plan and Project Outline for Report on Sex Discrimination in Liberal Arts College Admissions

IV. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: June 15, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–14825 Filed 6–15–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Summary of State and Local Government Tax Revenue.

OMB Control Number: 0607–0112.

Form Number(s): F–71, F–72, F–73.

Type of Request: Revision of a currently approved collection.

Burden Hours: 18,401.

Number of Respondents: 10,752.

Average Hours per Response: 26 minutes.

Needs and Uses: The U.S. Census Bureau requests a revision to the Quarterly Summary of State and Local Government Tax Revenues to ensure accurate collection of information about state and local government tax collections. The revision consists of a new survey universe, to a probability sample from a panel study, and modifications to the collection instrument for the F–73 portion of the program. With the change in the survey universe, the F–73 component is being renamed to the Quarterly Survey of Non-Property Taxes from the Quarterly Survey of Selected Local Taxes.

These tax collections, amounting to nearly $1.3 trillion annually, constitute approximately 43 percent of all governmental revenues. Quarterly measurement of, and reporting on, these fund flows provides valuable insight into trends in the national economy and that of individual states. Information collected on the type and quantity of taxes collected gives comparative data on how the various levels of government fund their public sector obligations.

The Census Bureau uses the three forms covered by this statement to collect state and local government tax data for this long established data series. Tax collection data are used to measure economic activity for the Nation as a whole, as well as for comparison among

the various states. These data are also useful in comparing the mix of taxes employed by individual states, and in determining the revenue raising capacity of different types of taxes in different state-areas.

Key users of these data include the Bureau of Economic Analysis, the Federal Reserve Board, the Department of Housing and Urban Development who rely on these data to provide the most current information on the financial status of state and local governments. These data are included in the quarterly estimates of National Income and Product Accounts developed by the Bureau of Economic Analysis; and the Department of Housing and Urban Development has used the property tax data as one of nine cost indicators for developing Section 8 rent adjustments. Legislators, policy makers, administrators, analysts, economists, and researchers use these data to monitor trends in public sector revenues. Journalists, teachers, and students use these data as well.

Affected Public: State, local or Tribal Government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: June 14, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–14685 Filed 6–16–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–820, A–588–843, A–580–829, A–469–807, A–583–828]

Stainless Steel Wire Rod from Italy, Japan, the Republic of Korea, Spain, and Taiwan: Continuation of Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty orders on stainless steel wire rod (SSWR) from Italy, Japan, the Republic of Korea (Korea), Spain, and Taiwan would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty orders.

EFFECTIVE DATE: June 17, 2010

FOR FURTHER INFORMATION: Holly Phelps or Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0656 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2009, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on SSWR from Italy, Japan, Korea, Spain, and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year ("Sunset") Review*, 74 FR 31412 (July 1, 2009).

As a result of its reviews, the Department determined that revocation of the antidumping duty orders on SSWR from Italy, Japan, Korea, Spain, and Taiwan would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the orders be revoked. *See Stainless Steel Wire Rod From Italy, Japan, the Republic of Korea, Spain, and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 74 FR 56179 (Oct. 30, 2009).

On May 14, 2010, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on SSWR from Italy, Japan, Korea, Spain, and Taiwan would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable future. *See Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, and Taiwan*, 75 FR 32503 (June 8, 2010).

Scope of the Orders

The merchandise covered by these orders is SSWR, which comprises products that are hot–rolled or hot–rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot–rolling or hot–rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold–finished into stainless steel wire or small–diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire–drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the orders. The chemical makeup for the excluded grades is as follows:

SF20T	
Carbon	0.05 max
Chromium	19.00/21.00
Manganese	2.00 max
Molybdenum	1.50/2.50
Phosphorous	0.05 max
Lead	added (0.10/0.30)
Sulfur	0.15 max
Tellurium	added (0.03 min)
Silicon	1.00 max

K–M35FL	
Carbon	0.015 max
Nickel	0.30 max
Silicon	0.70/1.00
Chromium	12.50/14.00
Manganese	0.40 max
Lead	0.10/0.30
Phosphorous	0.04 max
Aluminum	0.20/0.35

K–M35FL	
Sulfur	0.03 max

The products subject to these orders are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Continuation of the Orders

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty orders would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on SSWR from Italy, Japan, Korea, Spain, and Taiwan. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year reviews of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

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

Dated: June 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14665 Filed 6–16–10; 8:45 am]

BILLING CODE S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails from the People's Republic of China: Final Results of the First New Shipper Review

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

SUMMARY: The Department of Commerce ("Department") is conducting a new shipper review of the antidumping duty order on certain steel nails from the People's Republic of China ("PRC"). *See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China*, 73 FR 44961 (August 1, 2008) ("*Order*"). Based upon our analysis of the comments and information received, we made changes to the dumping margin calculations for the final results. *See* Memorandum to the File from Tim Lord, Case Analyst, through Alex Villanueva, Program Manager, Analysis of the Final Results of the First New Shipper Review of Certain Steel Nails from the People's Republic of China: Qingdao Denarius Manufacture Co., Ltd. ("Qingdao Denarius") ("Final Analysis Memorandum") (June 10, 2010). The final dumping margin is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: June 17, 2010.

FOR FURTHER INFORMATION CONTACT: Tim Lord, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–7425.

SUPPLEMENTARY INFORMATION:

Case History

On January 15, 2010, the Department published in the **Federal Register** the preliminary results of this new shipper review of the antidumping duty order on certain steel nails from the PRC. *See Certain Steel Nails from the People's Republic of China: Notice of Preliminary Results of the New Shipper Review*, 75 FR 2483 (January 15, 2010) ("*Preliminary Results*"). Since the *Preliminary Results*, the following events have occurred.

On February 12, 2010, the Department issued a memorandum that uniformly extended all Import Administration deadlines 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 April 21, 2009, the Department published the extension of the time limit for completion of the final results of this new shipper review by 60 days. *See Certain Steel Nails from the People's Republic of China: Extension of Time Limit for the Final Results of the First New Shipper Review*, 75 FR 14423 (March 25, 2010).

On January 13, 2010, the Department issued a supplemental questionnaire to Qingdao Denarius, in which we asked for documentation to support that Qingdao Denarius' U.S. customer during the period of review ("POR") re–sold the subject merchandise bought from Qingdao Denarius for a profit. On January 26, 2010, Qingdao Denarius submitted its response. Qingdao Denarius and Petitioner submitted their case briefs on February 16, 2010, and March 8, 2010, respectively, and on March 18, 2010 Qingdao Denarius and Petitioner submitted rebuttal briefs.

Scope of the Order

The merchandise covered by this proceeding includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot–dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw–threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope of this proceeding are roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder–actuated hand tools, not threaded and threaded, which are currently classified under HTSUS

7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under

HTSUS 7317.00.10.00. Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced–diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas–actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum ("Final Decision Memo"), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this new shipper review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit ("CRU"), room 1117 of the main Department of Commerce building. In addition, a copy of the Final Decision Memo can be accessed directly on our website at http://ia.ita.doc.gov/. The paper copy and electronic version of the Final Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results*, we have made revisions to the margin calculation for Qingdao Denarius in the final results. For all changes to the calculations of Qingdao Denarius, see the Final Decision Memo and Final Analysis Memorandum. For changes to the surrogate values see Memorandum to the File, through Alex Villanueva, Program Manager, AC/CVD Operations, Office 9, from Tim Lord, Case Analyst, AD/CVD Operations, Office 9, Analysis of the Final Results of the First New Shipper Review of Certain Steel Nails from the People's Republic of China: Qingdao Denarius Manufacture Co., Ltd. ("Qingdao Denarius").

Final Results of the Review

The weighted–average dumping margin for the POR is as follows:

CERTAIN STEEL NAILS FROM PRC

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Qingdao Denarius	34.14

Assessment

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b)(1). We have calculated importer–specific duty assessment rates on a per–unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. In this and future reviews, we will direct CBP to assess importer–specific assessment rates based on the resulting per–unit (i.e., per–kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this new shipper review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this new shipper review for all shipments of subject merchandise by Qingdao Denarius, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended ("Act"): (1) for subject merchandise produced and exported by Qingdao Denarius, the cash deposit rate will be the percent listed above, or the equivalent per–unit rate; (2) for subject merchandise exported by Qingdao Denarius, but not manufactured by Qingdao Denarius, the cash deposit rate will continue to be the PRC–wide rate of 118.04 percent; and (3) for subject merchandise manufactured by Qingdao Denarius, but exported by any party other than Qingdao Denarius, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements will remain in effect until further notice.

Reimbursement of Duties

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

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(5).

Dated: June 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I Decision Memorandum

[FR Doc. 2010–14666 Filed 6–16–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT

[4/28/2010 through 6/7/2010]

Firm	Address	Date accepted products for filing	Products
Kansas City Tent & Awning Company.	1819 Holmes, Kansas City, MO 64108.	4/28/2010	The company designs and manufactures custom tents and awnings.
A. Rifkin Company	1400 Sans Souci Parkway, Wilkes-Barre, PA 18703.	5/14/2010	A. Rifkin manufactures security and multi-use reusable fabric lock bags systems and related products.
Applied Separations, Inc.	930 Hamilton Street, Allentown, PA 18101.	5/14/2010	Applied Separations manufactures analytical laboratory instruments for DNA testing and systems to produce supercritical fluids.
Fitzpatrick Manufacturing Company.	33637 Sterling Ponds, Sterling, MI 48312.	5/14/2010	Machining and assembly of industrial motion control products, automotive powertrain and driveline components, aftermarket automotive tooling, mold and die components.
ZMC Industries, LLC dba Vomax.	76 Industrial Drive, Northhampton, MA 01060.	5/14/2010	Vomax manufactures custom performance apparel. They use a method of dye sublimation.
Electro Chemical Engineering & Manufacturing.	750 Broad Street, Emmaus, PA 18049.	5/17/2010	Electro Chemical manufactures steel tanks that are lined with various materials for the containment of corrosive materials.
Kepner-Scott Shoe Company	209 North Liberty Street, Orwigsburg, PA 17961.	5/17/2010	Kepner Scott's line of footwear consists of children's orthopedic, casual and dress footware.
Mount Joy Wire Corporation	1000 East Main Street, Mount Joy, PA 17552.	5/17/2010	Mount Joy is a manufacturer of carbon steel wire.
TLX Technologies, LLC	Saratoga Drive, Waukesha, WI 53186.	5/17/2010	The firm designs and manufactures latching, u-frame, actuators, high speed, tubular and valve solenoids.
Valley Fastener Group, LLC	1490 Mitchell Road, PO Aurora, IL 60507.	5/17/2010	Valley manufactures and distributes carbon steel, stainless steel, brass, aluminum, and copper fastening products.
Eastern Surfaces, Inc.	601 South 10th Street, Allentown, PA 18103.	5/18/2010	Eastern Surfaces is a manufacturer of natural and man-made stone and solid surface products. We also template, fabricate and install counters.
Cooley Group Holdings Inc.	50 Esten Avenue, Pawtucket, RI 02860.	5/24/2010	Cooley Group Holdings Inc. manufactures made to order rubber roofing membrane in roll form and other made to order engineered composites.
Corcoran Printing, Inc.	641 N. Pennsylvania, Wilkes Barre, PA 18705.	5/24/2010	Corcoran Printing's products include high quality multi-color commercial printing such as brochures, posters, catalogs, and postcards.
Chatsworth Data Corporation	20710 Lassen Street, Chatsworth, CA 91311.	5/25/2010	Chatsworth Data produces Impact Indicators and Recorders, Optical Mark Recorders and Scanners and Cable Circuit Analysis Systems.
Pairpoint Glass Company, LLC	851 Sandwich Road, P.O. Sagamore, MA 02561.	5/26/2010	Manufactures pressed and blown glass.
Woerner Industries, Inc. dba Lassco Wizer.	485 Hague Street, Rochester, NY 14606.	5/26/2010	Woerner manufactures primarily equipment used in the finishing area of the printing industry and church furniture.
Century Mold Company, Inc.	25 Vantage Point Drive, Rochester, NY 14624.	5/27/2010	CM produces injection molded plastic parts primarily for "under the hood" plastic parts for automotive markets.
Expert Die, Inc.	257 Expert Way, Dalton, GA 30721.	5/27/2010	The firm produces saw blades, CNC tools, knives and circular blades.
Dura-Bilt Products, Inc. dba Lassco Wizer.	17066 Berwick Turnpike, Gillete, PA 16925.	6/1/2010	National manufacturer of sunrooms, screenrooms, patio awnings and porch roofs.
The Carpentree, Inc.	2724 N. Sheridan, Tulsa, OK 74115.	6/1/2010	Frames for art and photography pictures.
Ames Industries, Inc.	2999 Elizabethtown Road, Hershey, PA 17033.	6/3/2010	Ames builds intricate, close tolerance molds for a multitude of custom products.
Frantz Manufacturing	603 First Avenue, Sterling, IL 61081.	6/3/2010	The company is a manufacturer of ball bearings and steel balls for the Company industrial machinery and automotive industries.
Paneltech Products, Inc.	2999 John Stevens Way, Hoquiam, WA 98550.	6/3/2010	Manufacturer of composite construction panels, interior and exterior, glass fiber protection fabrics.
Puritan Products, Inc.	Lehigh Valley Industrial, Bethlehem, PA 18107.	6/4/2010	Firm sells specialty chemicals and custom chemical formulations.
Charles Alan Incorporated	2901 Stanley Avenue, Fort Worth, TX 76110.	6/7/2010	Home and office furniture.
Custom Wood Gifts, LLC	5465 Woodbine Avenue, North, SC 29406.	6/7/2010	The firm produces laser cut replicas of historic sites and buildings; primary manufacturing material is wood.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT—Continued

[4/28/2010 through 6/7/2010]

Firm	Address	Date accepted products for filing	Products
Everbrite Electronics, Inc.	720 W. Cherry Street, Chanute, KS 66720.	6/7/2010	Electronic switching power supplies for neon signs and LED based products and related components.
H. H. Fessler Knitting Co, Inc. d/b/a FesslerUSA.	216 West Independence, Orwigsburg, PA 17961.	6/7/2010	FesslerUSA manufactures custom women and children's apparel and provides design and production.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 11, 2010.

Miriam J. Kearse,

Eligibility Certifier.

[FR Doc. 2010–14612 Filed 6–16–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW61

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Training Exercises in Three East Coast Range Complexes

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

ACTION: Notice; issuance of three Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued three one-year Letters of Authorization (LOAs) to take marine mammals by harassment incidental to the U.S. Navy's training activities within the Navy's Virginia Capes (VACAPES), Jacksonville (JAX), and Cherry Point Range Complexes to the Commander, U.S. Fleet Forces Command, 1562 Mitscher Avenue, Suite 250, Norfolk, VA 23551–2487 and persons operating under his authority.

DATES: Effective from June 5, 2010, through June 4, 2011.

ADDRESSES: Copies of the Navy's January 28, 2010, LOA applications, the LOAs, the Navy's 2009 marine mammal monitoring report and the Navy's 2009 exercise report are available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS (301) 713–2289 x 137.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's training activities at the Navy's VACAPES, JAX, and Cherry Point Range Complexes were published on June 15, 2009 (VACAPES: 74 FR 28328; JAX: 74 FR 28349; Cherry Point: 74 FR 28370), and remain in effect through June 4, 2014. They are codified at 50 CFR part 218 subpart A (for VACAPES Range Complex), subpart B (for JAX Range Complex), and subpart C (for Cherry Point Range Complex). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's range complex training exercises. For detailed information on these actions, please refer to the June 15, 2009 **Federal Register** Notices and 50 CFR part 218 subparts A, B, and C.

Summary of LOA Request

NMFS received an application from the U.S. Navy for three LOAs covering the Navy's training activities at the VACAPES, JAX, and Cherry Point Range Complexes off the US East Coast under the regulations issued on June 15, 2009 (VACAPES: 74 FR 28328; JAX: 74 FR 28349; Cherry Point: 74 FR 28370). The Navy requested that these LOAs become effective on June 5, 2010. The application requested authorization, for a period not to exceed one year, to take, by harassment, marine mammals incidental to proposed training activities that involve underwater explosives.

Summary of Activity under the 2009 LOA

As described in the Navy's exercise reports, in 2009, the training activities conducted by the Navy were within the scope and amounts contemplated by the final rule and authorized by the 2009 LOAs. In fact, the number of training

exercises was below the Navy's proposed 2009 operations.

Planned Activities for 2010

In 2010, the Navy expects to conduct the same type and amount of training identified in the final rules and 2009 LOAs. No modification is proposed by the Navy for its planned 2010 activities.

Estimated Take for 2010

The estimated takes for the Navy's proposed 2010 training exercises are the same as those in authorized in 2009. No change has been made in the estimated takes from the 2009 LOAs.

Summary of Monitoring, Reporting, and other requirements under the 2009 LOA

Annual Exercise Reports

The Navy submitted their 2009 exercise report within the required timeframes and it is posted on NMFS website: http://www.nmfs.noaa.gov/pr/permits/incidental.htm. NMFS has reviewed the report and it contains the information required by the 2009 LOAs. The report lists the amount of training exercises conducted between June 2009 and January 2010. For training exercises conducted at the VACAPES Range Complex, the Navy conducted 26 exercises out of the total of 176 proposed. For training exercises at the JAX Range Complex, the Navy conducted 4 out of 175 exercises proposed. No training exercise was conducted at the Cherry Point Range Complex, though a total of 38 exercises were proposed.

Monitoring and Annual Monitoring Reports

The Navy conducted the monitoring required by the 2009 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of training exercises by marine mammal observers. The Navy submitted their 2009 Monitoring Report, which is posted on NMFS' website (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. The Navy included a summary of their 2009 monitoring effort and results (beginning on page 3 of the monitoring report).

Integrated Comprehensive Management Program (ICMP) Plan

The ICMP will be used both as: (1) a planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (e.g., research and development), and other appropriate newly published information. The Navy finalized a 2009 ICMP Plan outlining the program on December 22, 2009, as required by the 2009 LOA. The ICMP may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

The ICMP is a program that will be in place for years and NMFS and Navy anticipate the ICMP may need to be updated yearly in order to keep pace with new advances in science and technology and the collection of new data.. In the 2009 ICMP Plan, the Navy outlines three areas of targeted development for 2010, including:

- Identifying more specific monitoring sub-goals under the major goals that have been identified
- Characterizing Navy Range Complexes and Study Areas within the context of the prioritization guidelines described here
- Continuing to Develop Data Management, Organization and Access Procedures

Adaptive Management and 2010 Monitoring Plan

NMFS and the Navy conducted an adaptive management meeting in October 2009 wherein we reviewed the Navy monitoring results through August 1, 2009, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Because this is the first year of the regulation's period of effectiveness, the review only covered about 7 months of monitoring, which limited NMFS and the Navy's ability to undertake a robust review of the Navy's exercises and their effects on marine mammals. Based on the implementation of the 2009 monitoring, the Navy proposed some minor modifications to their monitoring plan for 2010 for VACAPES and JAX Range Complex training exercises, which NMFS agreed were appropriate. Beyond those changes, none of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 7(b)(i)(A) of the 2010 LOAs for VACAPES and JAX Range Complexes, which may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. As additional data is obtained in subsequent years, NMFS and Navy will be better positioned to conduct more extensive reviews and modify existing mitigation and monitoring measures, if appropriate.

Authorization

The Navy complied with the requirements of the 2009 LOAs. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2009 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized, and was likely lower given the fact that Navy conducted fewer operations in 2009 than originally planned. Further, the level of taking authorized in 2010 for the Navy's training exercises at VACAPES, JAX, and Cherry Point Range Complexes is consistent with our previous findings made for the total taking allowed under these Range Complexes regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2010 training exercises at VACAPES, JAX, and Cherry Point Range Complexes will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued three one-year LOAs for Navy training exercises conducted at these East Coast Range Complexes from June 5, 2010, through Juan 4, 2011.

Dated: June 3, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–14662 Filed 6–16–10; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Petition of Hard Eight Futures, LLC for Exemptive Relief, Pursuant to Section 4(c) of the Commodity Exchange Act, From Section 2(a)(1)(C)(iv) of the Commodity Exchange Act and Appendix D to Part 30 of the Rules of the Commodity Futures Trading Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition and request for comment.

SUMMARY: Hard Eight Futures, LLC ("HEF") has petitioned the Commodity Futures Trading Commission ("Commission" or "CFTC") for exemptive relief, pursuant to Section 4(c) of the Commodity Exchange Act

("Act" or "CEA"),[1] to permit U.S. eligible contract participants ("ECPs"),[2] subject to certain conditions, to trade foreign non-narrow-based security index futures contracts where the foreign exchange has not obtained a staff no-action letter with respect to the offer and sale of such futures contracts to U.S. persons. The conditions proposed in HEF's petition are: (i) Relief is only available for futures on broad-based security indexes; (ii) the securities comprising such an index are principally traded on, by, or through any exchange or market located outside the U.S.; (iii) the Commission must have a Memorandum of Understanding with the foreign exchange's regulator with respect to information sharing and cooperation; [3] and (iv) an ECP seeking to claim the exemption would file notice with the Commission, which would be effective with respect to that person and index, unless the Commission notifies the person within ten (10) business days that the claimant does not meet the requirements of the exclusion, or that the index does not qualify as broad based.

The Commission seeks comment on HEF's petition and related questions. Copies of the petition are available for inspection at the Office of the Secretariat by mail at the address listed below, by telephoning (202) 418–5100, or on the Commission's Web site (*http://www.cftc.gov*).

DATES: Comments must be received on or before July 19, 2010. Comments must be in English or, if not, accompanied by an English translation.

ADDRESSES: Comments should be sent to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to *hardeightfutures@cftc.gov.* Reference should be made to "Hard Eight Futures Petition for Exemption from Section 2(a)(1)(C)(iv) of the Act and Appendix D to Part 30 of the Rules of the Commission." Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following the comment submission instructions. Comments will be published on the Commission's Web site.

FOR FURTHER INFORMATION CONTACT: Julian E. Hammar, Assistant General Counsel, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5118. E-mail: *jhammar@cftc.gov* or Edwin J. Yoshimura, Counsel, Office of General Counsel, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, IL 60661. Telephone: (312) 596–0562. E-mail: *eyoshimura@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In general, foreign exchange-traded futures and commodity option products may be offered or sold by properly registered or exempt intermediaries to persons located in the U.S., without prior product approval.[4] Special review procedures apply, however, to the offer or sale of futures contracts based on a group or index of securities ("security index").[5] Specifically, Section 2(a)(1)(C)(iv) of the CEA [6] generally prohibits any person from offering or selling a futures contract based on a security index in the U.S., except as otherwise permitted under Section 2(a)(1)(C)(ii) or Section 2(a)(1)(D).[7] By its terms, Section 2(a)(1)(C)(iv) applies to futures contracts on security indexes traded on both domestic and foreign boards of trade.

Section 2(a)(1)(C)(ii) of the CEA [8] sets forth three criteria to govern the trading of futures contracts on a security index to be traded on contract markets and derivatives transaction execution facilities designated or registered by the Commission:

(a) The contract must provide for cash settlement;

(b) The contract must not be readily susceptible to manipulation or to being used to manipulate any underlying security; and

(c) The security index must not constitute a narrow-based security index.[9]

The CEA does not explicitly address the standards to be applied to a security index futures contract traded on a foreign board of trade. Historically, though, Commission staff has applied the aforementioned three criteria in evaluating requests by foreign boards of trade seeking to offer and sell their foreign security index futures contracts in the U.S. (without becoming designated as a contract market, or registered as a derivatives transaction execution facility).

In reviewing such requests, Commission staff evaluates the foreign security index futures contract to ensure that it complies with the three criteria of Section 2(a)(1)(C)(ii) of the CEA. In making its determination, the staff considers the design and maintenance of the index, the method of index calculation, the nature of the component security prices used to calculate the index, the breadth and frequency of index dissemination, and other relevant factors.[10] With respect to whether a foreign futures contract based on a foreign security index is not readily susceptible to manipulation or being used to manipulate any underlying security, one preliminary consideration is the requesting board of trade's ability to access information regarding the securities underlying the index.[11]

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[1] 7 U.S.C. 6(c).

[2] The term "eligible contract participant" is defined in Section 1a(12) of the Act, 7 U.S.C. 1a(12).

[3] A foreign exchange seeking to offer foreign security index futures to the general public in the U.S. would still need staff no-action relief, and if it sought to do so through terminals located in the U.S., it would still need a second "direct access no-action letter" from the staff.

[4] *See* Foreign Commodity Options, 61 FR 10891 (Mar. 18, 1996).

[5] The CEA, as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), Appendix E of Public Law No. 106–554, 114 Stat. 2763 (2000), provides that the offer or sale in the U.S. of futures contracts based on a security index, including those contracts traded on or subject to the rules of a foreign board of trade, is subject to the Commission's exclusive jurisdiction, with the exception of security futures products, over which the Commission shares jurisdiction with the Securities and Exchange Commission ("SEC"). A security future, in turn, is defined in CEA Section 1a(31) as a futures contract on a single security or a "narrow-based security index." 7 U.S.C. 1a(31). Thus, the Commission's jurisdiction remains exclusive with regard to futures contracts on a security index that is broad-based, i.e., that does not meet the definition of a "narrow-based security index" in CEA Section 1a(25), 7 U.S.C. 1a(25).

[6] 7 U.S.C. 2(a)(1)(C)(iv).

[7] CEA Section 2(a)(1)(D), 7 U.S.C. § 2(a)(1)(D), governs the offer and sale of security futures products.

[8] 7 U.S.C. 2(a)(1)(C)(ii).

[9] With regard to the third criterion, the CFTC and SEC have jointly promulgated Commission Rule 41.13 under the CEA and Rule 3a55–3 under the Securities Exchange Act of 1934, governing security index futures contracts traded on foreign boards of trade. These rules provide that "[w]hen a contract of sale for future delivery on a security index is traded on or subject to the rules of a foreign board of trade, such index shall not be a narrow-based security index if it would not be a narrow-based security index if a futures contract on such index were traded on a designated contract market or registered derivatives transaction execution facility." Commission Rule 41.13, 17 CFR 41.13; SEC Rule 3a55–3, 17 CFR 240.3a55–3.

[10] *See* generally Appendix D to Part 30 of the Commission's regulations.

[11] In general, staff has requested that the foreign board of trade provide a copy of the surveillance agreements between the board of trade and the exchange(s) on which the underlying securities are traded; assurances that the board of trade will share information with the Commission, directly or indirectly; and when applicable, information regarding foreign blocking statutes and their impact on the ability of U.S. government agencies to obtain information concerning the trading of futures contracts on security indexes. The staff reviews this

Upon determination by staff that the subject futures contract and underlying index comport with the criteria set forth in Section 2(a)(1)(C)(ii) of the CEA, Commission staff issues a no-action letter to the foreign board of trade with respect to the offer and sale of such futures contract in the U.S.[12] A foreign board of trade that has received prior no-action relief with respect to a particular foreign security index futures contract must file a new submission for each foreign security index futures contract that it seeks to offer or sell in the U.S.

II. HEF's Petition

By letter dated April 21, 2008 ("Petition"), HEF, a registered commodity trading advisor ("CTA"), applied for exemptive relief, pursuant to Section 4(c) of the Act, from Section 2(a)(1)(C)(iv) of the Act and Appendix D to Part 30 of the Rules of the Commission.[13] According to the Petition, this exemption is necessary to promote responsible economic innovation and fair competition. Granting the exemption will enable U.S. ECPs [14] to trade a foreign security index futures contract even if the foreign board of trade that lists the contract has not obtained no-action relief relating to the offer and sale of that contract to U.S. persons.

Under the exemptive relief requested by HEF's Petition, U.S. ECPs could trade, on a foreign board of trade, futures contracts on foreign security indexes that are not security futures products (*i.e.,* the index is not a narrow-based security index) on the same basis as they may trade any other futures contract on a foreign board of trade. Currently, no prior qualifying action by the Commission or its staff is required in order for U.S. persons to enter into non-security-based futures contracts traded on a foreign board of trade. Rather, U.S. customers are permitted to access futures products offered by a foreign board of trade through a U.S. registered futures commission merchant or introducing broker, or through a foreign firm pursuant to an exemption under Commission Rule 30.10.[15] HEF's Petition asks that for U.S. ECPs, the same rules apply to foreign security index futures contracts as well.

III. SEC Exemptive Order Regarding Foreign Security Futures

Due to the applicability of the federal securities laws, though, security index futures are not the same as futures on non-security based commodities. In this regard, with respect to security futures products (*i.e.,* futures on a single security or a narrow-based security index) traded on foreign boards of trade, Section 2(a)(1)(E) of the CEA and Section 6(k) of the Securities Exchange Act of 1934 ("Exchange Act") provide that: (i) The CFTC and SEC "shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons;" and (ii) such rules, regulations or orders "shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects." [16]

After HEF's Petition was filed, the SEC on June 30, 2009, issued an Order ("SEC Order") [17] exempting certain persons from Section 6(h)(1) of the Exchange Act, which makes it unlawful for U.S. persons to enter into security futures traded on foreign boards of trade ("foreign security futures").[18] The SEC Order, among other things, permits certain sophisticated investors to access foreign security futures and provides relief for certain intermediaries in order to effect these transactions under certain conditions, including that the "primary trading market" for the underlying securities of foreign private issuers is outside the U.S.[19] Specifically, the sophisticated investors to which the SEC Order applies include qualified institutional buyers ("QIBs") as defined in SEC Rule 144A under the Securities Act of 1933.[20] A QIB is generally an entity that owns and invests on a discretionary basis at least $100 million in securities of unaffiliated issuers; it is, therefore, a narrower class of investors than the class of ECPs as defined in the CEA.[21]

The relief granted by the SEC Order, although not coterminous with the relief requested by HEF, is relevant to HEF's Petition. Prior to the SEC Order, if a foreign broad-based security index underlying a foreign exchange-traded futures contract became a narrow-based security index for a certain period of time, a U.S. person had to exit its position in that futures contract during a specified grace period, or be in violation of the Exchange Act's prohibition on trading foreign security futures.[22] Since June 30, 2009, though, if an ECP is eligible for and the contract satisfies the requirements for the exemption issued in the SEC Order, the ECP could continue to trade such a contract as a foreign security future pursuant to the terms and conditions of the SEC Order. But if an ECP is not eligible—that is, if the ECP does not meet the high threshold to qualify as a QIB—or the contract is not eligible under the SEC Order, then the ECP would not have relief in trading such a contract.

information to ensure that the requesting foreign board of trade (and/or its regulator) has the ability and willingness to access adequate surveillance data necessary to detect and deter manipulation in the futures contracts and underlying securities, as well as share such data with the Commission.

[12] A no-action letter generally is a written statement issued by the staff of a Division or Office of the Commission that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed by the requestor. *See* Commission Rule 140.99(a)(2), 17 CFR 140.99(a)(2). A no-action letter to a foreign board of trade does not affect or alter the application of Part 30 of the Commission's Rules, which governs the offer and sale by financial intermediaries of foreign futures and foreign option contracts to persons located in the U.S.

[13] Appendix D to Part 30 sets forth the process by which Commission staff evaluates requests for no-action relief from foreign boards of trade seeking to offer and sell their futures contracts on non-narrow-based security indexes in the U.S., and sets forth the information that such a foreign board of trade should submit when seeking no-action relief. 17 CFR Part 30, Appendix D.

[14] The CEA provides that the Commission may only issue exemptive relief to "appropriate persons" as described in CEA Section 4(c)(3), 7 U.S.C. 6(c)(3). For purposes of its Petition, HEF requests that the Commission define "appropriate persons" as including all ECPs.

[15] 17 CFR 30.10.

[16] 7 U.S.C. 2(a)(1)(E); 15 U.S.C. 78f(k).

[17] *See* Order Under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption From Exchange Act Section 6(h)(1) for Certain Persons Effecting Transactions in Foreign Security Futures and Under Exchange Act Section 15(a)(2) and Section 36 Granting Exemptions From Exchange Act Section 15(a)(1) and Certain Other Requirements, 74 FR 32200 (July 7, 2009).

[18] 15 U.S.C. 78f(h).

[19] In light of questions received following the issuance of the SEC Order, the Commission's Division of Clearing & Intermediary Oversight has recently issued an "Advisory Concerning the Offer and Sale of Foreign Security Futures Products to Customers Located in the United States."

[20] 15 U.S.C. 77a *et seq.*

[21] 17 CFR 230.144A (a QIB is one of the enumerated entities, "acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the entity").

[22] If an index becomes narrow-based for more than 45 business days over three consecutive calendar months, the CEA and the Exchange Act provide a grace period of three months during which the index is excluded from the definition of a "narrow-based security index." *See* Section 1a(25)(D) of the CEA, 7 U.S.C. 1a(25)(D) and Section 3(a)(55)(E) of the Exchange Act, 15 U.S.C. 78c(a)(55)(E). Although these provisions apply to security index futures contracts traded on certain U.S. exchanges, by joint regulation, the Commission and the SEC have made these provisions applicable to security index futures contracts traded on foreign boards of trade. *See* Commission Rule 41.13, 17 CFR 41.13 and SEC Rule 3a55–3, 17 CFR 240.3a55–3.

IV. Relief Sought by HEF

Section 4(c)(1) of the Act empowers the Commission to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions, including any person offering or entering into such transaction, from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.[23] The Petition requests relief from the requirement that U.S. persons may only enter into a futures contract on a foreign security index listed on a foreign board of trade if the foreign board of trade has first received a letter providing no-action relief to offer and sell that futures contract to U.S. persons.

The proposed exemptive relief would require that a person wishing to trade a particular security index futures contract listed on a foreign board of trade that has not received no-action relief notify the Commission of the person's intent to do so. The notice would require the claimant to demonstrate his or her qualification for the exemption (*i.e.,* that he or she is an ECP), and that the index is not a narrow-based security index. The exemption would be effective with respect to that person and index unless the Commission notifies the person within ten (10) business days that the claimant does not meet the requirements of the exclusion, or the index does not qualify under the Act as a non-narrow based index (including an explanation of why it considers the person not to be qualified or the index to be narrow-based, respectively).

Further, this exemption would be available only for contracts traded on foreign boards of trade for which the applicable foreign regulator has entered into a Memorandum of Understanding ("MOU") with respect to information sharing and cooperation with the CFTC.[24] Also, the securities comprising the index underlying the futures contract would have to be principally traded on, by, or through an exchange or market located outside the U.S.

The Petition does not seek an exemption from the requirement that a foreign board of trade be granted no-action relief before offering and selling such foreign security index futures contracts to the general public. Nor does it seek an exemption from the requirement that such contracts may be traded through direct access from the U.S. to a foreign board of trade's electronic trading system only pursuant to a Commission staff direct access no-action letter.[25]

More specifically, HEF is seeking an exemption, pursuant to Section 4(c) of the Act, from Section 2(a)(1)(C)(iv) of the Act and 17 CFR Part 30 Appendix D in the following form, with conditions:

(X) *Exemption for Eligible Contract Participants Trading Non-narrow Based Stock Indexes on a Foreign Board of Trade.* The Commodity Futures Trading Commission, pursuant to its authority under Section 4(c)(1) of the Commodity Exchange Act, hereby determines that notwithstanding the provisions of Section 2(a)(1)(C)(iv) of the Act and Appendix D to Part 30 of its Rules, nothing in the Act is intended to prohibit any "eligible contract participant," as defined in Section 1a(12) of the Act, located in the U.S. from purchasing or carrying futures contracts on a securities index that is not a "narrow-based index" as defined in Section 1a(25) of the Act, traded on or subject to the rules of a foreign board of trade to the same extent such person may be authorized to purchase or carry a futures contract on any other commodity so long as the underlying securities comprising such index are principally traded on, by or through any exchange or market located outside the United States, and the regulator of such foreign board of trade has entered into a Memorandum of Understanding with respect to information sharing and cooperation with the Commission.

(a) *Notification:* Persons wishing to avail themselves of this exemption shall so notify the Commission. This notification shall be filed with the Secretary of the Commission at its Washington, D.C. headquarters, in electronic form, shall be labeled as "Notification of Trading in a Non-narrow Based Index Traded on a Foreign Board of Trade," and shall include:

(1) The name and address of the person and representation that the person qualifies as an Eligible Contract Participant, and the basis upon which the person so qualifies;

(2) The name of the non-narrow based index and of the foreign board of trade on which the index is traded;

(3) A demonstration that the index is not a "narrow-based index" under the definition of Section 1a(25) of the Act; and

(4) A representation that the regulator of the foreign board of trade has entered into an information-sharing agreement with the Commission or to which the Commission is also a signatory.

(b) *Effective Date:* The exemption shall be effective ten (10) business days after filing of the notice with the Commission, unless the Commission within that period notifies the person claiming the exemption that the exemption may not be made effective with respect to that person and/or that index and its reason for so finding.

According to HEF, the purpose behind the no-action process is in furtherance of Congress' expressed intent "to protect the interests of U.S. residents against fraudulent or other harmful practices."[26] HEF maintains that ECPs, due to their size and sophistication, are not dependent upon the terms and conditions imposed on the trading of foreign security index futures in the staff's no-action relief for protection from fraud. Further, HEF notes that in the U.S., ECPs currently are able to trade contracts, agreements, or transactions that replicate futures contracts on foreign security indexes in the over-the-counter ("OTC") markets. HEF states that granting this exemptive relief will enable ECPs to trade futures contracts on a foreign board of trade that are equivalent to contracts that ECPs are able to trade in the OTC markets. Because contracts on foreign security

[23] Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1), provides that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by * * * order, after notice and opportunity for hearing, may (* * * on application of any person, including any board of trade designated or registered as a contract market * * *) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods * * * from any * * * provision of this Act (except subparagraphs (C)(ii) and (D) of section 2(a)(1), except that the Commission and Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)), if the Commission determines that the exemption would be consistent with the public interest.

While Section 4(c)(2) of the Act, 7 U.S.C. 6(c)(2), imposes additional requirements with respect to any exemption from the requirements of Section 4(a) of the Act, 7 U.S.C. 6(a), HEF is not seeking such relief.

[24] This could be either a bilateral MOU between the Commission and the applicable foreign regulator, or a multilateral MOU such as the "Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information" created by the International Organization of Securities Commissions ("IOSCO Multilateral MOU").

[25] *See* Policy Statement Regarding Boards of Trade Located Outside of the United States and No-Action Relief From the Requirement To Become a Designated Contract Market or Derivatives Transaction Execution Facility, 71 FR 64443 (Nov. 2, 2006).

[26] H.R. Rep. No. 97–565, Part I, at p. 85 (May 17, 1982).

indexes are already traded in the OTC markets by U.S. ECPs, HEF believes that it is in the public interest to provide U.S. ECPs the choice to trade foreign security indexes in a more regulated, transparent exchange environment on foreign boards of trade.

V. Request for Comments

The Commission requests public comment on any aspect of the Petition that commenters believe may raise issues under the CEA or Commission regulations. In particular, the Commission invites comment regarding the following:

(1) *Conditions Proposed by HEF:* Should an order granting the request for relief include any one or more of the conditions proposed by HEF in its Petition?

(2) *Surveillance:* In granting no-action relief to a foreign board of trade seeking to offer and sell a futures contract on a foreign security index to U.S. persons, Commission staff generally rely on surveillance sharing agreements between the securities exchanges on which the securities comprising the index are traded, and the foreign board of trade. *See infra* n.11. Also, before issuing such no-action relief, Commission staff often requests a representation or commitment from the foreign board of trade of its willingness and ability to share information with the Commission. *Id.* Similarly, in granting no-action relief to a foreign board of trade seeking to offer and sell any futures contract to U.S. persons through direct access to its electronic trading system from the U.S., Commission staff typically confirm that the market and its regulator have the ability to obtain the specific types of information that may be needed by the Commission, as well as the authority to share that information with the Commission on an "as needed" basis. Moreover, Commission staff generally obtains evidence of the foreign market's and regulator's willingness to share information (*e.g.,* through explicit undertakings) with the Commission.

To ensure that there are similar protections in place in the circumstances posed by HEF's Petition, should an order granting the request for relief require that the foreign board of trade that lists the foreign security index futures contract to be traded by the ECP have: (i) Submitted a pending request for no-action relief with respect to that futures contract; (ii) received a prior no-action letter for another foreign security index futures contract; and/or (iii) received a foreign direct access no action letter?

(3) *MOUs:* The Commission is concerned that the condition for an MOU included in HEF's Petition may not be workable in practice, given the wide spectrum of information sharing agreements to which the Commission is a party. An MOU may only mean that the foreign regulator will share information, not that it has access to surveillance information to share. Should an order granting the relief requested in HEF's Petition be conditioned on the existence of an MOU that is specifically tailored to obtain the information that the Commission needs to assess the efficacy of the foreign board of trade and its regulator, and to obtain surveillance information as it deems necessary? Should any such relief be limited to foreign security index futures contracts listed in jurisdictions that are signatories to the IOSCO Multilateral MOU?

(4) *Broad vs. Narrow-Based Security Indexes:* As discussed above, a futures contract on a security index that moves from broad to narrow-based thereby becomes a security future that may no longer be traded by U.S. persons subject to the exclusive jurisdiction of the CFTC. To ensure full compliance with the requirements of the CEA and the federal securities laws, should an order granting the relief requested in HEF's Petition require an undertaking by the ECP to: (i) Continually monitor the underlying index to ensure that it remains broad-based; (ii) notify the Commission if the index becomes a narrow-based security index; and (iii) if the index continues to be narrow-based for more than 45 business days during 3 consecutive calendar months, to cease trading the futures contract and liquidate existing positions in an orderly manner over the next 3 calendar months (provided, however, that if the ECP and the futures contract are eligible for the exemptive relief granted by the SEC Order, the ECP may continue to trade that contract as a foreign security future)?

(5) *Additional Conditions:* Should an order granting the relief requested in HEF's Petition require that there be no solicitation of ECP orders, and/or that ECPs be required to trade only for their own account? [27]

(6) *OTC Derivatives Reform Legislation:* As discussed above, HEF's Petition justifies its request for relief, in part, on the proposition that: (i) U.S. ECPs currently are able to trade contracts that replicate futures on foreign security indexes in the unregulated OTC markets; and (ii) it is in the public interest to enable them to do so in a more regulated and transparent exchange environment on a foreign board of trade. Yet, legislation currently pending before the Congress, if eventually enacted, could change this premise to some degree, as it would significantly enhance the transparency of OTC derivatives and require that certain swaps (subject to an "end-user exception") be traded on a contract market or a "swap execution facility" as provided for in that legislation. What are the implications of the OTC derivatives reform legislation pending in Congress, if any, on HEF's Petition?

(7) *Foreign Securities:* As discussed above, HEF's Petition proposes that an order granting its request for relief be conditioned upon all the securities in the index underlying the foreign futures contract being principally traded on, by, or through an exchange or market located outside the U.S. This "principally traded" formulation may be based on the language of CEA Section 2(a)(1)(F)(ii), which addresses trading of foreign security futures by ECPs in the U.S.[28] What are the implications, if any, of the use of this standard in an order granting the relief requested in HEF's Petition in comparison to the "primary trading market" test that the SEC created for securities of foreign private issuers in a narrow-based security index as set forth in paragraph (1)(a)(ii) of the SEC Order? [29] Should an order granting the relief requested in HEF's Petition treat securities in an index as being principally traded on, by, or through an exchange outside the United States if they meet the criteria for securities in a narrow-based security index contained in paragraph (1)(a)(ii) of the SEC Order? [30]

[27] Granting the relief requested in HEF's Petition would in no way alter the requirements of Part 30 of the Commission's regulations concerning foreign futures and options transactions.

[28] 7 U.S.C. 2(a)(1)(F)(ii). *See* text accompanying n.31 *infra* for full text.

[29] The SEC Order provides that for U.S. QIBs to be able to trade foreign security futures, the securities issued by foreign private issuers that underlie a foreign security future must have their "primary trading market" outside the U.S. For purposes of this condition, under the SEC Order a security's "primary trading market" is deemed to be outside the U.S. if at least 55% of the worldwide trading volume in the security took place in, on, or through a securities market or markets located in either: (i) A single foreign jurisdiction; or (ii) no more than two foreign jurisdictions during the most recently completed fiscal year. If the trading in the foreign private issuer's security is in two foreign jurisdictions, the trading for the issuer's security in at least one of the two foreign jurisdictions must be greater than the trading in the U.S. for the same class of the issuer's securities in order for such security's "primary trading market" to be considered outside the U.S.

[30] In addition to securities of foreign private issuers whose primary trading market is outside the

Continued

(8) *ECPs vs. QIBs:* CEA Section 2(a)(1)(F)(ii), cited in the preceding paragraph, provides in full as follows:

> Nothing in this Act is intended to prohibit any eligible contract participant located in the United States from purchasing or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market so long as any underlying security for such security futures products is traded principally on, by, or through any exchange or market located outside the United States.[31]

As discussed above, the SEC Order generally limits the category of U.S. persons that may trade foreign security futures to QIBs (who own and invest $100 million or more). This is a narrower class of investors than ECPs. The group of persons that satisfy the ECP definition but may not be QIBs includes registered investment companies, commodity pools, pension plans, corporations and high net worth individuals. These persons may have a real need for risk management based upon exposures in foreign financial markets or to economic conditions in other countries, or they may want to gain exposure to those markets as part of the asset allocation in their investment portfolio.

If the relief requested in HEF's Petition is granted, an ECP that is a QIB and trades a foreign futures contract on a foreign security index that moves from broad to narrow-based can continue to trade that contract as a foreign security future, provided the contract otherwise meets the requirements of the SEC Order. An ECP that is not a QIB, however, would have to exit its position in the foreign futures contract within the applicable grace period or be in violation of the Exchange Act. Given this difference in legal status, should an order issued by the Commission granting the relief requested in HEF's Petition be limited to QIBs?

With respect to access to foreign security futures by U.S. persons, are the conditions contained in the SEC Order consistent with Section 2(a)(1)(F)(ii) of the CEA? Should ECPs that are not QIBs be permitted to trade foreign security futures? What conditions, if any, should be imposed on such trading by ECPs that are QIBs, and ECPs that are not QIBs? How should an order permitting ECPs to trade foreign security futures take into account, as mandated by Section 2(a)(1)(E) of the CEA, "the nature and size of the markets that the securities underlying the security futures product reflects?"

(9) *Nature of Foreign Security Indexes:* Lying at the core of the complex interplay between HEF's Petition on the one hand, and the CEA and the federal securities laws on the other hand, is the application of the statutory definition of a "narrow-based security index" to foreign security indexes. To the extent that a foreign security index falls squarely on the broad-based side of the line, distinctions between ECPs that are QIBs and those that are not, and the prospect of an ECP that is relying on the relief requested by HEF violating the securities laws, may be of less concern.

Congress has recognized that "[t]he detailed statutory test of a narrow-based security index was tailored to fit the U.S. equity markets, which are by far the largest, deepest and most liquid securities markets in the world."[32] In the CFMA in 2000, Congress directed that the CFTC and the SEC, within one year, jointly adopt rules or regulations that set forth requirements for broad-based foreign security indexes traded on a foreign board of trade.[33] And shortly thereafter, the CFTC and SEC promised to consider amending the rules regarding security index futures trading on or subject to the rules of a foreign board of trade.[34]

Should the CFTC and the SEC establish criteria to exclude appropriate foreign security indexes from the definition of a "narrow-based security index?" If so, on what basis? How should it be determined whether a foreign security index is appropriately treated as a broad-based security index so that foreign futures on such an index would trade subject to the exclusive jurisdiction of the CFTC, or as a narrow-based security index so that foreign futures on such an index would trade as foreign security futures? The Commission encourages commenters to submit any quantitative data and analysis to support any proposed distinctions between broad and narrow-based foreign security indexes.

(10) *CEA Section 4(c) Requirements:*

- Is the exemption requested in HEF's Petition consistent with the requirements for relief set forth in Section 4(c) of the CEA?
- Would granting the exemption requested in HEF's Petition be consistent with the public interest and purposes of the CEA?
- Would granting the relief requested in HEF's Petition have any material adverse effects upon derivatives clearing organizations, exchanges, or other Commission registrants from a competitive or other perspective?

(11) *Other Issues:* The Commission welcomes comment on any other issues relevant to HEF's Petition for an exemption.

* * * * *

Issued in Washington, DC, on June 11, 2010 by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–14680 Filed 6–16–10; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Request To Amend an Existing Order Under Section 4(c) of the Commodity Exchange Act Permitting Eligible Swap Participants To Submit for Clearing, and ICE Clear U.S., Inc. and Futures Commission Merchants To Clear, Certain-Over-The-Counter Agricultural Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Request for Comment on an Amendment to an Exemption Order.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is requesting comment on whether to amend an existing order to extend the exemption granted to ICE Clear U.S., Inc. ("ICE Clear") under Section 4(c) of the Commodity Exchange Act ("Act")[1] to certain over-the-counter ("OTC") agricultural swaps for which there is no corresponding futures contract listed for trading on ICE

U.S. underlying narrow-based security indexes, paragraph (1)(a)(ii) of the SEC Order permits debt securities issued or guaranteed by a foreign government as defined in Rule 405 of the Securities Act, 17 CFR 230.405, that are eligible to be registered with the SEC under Schedule B of the Securities Act, 15 U.S.C. 77aa. Further, paragraph (1)(a)(ii) requires that at the time of the transaction, at least 90% of the index, both in terms of the number of underlying securities and their weight, must meet these eligibility requirements. No more than 10% of the securities in the index, both in terms of their number and their weight, at the time of the transaction, that do not meet the requirements, must be from issuers that are required to file reports with the SEC pursuant to Section 13 or Section 15(d) of the Exchange Act, 15 U.S.C. 78m and 78*o*.

[31] 7 U.S.C. 2(a)(1)(F)(ii).

[32] H.R. Rep. No. 110–627 at 983 (2009) (Conference Report on the CFTC Reauthorization Act of 2008, Title XIII of the 2008 "Farm Bill," Public Law No. 110–246, 122 Stat. 1651 (June 18, 2008)).

[33] *See* 7 U.S.C. 1a(25)(B)(iv) and 1a(25)(C); 15 U.S.C. 3(a)(55)(C)(iv) and 3(a)(55)(D).

[34] *See* Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; Application of the Definition of Narrow-Based Security Index, 66 FR 44490, 44501–44502 (August 23, 2001).

[1] 7 U.S.C. 6(c).

Futures U.S., Inc. ("ICE Futures") at the time of acceptance for clearing. Authority for extending this relief is found in Section 4(c) of the Act.

DATES: Comments must be received on or before August 2, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving.* Follow the instructions for submitting comments.
- *E-mail: iceclearotc4c@cftc.gov.* Include "ICE Clear Section 4(c) Amended Exemption Request" in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, 202–418–5092, *rwasserman@cftc.gov*, or Alicia L. Lewis, Attorney-Advisor, 202–418–5862, *alewis@cftc.gov*, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

In September 2007, ICE Clear, a registered derivatives clearing organization ("DCO") and the clearing organization for ICE Futures, submitted applications to the Commission requesting an order (1) pursuant to Section 4(c) of the Act, (a) to permit the clearing of coffee, sugar, and cocoa OTC swap contracts and (b) to determine that certain ICE Futures floor brokers and traders are eligible swap participants ("ESPs") for the purpose of trading these OTC swaps; and (2) pursuant to Section 4d of the Act, to permit certain customer positions in these cleared OTC swap contracts and the property collateralizing these positions to be commingled with property and positions otherwise required to be held in customer segregated accounts. Part 35 of the Commission's regulations [2] allows the trading but not the clearing of such contracts.[3] On December 12, 2008, the Commission approved the applications and issued an order pursuant to Sections 4(c) and 4d of the Act (the "Previous Order").[4] ICE Clear represents that it commenced clearing the permitted swaps on February 13, 2009.

The clearing process for these swaps involves the replacement of each OTC swap with a "cleared-only" contract, the essential terms of which match the terms, including the expiration date, of a corresponding underlying exchange-listed futures contract in coffee, sugar, or cocoa traded on ICE Futures. The clearinghouse is interposed as the central counterparty. The cleared-only contracts are financially settled while the underlying futures contracts are settled with physical delivery.

In granting the relief requested, the Commission imposed certain terms and conditions in the Previous Order to address its regulatory concerns and mitigate the risks associated with the clearing of OTC agricultural swaps. With respect to Section 4d of the Act, the Commission evaluated whether ICE Clear's proposal would provide appropriate protection for customer funds since futures customers would be exposed to a different source of risk if funds supporting contracts executed in the OTC market were commingled with customer funds supporting futures transactions in customer segregated accounts. In analyzing this issue, the Commission considered (1) the ability of a futures commission merchant ("FCM") or DCO to offset these contracts in the OTC markets in the event of a default on such contracts by a customer or an FCM, respectively, since a cleared-only contract could be *offset* only by another cleared-only contract and (2) the availability of the exchange-traded markets for coffee, sugar and cocoa for hedging purposes, as well as the correspondence between the terms of a cleared-only contract and a corresponding exchange-traded contract for these products. Based on ICE Clear's proposal, the Commission found that these cleared-only contracts correspond to transactions in a potentially liquid OTC market and, importantly, that they were economically equivalent to, and thus could be effectively hedged with an exchange-listed futures contract.[5]

Accordingly, in order to ensure an effective means of risk management for these cleared-only contracts, the Commission included Condition 3(B) in the Previous Order, which required that the cleared-only contracts be closely related to underlying futures contracts traded on ICE Futures. Specifically, Condition 3(B) provides that:

> "[t]he economic terms and the daily settlement prices of each contract, agreement or transaction subject to this order must be analogous to the economic terms, and equal to the daily settlement prices, respectively, of a corresponding futures contract listed for trading on ICE Futures."

The fulfillment of this condition would enable an FCM carrying the positions of a defaulting customer or ICE Clear carrying the positions of a defaulting member, to economically hedge those positions in the ICE Futures market by entering into an equal but opposite position in the corresponding listed futures contract. Thus, the Commission considered economic hedging in the exchange-listed market and actual offset based on the OTC market as feasible risk management measures for FCMs carrying cleared-only positions, as well as for ICE Clear itself.

II. The Current ICE Clear Petition

ICE Clear seeks to modify Condition 3(B) of the Previous Order to allow it to clear OTC swaps in coffee, sugar and cocoa that have economic terms analogous to the terms of corresponding futures contracts listed for trading on ICE Futures with the exception of their expiration dates. Such expiration dates would be permitted to be beyond that of the corresponding futures contracts. These OTC swap contracts are referred to herein as "Long-Dated Swaps". The clearing of Long-Dated Swaps will require ICE Clear to establish independent settlement prices for such swaps until there is a corresponding futures contract, with the same expiration date, listed for trading on ICE

[2] 17 CFR Part 35.

[3] Part 35 of the Commission's regulations, 17 CFRPart 35, promulgated pursuant to the authority of Section 4(c) of the Act, exempts swap agreements and eligible persons entering into these agreements from most provisions of the Act. The term "swap agreement" is defined to include, among other types of agreements, "a * * * commodity swap," which latter term includes swaps on agricultural products. While the Commodity Futures Modernization Act of 2000 amends the Act to exempt the trading of many OTC transactions from many provisions of the Act, these exemptions explicitly do not apply to OTC transactions in agricultural commodities. Accordingly, swaps involving agricultural commodities continue to rely upon the exemptions of Part 35. Part 35 requires, among other things, that a swap agreement not be part of a fungible class of agreements that are standardized as to their material economic terms and that the creditworthiness of any party having an interest under the agreement be a material consideration in entering into or negotiating the terms of the agreement. Thus, absent an additional exemption pursuant to Section 4(c) of the Act, ICE Clear could not engage in the clearing of OTC swap contracts in cocoa, sugar and coffee, since such contracts would not fulfill all of the conditions for exemption in Part 35. For further discussion of the Part 35 analysis, *see* 72 FR 68862, 68863 (Dec. 6, 2007).

As discussed further below, the Commission is requesting comment on the impact of pending financial services reform legislation on Part 35.

[4] 73 FR 77015 (Dec. 18, 2008).

[5] *See* 73 FR at 77018.

Futures. In order to establish such prices, ICE Clear represents that it has developed specific pricing models for Long-Dated Swaps and will use those models along with the best available market data to determine settlement prices.[6] In addition, ICE Clear represents that only ESPs would be permitted to trade these swaps.

ICE Clear has not requested an order pursuant to Section 4d of the Act permitting customer positions in these Long-Dated Swap contracts and the property collateralizing those positions to be commingled with property and positions otherwise required to be held in customer segregated accounts. Accordingly, positions in such contracts, and property collateralizing such positions, would not be commingled with positions and related collateral segregated pursuant to Section 4d of the Act.[7] Long-Dated Swaps, and property collateralizing such swaps, would be treated as other cleared-only contracts by ICE Clear and its clearing members that are registered as FCMs.

Eventually, however, the expiration date of a Long-Dated Swap will, after the passage of time, correspond to that of a futures contract listed for trading by ICE Futures (at that point, the Long-Dated Swap would become an "Aged Long-Dated Swap"). An Aged Long-Dated Swap would be economically equivalent to an OTC swap that was first accepted for clearing *after* the listing of a corresponding futures contract. As a result, an Aged Long-Dated Swap would also satisfy all the requirements specified in the Previous Order, and therefore, could be carried in the customer segregated account pursuant to the provisions of that order. ICE Clear would not establish an independent settlement price for an Aged Long-Dated Swap, but instead would use the settlement price of the corresponding listed futures contract.

[6] ICE Clear proposes to use a process similar to the industry-standard pricing procedures for options pricing models used to value longer dated options positions in less liquid contract months. Moreover, ICE Clear represents that the market data used will include: (i) Cleared-swaps data submitted to the clearinghouse; (ii) year-on-year spread values for the underlying traded futures contract for actively traded months; (iii) OTC transaction data solicited from third-party brokers such as the major inter-dealer brokers; (iv) indicative quotes provided by third-party brokers; and (v) historical data.

[7] Pursuant to recent amendments to Part 190 of the Commission's Regulations, 17 CFR Part 190, positions in these contracts, and related collateral, could be included as Cleared OTC Derivatives, if ICE Clear's rules or bylaws were to require them to be segregated. The amendments were published at 75 FR 17297 (Apr. 6, 2010).

III. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the Act empowers the Commission to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions from any of the provisions of the Act (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.[8] The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative. In enacting Section 4(c) of the Act, Congress noted that the goal of the provision "is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner."[9] Permitting the inclusion of Long-Dated Swaps in the class of OTC agricultural swap transactions that can be cleared by ICE Clear may foster both financial innovation and competition. It may benefit the marketplace by providing ESPs with the ability to bring together flexible negotiation with central counterparty guarantees, as well as capital and operational efficiencies. ESPs also may precisely hedge their cash positions with offsetting swap positions that match closely in terms of expiration date. The Commission is requesting comment on whether it should extend the permission to clear granted previously to include those OTC swap contracts for which the expiration date is beyond that of any corresponding futures contract listed for trading on ICE Futures at the time of acceptance for clearing.

Section 4(c)(2) provides that the Commission may grant exemptions only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts, or transactions at issue, and the exemption is consistent with the public interest and the purposes of the Act; that the agreements, contracts or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under the Act.[10] Section 4(c)(3) includes within the term "appropriate persons" a number of specified categories of persons deemed appropriate under the Act for entering into transactions exempt by the Commission under Section 4(c). This includes persons the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections. ESPs, as defined in Part 35 of the Commission's regulations,[11] and ICE Futures floor members deemed ESPs by the Commission in the Order, will be eligible to submit Long-Dated Swap transactions to ICE Clear for clearing. The proposed Order requires ICE Clear, FCMs and ESPs acting pursuant to the Order to provide the market and large-trader information described in Parts 16, 17 and 18 of the Commission's regulations, in the manner described in

[8] Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1), provides in full that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

[9] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

[10] Section 4(c)(2) of the Act, 7 U.S.C. § 6(c)(2), provides in full that:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

[11] This definition includes many of the classes of persons explicitly referred to in Act Section 4(c)(3) (e.g., a bank or trust company) as well as some classes of persons who are included under the category of Section 4(c)(3)(K) ("[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections").

Parts 15, 16, 17 and 18 of the Commission's regulations, with respect to all Cleared-Only Contracts, including Long-Dated Swaps. In light of the above, the Commission is requesting comment as to whether the extension of this exemption will affect the ability of the Commission or any contract market or derivatives clearing organization to discharge its regulatory or self-regulatory duties under the Act.

With respect to protecting the public interest, the Commission notes that Congress has begun to take steps to promote transparency in swap contracts. The financial services reform bills passed by the House of Representatives [12] and Senate [13] each requires swaps [14] to be cleared, subject to certain exemptions, and further requires, with respect to swaps that are subject to the clearing requirement, that such swaps be executed on a board of trade designated as a contract market under Section 5 of the Act ("DCM") or on a swap execution facility ("SEF") registered or exempt under Section 5h of the Act (where such a trading environment is available).[15] Although these bills have not completed the legislative process, the Commission recognizes that future legislative enactments may require the execution of cleared swaps on a DCM or SEF. Accordingly, the Commission seeks comment, both as to the current proposed exemption, as well as more generally with respect to Part 35 of the Commission's regulations, on the issues raised by the pending legislation regarding trading requirements for swap contracts, including agricultural swap contracts.

IV. Amended Order

The Previous Order is proposed to be revised to read as follows:

ORDER

(1) The Commission, pursuant to its authority under Section 4(c) of the Commodity Exchange Act ("Act") and subject to the conditions below, hereby:

(a) Permits eligible swap participants ("ESPs") to submit for clearing, and futures commission merchants ("FCMs") and ICE Clear to clear, OTC agricultural swap contracts in coffee, sugar, and cocoa ("Cleared-Only Contracts"); and

(b) Permits all ICE Futures floor members that are registered with the Commission, when trading for their own accounts, to be deemed ESPs for the purpose of entering into bilateral swap transactions involving coffee, sugar, or cocoa to be cleared on ICE Clear.

(2) The term "Long-Dated Swap Contract" shall be defined as a Cleared-Only Contract with terms analogous to those of a corresponding futures contract listed for trading on ICE Futures, except that the expiration date of the swap contract is later than that of any such futures contract. If the expiration date of a Long-Dated Swap Contract, after the passage of time, is on or before that of a futures contract listed for trading by ICE Futures, such OTC swap contract will become an "Aged Long-Dated Swap Contract".

(3) The Commission, pursuant to its authority under Section 4d of the Act and subject to the conditions below, hereby permits ICE Clear and its clearing members that are registered FCMs, acting pursuant to this order, to hold money, securities, and other property, used to margin, guarantee, or secure Cleared-Only Contracts (with the exception of Long-Dated Swap Contracts) and belonging to customers that are ESPs (including customers that are deemed ESPs in accordance with this order), with other customer funds used to margin, guarantee, or secure trades or positions in commodity futures or commodity option contracts executed on or subject to the rules of a contract market designated pursuant to Section 5 of the Act in a customer segregated account or accounts maintained in accordance with Section 4d of the Act (including any orders issued pursuant to Section 4d(a)(2) of the Act) and the Commission's regulations thereunder, and all such customer funds shall be accounted for and treated and dealt with as belonging to the customers of the ICE Clear clearing member, consistent with Section 4d of the Act and the regulations thereunder. This permission shall also apply to an Aged Long-Dated Swap Contract.

(4) The Order is subject to the following conditions:

(a) The contracts, agreements, or transactions subject to this order shall be executed pursuant to the requirements of Part 35 of the Commission's regulations, as modified herein, and shall be limited to Cleared-Only Contracts as defined herein.

(b) The economic terms and the daily settlement prices of each contract, agreement, or transaction subject to this order, except for a Long-Dated Swap Contract, shall be analogous to the economic terms, and equal to the daily settlement prices, respectively, of a corresponding futures contract listed for trading on ICE Futures.

(c) ICE Clear shall establish a settlement price for each Long-Dated Swap Contract for each trading day until such time as the contract's expiration date corresponds to that of a futures contract listed for trading on ICE Futures. ICE Clear shall make records reflecting the basis for setting each such price and shall maintain such records pursuant to Core Principle K.

(d) All contracts subject to this order shall be submitted for clearing by an ICE Futures clearing member to ICE Clear pursuant to ICE Clear rules.

(e) Each ICE Futures floor member, acting as an ESP pursuant to this order, shall be the subject of a financial guarantee from a member of ICE Clear covering the trading of the OTC swap contracts subject to this order. The clearing member shall be registered with the Commission as an FCM and shall clear for the floor member the contracts, agreement, or transactions covered by the financial guarantee.

(f) An ICE Futures floor member shall be prohibited from entering into a transaction in a Cleared-Only Contract with another ICE Futures floor member as the counterparty.

(g) ICE Clear and its clearing members shall mark to market each Cleared-Only Contract on a daily basis in accordance with ICE Clear rules.

(h) ICE Clear shall apply its margining system and calculate performance bond rates for each Cleared-Only Contract in accordance with its normal and customary practices.

(i) ICE Futures shall maintain appropriate compliance systems to monitor the transactions of its floor members in the OTC swap transactions permitted pursuant to this order.

(j) ICE Clear shall apply appropriate risk management procedures with respect to transactions and open interest in all Cleared-Only Contracts. ICE Clear shall conduct financial surveillance and oversight of its members clearing Cleared-Only Contracts, and shall conduct oversight sufficient to assure ICE Clear that each such member has the appropriate operational capabilities necessary to manage defaults in such contracts. ICE Clear and its clearing members, acting pursuant to this order, shall take all other steps necessary and appropriate to manage risk related to clearing Cleared-Only Contracts.

(k) ICE Clear shall make available open interest and settlement price information for the Cleared-Only Contracts on a daily basis in the same manner as for futures contracts listed for trading on ICE Futures.

(l) ICE Futures shall establish and maintain a coordinated market surveillance program that encompasses the Cleared-Only Contracts and the corresponding futures contracts listed by ICE Futures on its designated contract market. ICE Futures shall adopt position accountability levels for each cleared-only contract that are appropriate in light of the position accountability levels applicable to the corresponding futures contracts listed for trading on ICE Futures.

(m) Cleared-only contracts shall not be treated as fungible with any contract listed for trading on ICE Futures.

(n) Each FCM acting pursuant to this order shall keep the types of information and records that are described in Section 4g of the Act and Commission regulations thereunder, including but not limited to Commission Regulation 1.35, with respect to all Cleared-Only Contracts. Such information and records shall be produced for inspection in accordance with the requirements of Commission Regulation 1.31.

(o) ICE Futures shall provide to the Commission the types of information

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[12] H.R. 4173, 111th Cong. (2009).

[13] H.R. 4173 EAS, 111th Cong. (2010).

[14] We note that both bills include agricultural swap contracts in their definition of swaps. *See* H.R. 4173 § 3103(a) (at 575–77); H.R. 4173 EAS § 721(a) (at 535–38).

[15] H.R. 4173 EAS § 723(a) (at 570); H.R. 4173 § 3103(a) (at 605). Each of the financial services reform bills also provides that agricultural swaps may not be traded except pursuant to CFTC enabling regulations. *See* H.R. 4173 § 3103(a) (at 605) and § 3109 (at 646); H.R. 4173 EAS § 723(c)(3) (at 577–78).

described in Part 16 of the Commission's regulations in the manner described in Parts 15 and 16 of the Commission's regulations with respect to all Cleared-Only Contracts.

(p) ICE Clear shall apply large trader reporting requirements to all Cleared-Only Contracts in accordance with its rules, and each FCM and ESP acting pursuant to this order shall provide to the Commission the types of information described in Parts 17 and 18 of the Commission's regulations in the manner described in Parts 15, 17, and 18 of the Commission's regulations with respect to all Cleared-Only Contracts in which it participates.

(q) ICE Clear and ICE Futures shall at all times fulfill all representations made in their requests for Commission action under Sections 4(c) and 4d of the Act and all supporting materials thereto.

V. Request for Comment

The Commission requests comment on all aspects of the issues presented by this amended exemption request.

VI. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [16] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The amended exemption would not, if approved, require a new collection of information from any entities that would be subject to the exemption.

B. Cost-Benefit Analysis

Section 15(a) of the Act,[17] requires the Commission to consider the costs and benefits of its action before issuing an order under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission is considering the costs and benefits of an amended exemption order in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The contracts that are the subject of the amended exemption request will only be entered into by persons who are "appropriate persons" as set forth in Section 4(c) of the Act.

2. *Efficiency, competition, and financial integrity.* Extending the exemption granted under Part 35 to allow the clearing of Long-Dated Swap Contracts may promote liquidity and transparency in the markets for OTC derivatives in coffee, sugar, and cocoa, as well as for futures on those commodities. Extending the exemption also may promote financial integrity by increasing the benefits of clearing in these OTC markets.

3. *Price discovery.* Price discovery may be enhanced through market competition.

4. *Sound risk management practices.* Clearing of Long-Dated Swap Contracts may foster risk management by the participant counterparties. ICE Clear's risk management practices in clearing these transactions would be subject to the Commission's supervision and oversight.

5. *Other public interest considerations.* The requested amended exemption may encourage market competition in agricultural derivative products without unnecessary regulatory burden. As noted above, however, there are pending financial services reform bills that would affect the trading and clearing requirements for agricultural swap contracts.

After considering these factors, the Commission has determined to seek comment on the request for an amended exemption order as discussed above. The Commission also invites public comment on its application of the cost-benefit provision.

* * * * *

Issued in Washington, DC, on June 14, 2010 by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–14682 Filed 6–16–10; 8:45 am]

BILLING CODE P

[16] 44 U.S.C. 3507(d).

[17] 7 U.S.C. 19(a).

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, June 23, 2010; 10 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: June 14, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–14816 Filed 6–15–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Trends and Implications of Climate Change for National and International Security

AGENCY: Department of Defense (DoD).

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Trends and Implications of Climate Change for National and International Security will meet in closed session on July 14–15 and on July 29–30, 2010, in Arlington, VA.

DATES: The meetings will be held on July 14–15 and on July 29–30, 2010.

ADDRESSES: Both meetings will be held at Strategic Analysis, Inc., 4075 Wilson Boulevard, Suite 350, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Maj. Michael Warner, USAF Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *michael.warner@osd.mil,* or via phone at (703) 571–0081.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and

the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. These meetings will bring together the information and views from multiple government and other organizations to provide a comprehensive picture of the current situation, known unknowns and emerging trends.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the July 14–15 and the July 29–30, 2010, meetings are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**), at any point, however, if a written statement is not received at least 10 calendar days prior to the meetings, which are the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meetings that are the subject of this notice.

Dated: June 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–14672 Filed 6–16–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Nuclear Treaty Monitoring and Verification

AGENCY: Department of Defense (DoD).

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Treaty Monitoring and Verification will meet in closed session on July 22–23 and on August 24–25, 2010, in Arlington, VA.

DATES: The meetings will be held on July 22–23 and on August 24–25, 2010.

ADDRESSES: Both meetings will be held at Science Applications International Corporation, 4001 North Fairfax Drive, Suite 300, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Maj Michael Warner, USAF Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *michael.warner@osd.mil,* or via phone at (703) 571–0081.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Both meetings will research and summarize anticipated directions in nonproliferation and arms control agreements and the environments in which they might be implemented.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the July 22–23 and the August 24–25, 2010, meetings are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**), at any point, however, if a written statement is not received at least 10 calendar days prior to the meetings, which are the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meetings that are the subject of this notice.

Dated: June 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–14673 Filed 6–16–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Improvements to Services Contracting; Notice of Advisory Committee Meetings

AGENCY: Department of Defense (DOD).

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Improvements to Services Contracting will meet in closed session on July 28–29 and on September 22–23, 2010, in Arlington, VA.

DATES: The meetings will be held on July 28–29 and on September 22–23, 2010.

ADDRESSES: Both meetings will be held at Strategic Analysis, Inc., 4075 Wilson Boulevard, Suite 350, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Maj Michael Warner, USAF Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *michael.warner@osd.mil,* or via phone at (703) 571–0081.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Both meetings will assess the quality and completeness of guidance relating to the procurement of services, including implementation of statutory and regulatory authorities and requirements.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the July 28–29 and September 22–23, 2010, meetings are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**), at any point, however, if a written statement is not received at least 10 calendar days prior to the meetings, which are the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meetings that are the subject of this notice.

Dated: June 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–14674 Filed 6–16–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Notice of Meeting of the Air University Board of Visitors.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Air University Board of Visitors' meeting will take place on Wednesday, July 21st, 2010, from 2:30 p.m. to 3:30 p.m. The meeting will be a conference call meeting and the conference number is 334–953–1945.

The purpose and agenda of this meeting is to provide independent advice and recommendations on matters pertaining to the faculty hiring, curriculum oversight, and the status of the Course Development and Student Administration/Registrar System of the at Air University. Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meeting will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Additionally, any member of the public wishing to attend this meeting should contact either person listed below at least five calendar days prior to the meeting for information on base entry passes.

FOR FURTHER INFORMATION Dr. Dorothy Reed, Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159 or Mrs. Diana Bunch, Alternate Designated Federal Officer, same address, telephone (334) 953–4547.

Bao-Anh Trinh, YA–3,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–14621 Filed 6–16–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board: Proposed Information Collection

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Assessment Governing Board is publishing the following summary of a proposed information collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) 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 (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Type of Information Collection Request: New information collection.

Title of Information Collection: Evaluating Student Need for Developmental or Remedial Courses at Postsecondary Education Institutions (formerly titled Survey of Placement Tests and Cut-Scores in Higher Education Institutions).

Use: The congressionally authorized National Assessment of Educational Progress (NAEP) reports to the public on the achievement of students at grades 4, 8, and 12 in core subjects. The National Assessment Governing Board oversees and sets policy for NAEP. NAEP and the Governing Board are authorized under the National Assessment of Educational Progress Authorization Act (Pub. L. 107–279).

Among the Board's responsibilities is "to improve the form, content, use, and reporting of [NAEP results]." Toward this end, the Governing Board plans to enable NAEP at the 12th grade to report on the academic preparedness of 12th grade students in reading and mathematics for entry level college credit coursework.

The Governing Board has planned a program of research studies to support the validity of statements about 12th grade student preparedness that would be made in NAEP reports, beginning with the 2009 assessments in 12th grade reading and mathematics. Among the studies planned is a survey of 2-year and 4-year institutions of higher education about the tests and test scores used to place students into entry level college credit coursework leading to a degree and into non-credit remedial or developmental programs in reading and/or mathematics. The data resulting from this survey will be used to help develop valid statements that can be made about the preparedness of 12th grade students in NAEP reports.

Frequency: One small-scale pilot test: One time only, and one operational study: one time only; *Affected Public:* State, Local or Tribal Governments (2-year and 4-year public higher education institutions); Private Sector For-Profit and Not-For-Profit Institutions (2-year and 4-year private higher education institutions); *Number of Respondents:*

for the pilot test: 120 institutions; for the operational study: 1,700; *Total Annual Responses:* 1,820; *Total Annual Hours:* 1,365.

To obtain copies of the proposed survey and/or supporting statement for the proposed paperwork collection referenced above, e-mail your request, including your address and phone number, to *Ray.Fields@ed.gov* or call 202–357–0395.

To be assured consideration, comments and recommendations for the proposed information collection must be received by the OMB desk officer at the address below, no later than 5 p.m. on July 19, 2010:

OMB, Office of Information and Regulatory Affairs, Attention: Education Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: June 14, 2010.

Ray Fields,

Authorized Agency Paperwork Contact, National Assessment Governing Board.

[FR Doc. 2010–14635 Filed 6–16–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Educational Facilities Clearinghouse; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215T.

Dates:

Applications Available: June 17, 2010.

Deadline for Transmittal of Applications: July 30, 2010.

Deadline for Intergovernmental Review: July 19, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Educational Facilities Clearinghouse (Clearinghouse) will provide technical assistance and training on the planning, design, financing, construction, operation, and maintenance of public nursery and pre-kindergarten, kindergarten-through-grade-12, and higher education facilities. The Clearinghouse will also develop resources and assemble best practices on issues related to ensuring safe, healthy, and high-performance public education facilities, including on procedures for identifying hazards and conducting vulnerability assessments.

Priority: We are establishing this priority for the FY 2010 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: We are establishing this priority to provide a Clearinghouse for public nursery, pre-kindergarten, and kindergarten-through-grade-12 schools, and higher education facilities, to support decision-making related to educational facility planning, design, financing, construction, improvement, operation, and maintenance. This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Establishment of the Clearinghouse.

This priority supports the establishment of a Clearinghouse to collect and disseminate information on effective educational practices and the latest research regarding the planning, design, financing, construction, improvement, operations, and maintenance of safe, healthy, high-performance public facilities for nursery and pre-kindergarten, kindergarten-through-grade 12, and higher education.

Invitational Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications. Under this competition we are particularly interested in applications that address the following priority.

This priority is:

Development and Dissemination of Information on Green Building Practices.

Under this priority, applicants may propose to develop and disseminate resources and research regarding best practices in constructing and maintaining environmentally sound educational facilities using green building practices. For the purposes of this competition the term "green building," as defined by the U.S. Environmental Protection Agency, is the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building's life-cycle from siting through design, construction, operation, maintenance, renovation, and deconstruction. This practice expands and complements the classical building design concerns of economy, utility, durability, and comfort.

Requirements: Applicants for grants under this competition must meet the following requirements:

1. *Establish and maintain a Web site.* To be considered for an award, applicants must include in their application a plan to establish and maintain a dedicated Web site that will include electronic resources, such as links to published articles and research, related to the planning, design, financing, construction, improvement, operation, and maintenance of safe, healthy, high- performance public facilities for nursery and pre-kindergarten, kindergarten-through-grade-12, and higher education. The Web site should be established within 90 days of the award and must be maintained for the duration of the project.

2. *Develop Resource Materials.* The project funded under this competition must develop resources that support the planning, design, financing, construction, improvement, operation, and maintenance of safe, healthy, high-performance public facilities for nursery and pre-kindergarten, kindergarten-through-grade-12 schools, and higher education. Applicants must plan to develop at least three publications each year. All publication topics must be reviewed and approved by the Department. In general, the three publications will consist of two short (3–4 pages) resource documents that provide a general overview of a particular topic and one longer (8–10 pages) resource document that provides detailed research or analysis on a particular topic.

3. *Distance-Learning Events.* Applicants must plan to convene up to three distance-learning events each year on topics related to the absolute priority in this notice. The events must be at least one hour in duration and must be aired and archived on the Clearinghouse's Web site. All proposed topics, materials, and presenters must be reviewed and approved by the Department.

4. *Training.* Applicants must plan to develop and conduct at least two training programs per year for public nursery, pre-kindergarten, and kindergarten-through-grade-12 schools; local educational agencies (LEAs); or public higher education facilities. Training topics must include information on the planning, design, financing, construction, improvement, operation, or maintenance of public educational facilities. Specific training topics could include training on the vulnerability assessment process, including on selecting a vulnerability assessment tool, evaluating educational

facility risks and hazards, setting priorities and reporting on identified vulnerabilities, developing written plans to address hazards, and identifying best practices in constructing and maintaining environmentally sound educational facilities using green building practices. Training will be conducted upon request or based on input from the Department or from public nursery, pre-kindergarten, and kindergarten-through-grade-12 schools; LEAs; or public higher education facilities using appropriate Clearinghouse staff or subcontractors. All training topics, materials, and requests for training must be approved in advance by the Department. Applicants must include funds in their budget request for travel, lodging, and per diem costs to administer the training programs at the host site.

5. *Technical Assistance.* The project funded under this competition must provide technical assistance to public nursery, pre-kindergarten, and kindergarten-through-grade-12 schools; LEAs; or public higher education facilities regarding issues related to the planning, design, financing, construction, improvement, operation, and maintenance of public educational facilities. The technical assistance may be provided in the form of electronic or telephone assistance when requested from these parties or by the Department.

Applicants must plan to provide specialized, on-site technical assistance to up to six public nursery, pre-kindergarten, and kindergarten-through-grade-12 schools; LEAs; or public higher education facilities. The technical assistance must consist of consultation regarding the planning, design, financing, construction, improvement, operation, or maintenance of public educational facilities. Specific technical assistance topics might include information related to assessing facilities and conducting vulnerability assessments; developing written plans to address identified hazards; and other safe school facility-related topics. On-site technical assistance visits will be conducted upon request or based on input from the Department or by public nursery, pre-kindergarten, and kindergarten-through-grade-12 schools; LEAs; or public higher education facilities using appropriate Clearinghouse staff or subcontractors. The Department must be informed in advance of all technical assistance visits. The Clearinghouse must include in its budget funding for travel, lodging, and per diem costs of its staff or subcontractors to conduct the on-site technical assistance visits.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first competition for an educational facilities clearinghouse under section 5411 of the Elementary and Secondary Education Act of 1965, as amended and, therefore, qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the absolute priority and requirements under section 437(d)(1) of GEPA. This absolute priority and requirements will apply to the FY 2010 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 7243–7243b, the Consolidated Appropriations Act of 2010, Public Law 111–117.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,000,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* State or local educational agencies, institutions of higher education (IHEs), or other public or private agencies, organizations, or institutions.

For the purposes of this competition, the term "institution of higher education" is defined in section 101(a) of the Higher Education Act of 1965, as amended by the Higher Education Opportunity Act of 2008, Public Law 110–315 as: An educational institution of higher education in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate or persons who meet the requirements of section 484(d)(3) of the Higher Education Act of 1965, as amended;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Sara Strizzi, U.S. Department of Education, 550 12th Street, SW., 10th Floor, Washington, DC 20202–6450. *Telephone:* (303) 346–0924 or by *e-mail: sara.strizzi@ed.gov*. You can also obtain an application package via the Internet. To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/fund/grant/apply/grantapps/index.html*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: June 17, 2010.

Deadline for Transmittal of Applications: July 30, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 19, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for a grant under the Educational Facilities Clearinghouse program—CFDA Number 84.215T must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov*.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Office of Safe and Drug-Free Schools after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Office of Safe and Drug-Free Schools at (202) 485–0041 or (202) 245–7166.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your

application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sara Strizzi, U.S. Department of Education, 550 12th Street, SW., 10th Floor, Washington, DC 20202–6450. *Fax:* (202) 485–0041.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.215T), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.215T), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measure:* We have identified the following Government Performance and Results Act of 1993 (GPRA) performance measure for assessing the effectiveness of the Clearinghouse: The percentage of

recipients of Clearinghouse on-site training or technical assistance that implement one or more changes in improving their education facility based upon Clearinghouse recommendations within six months of the training or technical assistance.

If needed, upon award of the grant, the Secretary will work with the grantee to refine or augment this measure.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sara Strizzi, U.S. Department of Education, 550 12th Street, SW., 10th Floor, Washington, DC 20202–6450. *Telephone:* (303) 346–0924 or by *e-mail: sara.strizzi@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 10, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–14681 Filed 6–16–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R06–OAR–2010–0510; FRL–9163–7]

Audit Program for Texas Flexible Permit Holders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Clean Air Act voluntary compliance audit program for flexible permit holders in the State of Texas; request for public comment.

SUMMARY: EPA is offering holders of Texas flexible air permits an opportunity to participate in a voluntary compliance audit program (hereinafter "Audit Program") that is intended to expeditiously identify the Federally-enforceable Clean Air Act (CAA) unit specific emission limitations, operating parameter requirements, and monitoring, reporting, and recordkeeping (MMR) requirements for determining compliance for all units covered by a facility's flexible permit. EPA believes that the program will generate environmental benefits for the public in Texas as well as a measure of regulatory stability for holders of Texas flexible permits. EPA is requesting informal comment on the Audit Program. EPA will respond generally to comments received and reserves its right to make modifications to implementation of the Audit Program at its discretion, as warranted.

DATES: All comments should be submitted by July 2, 2010. Executed audit agreements may be submitted no later than October 15, 2010.

ADDRESSES: Submit comments on the Audit Program, identified by Docket ID No. EPA–R06–OAR–2010–0510, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6EN" (Enforcement) and select "CAA Enforcement" before submitting comments.
- *E-mail:* Mr. John Jones at *jones.john-l@epa.gov.*
- *Fax.:* Mr. John Jones, Air Enforcement Section (6EN–AA), at fax number (214) 665–3177.
- *Mail:* Mr. John Jones, Air Enforcement Section (6EN–AA), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. John Jones, Air Enforcement Section (6EN–AA), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:00 a.m. and 4:00 p.m. weekdays, except for legal holidays.

Instructions: Direct comments to Docket ID No. EPA–R06–OAR–2010–0510.

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 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 submittal. In an effort to consolidate comments received, EPA prefers that information be submitted via *http://www.regulations.gov.* If you send a submittal by e-mail directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the submittal that is placed in the public docket and made available on the Internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Air Enforcement Section (6EN–AA), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733.

FOR FURTHER INFORMATION CONTACT: For information on the Audit Program for Texas flexible permit holders, please contact Mr. John Jones, Air Enforcement

Section (6EN–AA), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7233; fax number (214) 665–3177; e-mail address *jones.john-l@epa.gov.*

SUPPLEMENTARY INFORMATION:

Audit Program Overview

Texas flexible permits have never been incorporated into the Federally approved State Implementation Plan ("SIP"), and thus, only contain applicable State permit requirements. Flexible permits are not the appropriate mechanisms for embodying Federal requirements, and are not independently Federally-enforceable. On September 25, 2007, EPA sent notice letters to all facilities that were issued a flexible permit informing them that flexible permits were pertinent only to Texas State air permit requirements and that facilities were "obligated to comply with the Federal requirements applicable to (their) plant, in addition to any particular requirements of (their) flexible permit." Moreover, on September 23, 2009, EPA proposed the disapproval of the Texas flexible permit program as an amendment to the Texas SIP because it does not meet Federal Nonattainment New Source Review or Prevention of Significant Deterioration (hereafter collectively referred to as "NSR") requirements. EPA followed that proposal with several objections to Title V permits that relied on flexible permits to encompass Federal NSR requirements because the terms of the Texas flexible permit are not incorporated into the Federally approved Texas SIP.

Under the Audit Program, participants would need to commission a comprehensive third-party audit to determine all Federally applicable unit-specific limitations and requirements and to evaluate the Federal CAA compliance status of emission units covered under the facility's Texas flexible permit.

The third-party auditor would identify for each emission unit regulated under the source's flexible permit all current Federally applicable CAA requirements, including: (1) Emission limitations/standards; (2) operational limitations/special conditions; (3) MRR requirements; and (4) specific references for all Federal requirements identified (*e.g.,* permit number, specific Maximum Achievable Control Technology, State Implementation Plan citation). The auditor will also need to review and assess the adequacy of the current flexible permit MRR requirements to evaluate compliance with Federally enforceable unit-specific emission limitations. Where deficiencies exist, the auditor will provide recommendations for more effective or supplemental MRR.

To the extent that it is determined that a source is not in compliance with NSR requirements with respect to a particular emission unit, the auditor will include an evaluation of the current (2010) Lowest Achievable Emissions Rate or Best Available Control Technology (hereinafter collectively referred to as "LAER/BACT") for that emissions unit and will recommend an applicable LAER/BACT limit for that emissions unit. Identification of non-compliance with NSR requirements through the Audit Program may require further discussion with EPA regarding a path forward for bringing that emission unit into permanent, consistent compliance with the CAA and appropriate resolution of civil penalties.

The primary deliverable from the third-party audit will be a detailed audit report that describes the audit process and its conclusions, including clearly organized summary tables of all applicable CAA requirements for each emissions unit that will provide the basis for necessary permitting revisions by the Texas Commission on Environmental Quality (TCEQ). In addition to identifying all applicable unit specific emission limitations, special conditions, operating parameters, and MMR requirements, the auditor will evaluate the CAA compliance status of the emissions units included under the Texas flexible permit.

The audit participant will then have an opportunity to comment on the results of the third-party audit, and to propose to EPA alternative emission unit requirements. The parties may elect to negotiate emission unit requirements in the post-audit period.

The emission unit requirements agreed upon during the post-audit negotiation with EPA would be memorialized in a Consent Agreement and Final Order ("CAFO") with EPA. The CAFO would set forth the agreed upon emission unit requirements and would require their inclusion in an amended Title V permit and appropriate Federally-enforceable non-Title V permits (*e.g.,* NSR, Texas SIP permits).

As part of the Audit Program, the audit participant will also agree to work with its surrounding community to develop community project(s) focused on improving, protecting, mitigating, and/or reducing community risks to public health or the environment that could have been caused by potential violations by the audit participant. The details of the community projects will be fully described in the CAFO memorializing the results of the audit.

Participation in the Audit Program is purely voluntary, and this is not a rulemaking by the Agency. Interested parties are required to submit an executed audit agreement to enroll in this program. Participants choosing to enroll in the Audit Program will be required to meet the specific requirements of the third-party audit set forth in this Notice and memorialized in an audit agreement signed by the audit participant and EPA. It is important to emphasize that although participation in this Audit Program is voluntary, participants who successfully complete the program will receive appropriate covenants in resolution of non-compliance.

Persons who have not secured independently Federally-enforceable construction and/or operating permits for all CAA applicable requirements, through participation in this program or through other appropriate mechanisms, may be the subject of Federal enforcement action. Nothing in this notice should be read to preclude EPA from taking enforcement action where it determines such action is appropriate to address non-compliance.

Texas Flexible Permit Program History

In the period from 1996 through 2002, the State of Texas proposed a series of modifications to its Federal CAA SIP intended to make its flexible permit program part of the SIP. The flexible permit program, currently codified at 30 TAC 116.710, allows groups of emission sources to be clustered together and issued permit limitations as if they were a single emission source.

EPA has never approved the Texas flexible permit program for inclusion in the SIP. On September 25, 2007, EPA issued a letter to all flexible permit holders making the following points:

- Permits issued under the Texas flexible permit rules reflect Texas State requirements and not necessarily the Federally-applicable requirements.
- Texas flexible permit holders are obligated to comply with the applicable Federal requirements (*e.g.,* New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Prevention of Significant Deterioration (PSD), and Non-attainment New Source Review (NNSR), terms and conditions of permits approved under the Federally approved Texas SIP).
- EPA would consider enforcement against sources for failure to comply with applicable Federal requirements on a case-by-case basis, including against emission sources that were modified or

constructed without the issuance of a Federally-enforceable permit.

As of the date of this notice, EPA has yet to issue a final approval or disapproval of the Texas flexible permit program. Nonetheless, we offer the Audit Program at this time as a vehicle for flexible permit holders wishing to proactively address the status of emission units operating under the Texas flexible permit program. The Audit Program is entirely voluntary and does not pre-judge the ongoing EPA review of the Texas flexible permit program.

Audit Program Implementation

Participants in the Audit Program shall conduct an independent third-party audit of all emission units covered by the source's Texas flexible permit to identify each emission unit's CAA compliance status, and to identify/re-establish all of an emission unit's Federally applicable requirements as discussed under the Audit Program Overview. The final CAFO will require that the facility submit applications for Title V and appropriate Federally-enforceable non-Title V permits to the State of Texas in order to memorialize the requirements derived from the audit process for each emission unit.

The Audit Program shall be implemented in the following steps:

(1) *Submittal of an executed audit agreement by the audit participant.* This agreement will memorialize the specific requirements of the independent third-party audit, as well as the company's commitment to work with its community to develop a community project(s). EPA will have 15 days to object to the third-party auditor selected by an audit participant. Any EPA objections shall be based on concerns regarding the independence of the auditor. Executed audit agreements under the Audit Program will be received for a period of 120 days after publication in the **Federal Register**.

(2) *Audit participant and community development of significant community project(s).* During the performance of the audit, the audit participant shall work with the community surrounding the facility to develop community projects(s). Within 180 days of signing the audit agreement, the audit participant will submit to EPA a final community project proposal for approval. The community project proposal shall include a detailed description of the project(s) and a schedule for project(s) implementation (projects must be completed within one year of the CAFO date), a clear discussion of air nexus, and a discussion of the community involvement and outreach conducted as the project was developed.

(3) *Completion of audit report.* No later than, 160 days after the effective date of the audit agreement, the independent third-party auditor shall submit an audit report to the audit participant and EPA. This report will include an analysis of the CAA compliance status of all emission units covered by the audit participant's Texas flexible permit as well as a table containing all of the applicable emission unit requirements for each unit. For the purpose of providing transparency to the community on the audit process, the Auditor will work with the audit participant to prepare a version of the audit report with any CBI removed. The non-CBI versions of the audit reports will be made available to the public by EPA.

(4) *Audit participant's comments regarding the audit report.* Not later than 250 days after the effective date of the audit agreement, the audit participant shall submit its comments, if any, regarding the audit report to EPA. The audit participant may specifically address its concerns regarding the CAA compliance determinations and the emission unit requirements identified in the audit report. For purposes of providing transparency to the community on the audit process, the audit participant will also prepare a version of the comments on the audit report with any CBI removed. The audit participant's comments regarding the audit reports will be made available to the public by EPA.

(5) *Resolution of NSR non-compliance.* One of the major objectives of the third-party auditor will be the evaluation of the changes and modifications made during the period of the Texas flexible permit for compliance with applicable Federal NSR requirements. Identification of non-compliance with the NSR program may require the installation of LAER/BACT and will require further discussion with EPA regarding a path forward for bringing non-compliant emission units into permanent, consistent compliance and appropriate resolution of civil penalties.

(6) *Filing of a Consent Agreement and Final Order (CAFO) with the Region 6 Judicial Officer.* The CAFO would memorialize the audit participant's commitment to seek the inclusion of agreed upon emission unit requirements in its Title V permit and appropriate Federally-enforceable non-Title V permits. No later than 30 days after the effective date of the CAFO, the audit participant will apply to the appropriate permitting authority for a modification of its existing Title V permit to include emission unit requirements (as defined in the model audit agreement below), a compliance plan, a compliance certification, and, if warranted, a compliance schedule as outlined in 30 TAC 122 § 132(e)(4). In addition, the audit participant shall apply for modifications or for new non-Title V permits memorializing the emission unit requirements set forth in the CAFO. The resolution of emission unit requirements for some flexible permit emission units, but not all, will not be allowed under this program. For agreeing to evaluate and address (where necessary) non-compliance at all emission units covered by its flexible permit, a source will receive a covenant-not-to-sue regarding civil liability for possible past violations of the CAA provided that CAA compliant emission unit specific requirements are incorporate into a Federally-enforceable permit. The audit participant may be subject to civil penalties where it is determined that there was non-compliance with NSR.

The proposed CAFO shall be made available for public comment for a period of 30 days. EPA will consider any public comments, and as appropriate seek to work with the audit participant to revise the CAFO based on such public comments. After the end of the CAFO public comment period and after any revisions are made, EPA will seek finalization of the CAFO by the Region 6 Judicial Officer. The Agency reserves its right to modify the CAFO. The offering of the CAFO for public comment does not explicitly create an obligation for EPA response or inclusion of such comments in the final CAFO or elsewhere, nor does this create any rights for public objection to the final CAFO.

The required text of the audit agreement is available for download in either a Word version file or as a portable document format (pdf) file at *http://www.regulations.gov.* The text of the audit agreement is not subject to negotiation. However, EPA may refine the text of the audit agreement upon receiving feedback during public comment and provide an updated agreement in the docket within 45 days following the close of public comment. Entities wishing to participate shall submit: An executed copy of the audit agreement with specific site details filled into the provided blanks; a list of emission units covered under its Texas flexible permit; a copy of its current Texas flexible permit, and all permits that applied to the facility prior to the issuance of the Texas flexible permit.

Conclusion: The above represents a short summary of the Audit Program. The Texas Flexible Permit Audit Agreement is available in the public docket for this notice at *http://www.regulations.gov,* and represents the full requirements of the program.

EPA is proposing the Audit Program to ensure that Texas flexible permit holders have a path forward to secure compliance with the requirements of the CAA. As EPA has stated that Texas flexible permits are not independently Federally-enforceable permits, industry representatives have expressed concern regarding the legal ramifications of operating facilities and making facility changes at facilities that do not have independently Federally-enforceable permits. Representatives of citizens living in areas near facilities regulated under flexible permits are concerned that in some instances flexible permits allow facilities to emit more harmful pollution than would be allowed under Federal law. We believe the Audit Program has the potential to result in beneficial reductions in the levels of air pollutants being emitted by flexible permit holders as well as providing industry a regulatory framework for continuing operations until independently Federally-enforceable permitting authorizations can be obtained.

Dated: June 10, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–14653 Filed 6–16–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0282; FRL–8832–4]

Pesticides; Draft Guidance for Pesticide Registrants on False or Misleading Pesticide Product Brand Names; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of May 19, 2010, announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PR Notice) entitled "False or Misleading Pesticide Product Brand Names." This document extends the comment period for 60 days, from June 18, 2010, to August 17, 2010.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0282, must be received on or before August 17, 2010.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of May 19, 2010.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5448; fax number: (703) 308–6467; e-mail address: *kempter.carlton@epa.gov*.

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** of May 19, 2010 (75 FR 28012) (FRL–8824–8). In that document, the Agency announced the availability of and sought public comment on a draft Pesticide Registration Notice (PR Notice) entitled "False or Misleading Pesticide Product Brand Names." EPA is hereby extending the comment period, which was set to end on June 18, 2010, to August 17, 2010.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the May 19, 2010 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

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

Dated: June 11, 2010.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2010–14656 Filed 6–16–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9163–8]

Proposed CERCLA Administrative Cost Recovery Settlement; Great Lakes Container Corporation Superfund Site, Coventry Rhode Island

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and future response costs concerning the Great Lakes Container Corporation Superfund Site, located in Coventry Rhode Island with the settling parties listed below under the heading "Supplementary Information." The settlement requires the settling parties to pay $200,000 to the Hazardous Substance Superfund. The settlement also requires the settling parties to perform a removal action to address hazardous substances at the Site, and to pay the Agency all of its oversight and other response costs related to the removal action. The settlement includes a covenant not to sue the settling parties pursuant to Section 106 of CERCLA, 42 U.S.C. 9606, and Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement for recovery of response costs (Section XV of the proposed settlement). The Agency will consider all comments received and may modify or withdraw its consent to this cost recovery settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Coventry Public Library, 1672 Flat River Road, Coventry, RI 02816 and at the Environmental Protection Agency—Region I, 5 Post Office Square—Suite 100, Boston, MA 02109–3912.

DATES: Comments must be submitted on or before July 19, 2010.

ADDRESSES: The proposed settlement is available for public inspection at the Environmental Protection Agency—Region I, 5 Post Office Square—Suite 100, Boston, MA 02109–3912. A copy of the proposed settlement may be obtained from Tina Hennessy, Office of Site Remediation and Restoration, Environmental Protection Agency—Region I, 5 Post Office Square—Suite 100 (OSRR02–2), Boston, MA 02109–3912, (617) 918–1216. Comments should reference the Great Lakes Container Corporation Superfund Site, Coventry, Rhode Island and EPA CERCLA Docket No. 01–2009–0010 and should be addressed to Regional Hearing Clerk, Environmental Protection Agency—Region I, 5 Post Office Square—Suite 100 (ORA18–1), Boston, MA 02109–3912.

FOR FURTHER INFORMATION CONTACT: For legal questions, John Hultgren, Office of

Environmental Stewardship, Environmental Protection Agency—Region I, 5 Post Office Square—Suite 100 (OES04–2), Boston, MA 02109–3912, (617) 918–1761; for technical questions, Tina Hennessy, Office of Site Remediation and Restoration, Environmental Protection Agency—Region I, 5 Post Office Square—Suite 100 (OSRR02–2), Boston, MA 02109–3912, (617) 918–1216.

SUPPLEMENTARY INFORMATION: The settling parties to this administrative settlement include: Akzo Nobel Coatings, Inc., as successor to Nubrite Chemical Co; Zeneca, Inc. (f/k/a I.C.I. Americas, Inc.); Avnet, Inc.; CNA Holdings, Inc. now known as CNA Holdings LLC (f/k/a American Hoechst); Cooley, Inc.; Development Associates, Inc.; Drake Petroleum Company, Inc. (f/k/a Warren Oil Co.); Exxon Mobil Corporation; Electric Boat Corporation; John H. Collins & Sons Company; John R. Hess & Company (f/k/a John R. Hess & Sons, Inc.); Mallinckrodt, LLC, a Delaware limited liability company (f/k/a Mallinckrodt, Inc., a New York corporation) on behalf of Great Lakes Container Corporation and Kingston Steel Drum; National Grid; Northeast Products Co., Inc.; Shell Oil Company; Greenhill, Inc. (f/k/a Soluol, Inc.); Sunoco, Inc. (R&M); Uniroyal Holding, Inc. (successor to certain limited liabilities of Uniroyal, Inc.); Cytec Industries Inc. (on behalf of American Cyanamid Company); Hubbard Hall, Inc.; Invesys, Inc. on behalf of Elmwood Sensors, Inc.; Chevron Environmental Management Company, for itself and on behalf of Texaco Inc. and Union Oil Company of California; Ross & Roberts; Whittaker Corporation, on behalf of itself and its present and former affiliates, subsidiaries and divisions; BP Products North America, Inc.; Eastern Color & Chemical Company.

Dated: June 3, 2010.

Richard Cavagnero,

Acting Director, Office of Site Remediation and Restoration, EPA Region I.

[FR Doc. 2010–14651 Filed 6–16–10; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Extension Without Change of Existing Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension without change of the existing information collection described below. The Commission is seeking public comments on the proposed extension.

DATES: Written comments must be received on or before August 16, 2010.

ADDRESSES: Send written comments by mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Suite 6NE03F, Washington, DC 20507. Written comments of six or fewer pages may be faxed to the Executive Secretariat at (202) 663–4114. (There is no toll free FAX number.) Receipt of facsimile transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers.) Instead of sending written comments to EEOC, comments may be submitted to EEOC electronically on the Federal eRulemaking Portal: *http://www.regulations.gov.* After accessing this web site, follow its instructions for submitting comments.

All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide. Copies of the received comments also will be available for inspection, by advance appointment only, in the EEOC Library from 9 a.m. to 5 p.m., Monday through Friday except legal holidays. Persons who schedule an appointment in the EEOC Library and need assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC Library, contact the EEOC Library by calling (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll free numbers.)

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or James Allison, Senior Attorney, (202) 663–4661, Office of Legal Counsel, 131 M Street, NE., Washington, DC 20507. Copies of this notice are available in the following alternate formats: large print, braille, electronic computer disk, and audio-tape. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–699–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Overview of This Information Collection

Collection Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR 1625.22.

OMB Number: 3046–0042.

Type of Respondent: Business, State or local governments, not for profit institutions.

Description of Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination program.

Number of Responses: 13,700.

Reporting Hours: 41,000.

Number of Forms: None.

Burden Statement: The only paperwork burden involved is the inclusion of the relevant data in requests for waiver agreements under the OWBPA.

Abstract: The EEOC enforces the Age Discrimination in Employment Act (ADEA) which prohibits discrimination against employees and applicants for employment who are age 40 or older. The OWBPA, enacted in 1990, amended the ADEA to require employers to disclose certain information to employees (but not to EEOC) in writing when they ask employees to waive their rights under the ADEA in connection with an exit incentive program or other employment termination program. The regulation at 29 CFR 1625.22 reiterates those disclosure requirements. The EEOC seeks an extension without change for the third-party disclosure requirements contained in this regulation.

Request for Comments: Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including 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.

Dated: June 11, 2010.

Jacqueline A. Berrien,

Chair, U.S. Equal Employment Opportunity Commission.

[FR Doc. 2010–14610 Filed 6–16–10; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting Thursday, June 17, 2010

DATES: June 10, 2010.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, June 17, 2010, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

In accordance with the purpose of the Sunshine period, comments submitted on blog pages in broadband.gov during the Sunshine period will not be considered by the Commission in finalizing the item under consideration at the open meeting on June 17.

	BUREAU	SUBJECT
	OFFICE OF THE GENERAL COUNSEL	TITLE: Framework for Broadband Internet Service SUMMARY: The Commission will consider a Notice of Inquiry to begin an open, public process to consider possible legal frameworks for broadband Internet services in order to promote innovation and investment, protect and empower consumers, and bring the benefits of broadband to all Americans.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e–mail to: fcc504@fcc.gov <mailto:fcc504@fcc.gov> or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at www.fcc.gov/live <http://www.fcc.gov/live>.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to www.capitolconnection.gmu.edu <http://www.capitolconnection.gmu.edu/>.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e–mail at FCC@BCPIWEB.com.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–14785 Filed 6–15–10; 4:15 pm]

BILLING CODE 6712–01–S

FEDERAL ELECTION COMMISSION

[NOTICE 2010–12]

Filing Dates for the Indiana Special Election in the 3rd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Indiana has scheduled a Special General Election on November 2, 2010, to fill the U.S. House seat in the 3rd Congressional District vacated by Representative Mark E. Souder.

Committees required to file reports in connection with the Special General Election on November 2, 2010, shall file a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; *Telephone:* (202) 694–1100; toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Indiana Special General Election shall file a 12-day Pre-General Report on October 21, 2010, and a 30-day Post-General Report on December 2, 2010. (See chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's quarterly filings in October 2010 and January 2011. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2010 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Indiana Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the Indiana Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Indiana Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates_2010.shtml.*

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and Leadership PACs that are otherwise required to file reports in

connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,000 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

CALENDAR OF REPORTING DATES FOR INDIANA SPECIAL ELECTION COMMITTEES INVOLVED IN THE SPECIAL GENERAL ELECTION (11/02/10) MUST FILE:

Report	Close of books[1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Pre-General	10/13/10	10/18/10	10/21/10.
Post-General	11/22/10	12/02/10	12/02/10.
Year-End	12/31/10	01/31/11	01/31/11.

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

Dated: June 11, 2010.

On behalf of the Commission.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2010–14568 Filed 6–16–10; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012100.

Title: CMA CGM/CSAV Gulf Bridge Express Vessel Sharing Agreement.

Parties: CMA CGM Antilles Guyane and Compania Sud American de Vapores S.A.

Filing Party: Draughn Arbona, Esq.; Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between the U.S. Gulf coast and Mexico, Jamaica, Colombia, and Venezuela. The parties have requested expedited review.

Agreement No.: 012101.

Title: NYK/"K" Line/MOL Vessel Sharing Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Nippon Yusen Kaisha.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between Hawaii and ports in Japan, China, Korea, and Pacific Coasts of Mexico, Colombia, and Ecuador.

By Order of the Federal Maritime Commission.

Dated: June 14, 2010.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–14679 Filed 6–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the Presidential Commission for the Study of Bioethical Issues

AGENCY: Department of Health and Human Services, Office of Public Health and Science, The Presidential Commission for the Study of Bioethical Issues.

ACTION: Notice.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues (Amy Gutmann, PhD, Chair, and James Wagner, PhD, Vice Chair), will conduct its first meeting to discuss the implications of synthetic biology.

DATES: The meeting will take place Thursday, July 8, 2010, from 8:30 a.m. to 5 p.m., ET; and Friday, July 9, 2010, from 8:30 a.m. to 11:45 a.m., ET.

ADDRESSES: The Ritz-Carlton, 1150 22nd Street, NW., Washington, DC 20037. Phone 202–835–0500.

FOR FURTHER INFORMATION CONTACT: Ms. Diane M. Gianelli, Acting Executive Director, The Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue, NW., Suite C–100, Washington, DC 20005. Telephone: 202/233–3960. E-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov*.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted at *http://www.bioethics.gov*. The Commission encourages public comment, either in person or in writing. Interested members of the public may address the Commission at select times to be announced at the meeting. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane M. Gianelli, Acting Executive Director, in advance, of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of her contact addresses given above.

Dated: June 9, 2010.

Diane M. Gianelli,

Acting Executive Director, The Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2010–14577 Filed 6–16–10; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–10–10ES]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road,

NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarify of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

LRN Special Data Calls—Existing Collection in Use Without an OMB Control Number—National Center for Emerging and Zoonotic Infectious Diseases (proposed) (NCEZID, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Laboratory Response Network (LRN) was established by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) in accordance with Presidential Decision Directive 39, which outlined national anti-terrorism policies and assigned specific missions to Federal departments and agencies. The LRN's mission is to maintain an integrated national and international network of laboratories that can respond to acts of biological, chemical, or radiological terrorism and other public health emergencies. Federal, state and local public health laboratories voluntarily join the LRN.

The LRN Program Office maintains a database of information for each member laboratory that includes contact information as well as staff and equipment inventories. However, semiannually or during emergency response the LRN Program Office may conduct a Special Data Call to obtain additional information from LRN Member Laboratories in regards to biological or chemical terrorism preparedness. Special Data Calls may be conducted via queries that are distributed by broadcast emails or by survey tools (*i.e.* Survey Monkey). This is a request for a generic clearance. The only cost to respondents is their time to respond to the data call.

Estimate of Annualized Burden Hours

Forms	Number of respondents	Average number of responses per respondent	Average burden per response (hours)	Total burden hours
Special Data Call	200	4	30/60	400

Dated: June 10, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–14625 Filed 6–16–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0279]

Center for Drug Evaluation and Research Data Standards Plan; Availability for Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of the draft document entitled "CDER Data Standards Plan Version 1.0" (draft plan). The draft plan outlines the general approach proposed for development of a comprehensive data standards program in the Center for Drug Evaluation and Research (CDER). The draft plan identifies key objectives for a data standards program at CDER, processes to be developed to ensure successful use of those standardized data, and a set of recommended projects to begin in calendar year (CY) 2010.

DATES: Submit either electronic or written comments on the draft plan by September 15, 2010.

ADDRESSES: Submit written requests for single copies of the draft plan to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft plan.

Submit electronic comments on the draft plan to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ranjit Thomas, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 1166, Silver Spring, MD 20993–0002, e-mail: *Ranjit.Thomas@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA receives an enormous and growing amount of data in regulatory submissions in a variety of formats from many sources. This wealth of data holds great potential to advance CDER's regulatory and scientific work, but the present lack of standardized data creates significant challenges to realizing that potential. A data standards plan would enhance CDER's ability to efficiently and effectively perform its critical public health mission.

At present, the lack of standardized data affects CDER's review processes by curtailing a reviewer's ability to perform integral tasks such as rapid acquisition, analysis, storage, and reporting of regulatory data. Standardized data will allow reviewers to increase review consistency and perform evaluations across the drug lifecycle. Improved data quality, accessibility, and predictability will give reviewers more time to carry out complex analyses, ask in-depth questions, and address late-emerging issues.

Standardization of data submissions, a requirement for electronic submissions, and a robust computational infrastructure would make significant improvements possible. Facilitating improvements requires careful analysis, advanced planning, project management, expert input, and effective communication among all key stakeholders. To be successful, a plan is required to identify, develop, adopt, and maintain data standards that meet CDER "end user" needs.

FDA is making available for public comment the draft plan entitled "CDER

Data Standards Plan Version 1.0." The draft plan is intended to communicate FDA's approach for establishing a comprehensive data standards program at CDER and ensuring the development and successful use of data standards for all key data needed to make regulatory decisions. FDA will consider comments received in developing future versions of the plan.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov* or http://www.fda.gov/downloads/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/UCM214120.pdf.

Dated: June 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14637 Filed 6–16–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–N–0284 and FDA–2009–D–0461]

Risk Evaluation and Mitigation Strategies; Notice of Public Meeting; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing a 2-day public meeting to obtain input on issues and challenges associated with the development and implementation of risk evaluation and mitigation strategies (REMS) for drugs and biological products. As FDA has taken steps to implement the REMS provisions of the Federal Food, Drug, and Cosmetic Act (FDCA), some stakeholders have raised concerns about the impact of various REMS, and the growing number of REMS on the health care system, as well as on individual prescribers, pharmacists, distributors, and other affected stakeholders. To obtain public input about the REMS program and its impact, and to gather additional input on a draft guidance for industry issued on October 1, 2009 entitled "Format and Content of Proposed Risk Evaluation and Mitigation Strategies (REMS), REMS Assessments, and Proposed REMS Modifications," FDA has decided to hold this public meeting. FDA wishes to give a wide range of stakeholders the opportunity to provide input in this area, and will take the information it obtains from the meeting into account in its implementation of the REMS program and in the development of the final guidance and future REMS guidances.

DATES: The meeting will be held on July 27 and 28, 2010, from 8:30 a.m. to 4:30 p.m. Individuals who wish to present at the meeting must register by July 6, 2010. The comment period for the draft guidance for industry on "Format and Content of Proposed Risk Evaluation and Mitigation Strategies (REMS), REMS Assessments, and Proposed REMS Modifications" has been reopened until August 31, 2010.

ADDRESSES: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, rm. 1503, Silver Spring, MD 20993. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify each set of comments with the corresponding docket number for either the public meeting or the draft guidance as follows: Docket No. FDA–2010–N–0284, "Risk Assessment and Mitigation Strategies; Public Meeting," and Docket No. FDA–2009–D–0461, Draft guidance for industry on "Format and Content of Proposed Risk Evaluation and Mitigation Strategies (REMS), REMS Assessments, and Proposed REMS Modifications."

FOR FURTHER INFORMATION CONTACT: Kristen Everett, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, rm. 6228, Silver Spring, MD 20993, 301–796–0453, FAX: 301–847–8440, Email: *REMSpublicmeeting@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 27, 2007, the President signed into law the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85). Title IX, subtitle A, section 901 of FDAAA created new section 505–1 of the FDCA, which authorizes FDA to require persons submitting new drug applications (NDAs) or abbreviated new drug applications (ANDAs) for prescription products, or biologics license applications (BLAs), to submit and implement a REMS if FDA determines that a REMS is necessary to ensure the benefits of a drug outweigh the risks of the drug. To require a REMS for an already approved drug, FDA must have new safety information as defined in the statute.

FDAAA specifies the criteria FDA must consider in determining when to require a REMS, the elements of a REMS that FDA must and may require, and additional considerations when requiring a REMS with elements to assure safe use. FDAAA also contains provisions that are specifically directed to REMS for ANDAs and describes enforcement actions for failure to comply with REMS. FDAAA contains provisions that require the FDA to seek input from patients, physicians, pharmacists, and other health care providers about how the elements to assure safe use may be standardized to (1) not be unduly burdensome on patient access to the drug and (2) to the extent practicable, minimize the burden on the health care delivery system. A webinar will be available on the agency's Web site at *http://www.fda.gov/Drugs/NewsEvents/ucm210201.htm* 2 weeks before the meeting, describing in more detail the statutory requirements for REMS.

II. REMS Draft Guidance and Comment Period

FDA has been implementing the REMS FDAAA provisions for more than 2 years. On October 1, 2009, the Agency published in the **Federal Register** (74 FR 80801) a notice of availability of a draft guidance for industry entitled, "Format and Content of Proposed Risk Evaluation and Mitigation Strategies (REMS), REMS Assessments, and Proposed REMS Modifications." Although comments on Agency guidances are welcome at any time (see 21 CFR 10.115(g)(5)), to ensure that comments could be considered as the Agency worked on the final version of the guidance, interested persons were invited to comment on the draft guidance by December 30, 2009. The draft guidance provides information

regarding FDA's current thinking on the format and content that should be used for submissions of proposed REMS, including the availability of templates for REMS and REMS supporting documents. It also includes preliminary information on the content of assessments and proposed modifications to approved REMS.

In comments on the guidance, as well as in various other contexts, stakeholders have raised concerns with the Agency about the use of REMS, and the impact of both the variety of REMS and the growing number of REMS on the health care system and on affected prescribers, pharmacists, distributors, patients, and other affected stakeholders. For example, some stakeholders have expressed concern regarding the cumulative burden of REMS on the health care delivery system. Others have raised concerns about prescribers' and pharmacists' costs of implementing REMS, and some have raised questions about the impact of REMS on patient access to therapies. FDA has decided to hold a public meeting to hear from stakeholders about their opinions on how REMS are working, and the effects of REMS on prescribers, pharmacists, distributors, patients, and other stakeholders, and on the overall health care system. At the same time, FDA is reopening the comment period on the draft guidance for industry on "Format and Content of Proposed Risk Evaluation and Mitigation Strategies (REMS), REMS Assessments, and Proposed REMS Modifications" until August 31, 2010. FDA will take into account the input it receives through comments and at the public meeting in its implementation of the FDAAA REMS provisions when it finalizes the above guidance, and in the development of future guidances regarding REMS for drugs and biological products.

III. FDA Actions Under FDAAA

Section 901 of FDAAA became effective March 25, 2008. Between March 25, 2008, and March 25, 2010, FDA approved 110 new REMS for NDAs and BLAs, and two deemed REMS.[1] Table 1 shows the various types of approved REMS.

TABLE 1. NEW REMS APPROVED BETWEEN MARCH 25, 2008, AND MARCH 25, 2010[1]

REMS Elements (in addition to a timetable for submission of assessments of the REMS)	No. Approved
Medication Guide (MG) Only	75
Communication plan (CP) alone or with a MG	25
Elements to assure safe use alone or with CP and/or MG	10
Total new REMS approved	110

[1] "New REMS" means REMS approved since FDAAA took effect for drugs that did not previously have risk management plans in place.

As shown in Table 1, 68 percent of the newly approved REMS contained only a Medication Guide and a timetable for submission of assessments of the REMS (the only element required in all REMS). Before FDAAA, a drug with only a Medication Guide would not have been considered to have a risk management plan. Instead, Medication Guides were considered part of labeling.

Less than 10 percent of the new REMS contain elements to assure safe use; however, these new REMS are in addition to the 16 previously approved risk management plans with elements to assure safe use that have been deemed to be REMS.

In each case where a REMS was required, FDA made the finding that a REMS was necessary to ensure that the benefits of the drug outweighed the risks. In the case of REMS with elements to assure safe use, the types of REMS that place the greatest burden on participants in the program and on the health care system, FDA determined that without these elements to assure safe use, the drug could not be approved, or if previously approved, would need to be withdrawn from the market. It is these types of REMS that seem to be of most concern to stakeholders who have communicated concerns about the REMS program.

Most of the REMS with elements to assure safe use require prescriber education and certification about the specific risks of the drug covered by the REMS and the drug's appropriate use. In some cases, prescribers are required to counsel patients about the risks of the drug. They also may be required to enroll patients in the REMS, and they may be asked to have the patient sign a prescriber/patient agreement. All of these actions are intended to promote informed, appropriate prescribing of the particular drug, and provide information to the patient about the risks and appropriate use of the drug. However, FDA has heard from prescribers who are concerned about having to enroll in many different programs, obtain different certifications, and comply with various requirements for counseling their patients. They are concerned that these restrictive programs interfere with the practice of medicine and are costly to implement without any reimbursement for the costs incurred. Patients have expressed the concern individually and through patient advocacy groups that prescribers may refuse to participate in the REMS, so they may be deprived of access to necessary drugs.

Many of the REMS with elements to assure safe use require pharmacists or pharmacies to be certified, and in several REMS with elements to assure safe use, pharmacists are required to determine whether the prescription presented by the patient was written by a certified prescriber or whether the patient is authorized to receive the drug. Sometimes pharmacists are also provided educational materials so that they can counsel patients on the safe and appropriate use of the drug. FDA has heard from pharmacy organizations that complying with these requirements can cause a disruption in usual workflow, and these organizations have expressed concern that there is no additional compensation for pharmacists complying with REMS requirements. In addition, pharmacists have said that the multiplicity of programs requiring separate enrollment and certification are unduly burdensome on the pharmacy, as is the lack of a single source for information on all REMS requirements.

In some REMS, to help ensure that the REMS is appropriately implemented, the sponsor will elect to distribute only through a central pharmacy or pharmacies that agree to abide by the terms of the REMS. Some health care organizations have expressed the concern that these arrangements disrupt their ability to provide drugs to patients in their system, and are anticompetitive in nature. (See the citizen petition filed under 21 CFR 10.30 by Kaiser Foundation Health Plan, Inc., Docket No. FDA–2009–P–0602, available on the Internet at *http://www.regulations.gov*.)

A few REMS with elements to assure safe use require that drugs be dispensed only in particular settings, such as hospitals. Some require patients to be monitored for the development of undesirable reactions to the drug or, in the case of drugs that can adversely affect a fetus, require pregnancy testing to prevent fetal exposure to the drug. Stakeholders have expressed concerns

[1] Section 909 of FDAAA provides that drugs approved with elements to assure safe use before FDAAA was enacted were deemed to have REMS. Sponsors of these products were required to submit proposed REMS by September 21, 2008.

about these types of restrictions, citing burden and cost.

Several of the REMS with elements to assure safe use require that the drug be dispensed only with documentation of conditions to assure safe use. For example, patient enrollment may be required in a program designed to make sure the patient is educated about the risks of the drug, the importance of follow-up, monitoring, if applicable, and reporting of adverse events. Stakeholders have raised concerns about the effect of such restrictions on patient access to medications and about the costs to prescribers and pharmacists to implement such a program.

All REMS include a timetable for submission of assessments. The timing for assessments is at a minimum 18 months, 3 years, and 7 years, but for drugs that have REMS with elements to assure safe use, the assessments can be more frequent. Sponsors must assess the REMS and determine whether the goals of the REMS are being met. REMS assessment reports generally summarize surveys of patients and prescribers, data on compliance with the REMS processes, drug use, and information on certain outcomes.

Because FDA regulates the holders of approved applications to market drugs, the REMS requirements are imposed on sponsors, not directly on other participants in the health care system. Thus, sponsors must establish the education and certification programs and the monitoring systems, and implement the REMS requirements. Yet sponsors do not control the other participants in the health care system, and it may be difficult to get the participants to comply with the REMS requirements. Furthermore, because in most cases the REMS programs are established by individual sponsors and are tailored to the characteristics of the drug, the population using the drug, and the way the drug is prescribed and distributed, it can be difficult to standardize the elements of REMS to reduce their burden. Finally, it may be difficult to determine whether a REMS is working effectively and, if so, which specific elements of the REMS are working well.

As FDA continues to require and approve REMS for drugs, it is important to hear more from stakeholders about their concerns. Therefore, FDA has decided to hold this public meeting.

IV. Purpose and Scope of Meeting

The purpose of this meeting is to receive information and comments on issues with REMS from a broad group of stakeholders including interested prescribers, pharmacists, patients, third party payers, application holders, and the public.

Although any comments are welcome, FDA is particularly interested in obtaining information and public comment on the following issues:

A. Requirement for a REMS

In each case where a REMS was required, FDA made the statutorily required finding that a REMS was necessary to ensure that the benefits of the drug outweighed the risks. Section 505–1 lists the factors FDA must consider in determining whether to require a REMS as follows:

- The estimated size of the population likely to use the drug
- The seriousness of the disease or condition that is to be treated with the drug
- The expected benefit of the drug with respect to the disease or condition
- The expected or actual duration of treatment with the drug
- The seriousness of any known or potential adverse events that may be related to the drug and the background incidence of such events in the population likely to use the drug
- Whether the drug is a new molecular entity

In addition, for REMS with elements to assure safe use, the elements to assure safe use must:

- Be commensurate with the specific serious risk listed in the labeling of the drug
- Not be unduly burdensome on patient access to the drug, considering the risk and, in particular, patients with serious or life-threatening diseases or conditions and patients who have difficulty accessing health care (such as patients in rural or medically underserved areas)
- To the extent practicable, conform with elements to assure safe use for other drugs with similar serious risks, and
- Be designed to be compatible with established distribution, procurement, and dispensing systems for drug.

1. How should these factors be evaluated individually and in relation to each other to determine whether a REMS is appropriate?

2. How should the factors be evaluated individually and in relation to each other to determine what type of REMS is appropriate (i.e., what elements should be included in the REMS: Medication Guide, communication plan, elements to assure safe use, implementation system)?

3. Are there other factors that FDA should consider besides the statutorily enumerated factors in deciding whether to require a REMS, and if FDA believes a REMS is necessary, what type of REMS should be required?

B. Establishing the Goals of A REMS

1. When FDA requires a REMS, how should the goals be expressed? For example:

a. Should the goal be to reduce the risk to zero (e.g., zero fetal exposures or cases of agranulocytosis), even if it is recognized as an aspirational and not an achievable goal?

b. Should the goal be expressed in terms of risk reduction either to some minimum level (e.g., not more than 100 fetal exposures) or as compared to a baseline, assuming there is a known baseline from which risk reduction can be measured (e.g., reduce fetal exposures by 90 percent)?

c. What factors should FDA consider in establishing the goals of a REMS?

d. What criteria might be considered for modifying a REMS (increasing or decreasing elements, or eliminating it all together)?

C. Issues Regarding Elements to Assure Safe Use

1. Is there evidence that REMS with elements to assure safe use have adversely affected appropriate patient access to approved drugs?

a. What features of a REMS with elements to assure safe use are most likely to adversely affect appropriate patient access to approved drugs?

b. What design features or safeguards could be incorporated into elements to assure safe use to reduce any negative impact on appropriate patient access?

2. Is there evidence that REMS with elements to assure safe use have improved patient safety?

3. Is there evidence that REMS with elements to assure safe use have adversely affected patient safety?

4. How have REMS with elements to assure safe use affected the health care delivery system?

a. What features of a REMS with elements to assure safe use are most likely to adversely affect the health care delivery system?

b. What design features could be incorporated into elements to assure safe use to reduce any negative impact on the health care delivery system? For example, can training and certification of health care providers be streamlined? If so, how?

c. How should REMS with elements to assure safe use be made compatible with established distribution systems so as to minimize the burden on the health care delivery system?

5. Some REMS are implemented by distribution of drugs through a central pharmacy system, and some are

implemented through a retail pharmacy system.

a. What are the advantages and disadvantages of the various models of drug distribution under a REMS?

b. Should sponsors be permitted to choose the drug distribution system they prefer to manage the risks, or should a common distribution system be employed for REMS?

6. Can implementation of elements to assure safe use be standardized (e.g., could uniform systems for providing prescriber and pharmacist education or certification be developed)?

a. Is there a preferred way to standardize the elements to assure safe use (e.g., based on the nature of the risk, across a class of drugs with common risks, or around certain elements such as prescriber education or pharmacy certification)?

b. What are the advantages and disadvantages of standardizing the way elements to assure safe use are implemented on:

i. Patient safety?

ii. Patient access?

D. Evaluating the Effectiveness of REMS

1. How should REMS be monitored and assessed to determine their effectiveness, considering the different types of REMS elements (e.g., Medication Guides, communication plans, elements to assure safe use)?

2. How should the overall burden on the health care system of a REMS with elements to assure safe use be monitored and assessed, considering the different types of elements to assure safe use (e.g., training or certification of prescribers and pharmacists, implementation of patient registries)?

3. Should metrics for determining the effectiveness of a REMS be specified at the time the REMS is approved? How should the appropriate metrics be determined?

4. Are surveys the optimal method to assess patient and health care provider understanding of the serious risks and safe use of the drug? Are there alternative methods that should be considered?

E. Effects of REMS on Generic Drugs

1. Section 505–1(f)(8) states that no holder of an approved application shall use any element to assure safe use required by the Secretary to block or delay approval of an application under section 505(b)(2) or (j) or to prevent application of an element to assure safe use to a drug that is the subject of an abbreviated new drug application. What steps should FDA take to ensure that REMS are not used to block or delay generic competition?

2. FDAAA requires that innovator and generic sponsors use a single shared system to provide a REMS with elements to assure safe use, unless a waiver is granted. What design or process features should be taken into account when designing an innovator REMS to facilitate use of a single shared system when generics are approved?

F. Protection of Patient Information

1. Some REMS with elements to assure safe use require enrollment of patients and health care providers in a program, or require a patient registry as a condition of prescribing or dispensing a drug.

a. What, if any, privacy concerns are raised by these programs?

b. Does enrollment in a REMS program or a patient registry without requiring a specific collection of health information raise the same privacy concerns?

2. What steps should FDA take to reduce concerns about patient privacy when REMS with such elements to assure safe use are determined to be necessary to ensure the benefits of a drug outweigh its risks?

V. Attendance and Registration

The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendance is free and will be on a first come, first served basis. Individuals who wish to present at the public meeting must register by email to *REMSpublicmeeting@fda.hhs.gov* on or before June 30, 2010, and provide complete contact information, including name, title, affiliation, address, email, and phone number. In section IV of this document, FDA has included questions for comment. You should identify by number each question you wish to address in your presentation, so that FDA can consider that in organizing the presentations. FDA will do its best to accommodate requests to speak, and will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. An agenda will be available approximately 2 weeks before the meeting on the Agency Web site at *http://www.fda.gov/Drugs/NewsEvents/ucm210201.htm.*

If you need special accommodations because of disability, please contact Kristen Everett (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

A live Web cast of this meeting will be available on the Agency Web site at *http://www.fda.gov/Drugs/NewsEvents/ucm210201.htm* on the day of the meeting. A video record of the meeting will be available at the same Web address for 1 year.

VI. Comments

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. To ensure consideration, submit comments by August 31, 2010. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VII. Transcripts

Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the meeting. A transcript will also be made available in either hard copy or on CD-ROM, upon submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: June 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14547 Filed 6–11–10; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology,

Date: June 25, 2010,

Time: 4:30 p.m. to 7 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: Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14640 Filed 6–16–10; 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, Human Protein Affinity Reagents.

Date: June 22, 2010.

Time: 4 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard A. Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Electromagnetic Devices.

Date: June 22, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14643 Filed 6–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Data Archive on Adolescent Pregnancy and Pregnancy Prevention.

Date: July 7, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, And Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14645 Filed 6–16–10; 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–OD–10–005 Director's Opportunity 5 Themes Oral Musculoskeletal and Imaging.

Date: June 28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D Sipe, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892. 301/435–1743. *sipej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Clinical Neuroimmunology and Brain Tumors II.

Date: June 30, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Samuel C. Edwards, PhD, Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892. (301) 435–1246. *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Therapies.

Date: July 13–14, 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: Russell T. Dowell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892. (301) 435–1850. *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Risk, Prevention and Intervention for Addictions.

Date: July 20, 2010.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892. 301–594–3139. *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Intervention and Addictions.

Date: July 21, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892. 301–594–3139. *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Statistical Genetics Research Resource.

Date: July 26–28, 2010.

Time: 6 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Hotel, 9801 Carnegie Avenue, Cleveland, OH 44106.

Contact Person: Barbara J. Thomas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892. 301–435–0603. *bthomas@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 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14647 Filed 6–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/Initial Review Group, (NCIPC/IRG)

Correction: This notice was published in the **Federal Register** on February 18, 2010, Volume 75, Number 32, page 7281. The notice should read as follows:

NCIPC/IRG Workgroup: Unintentional Poisoning from Prescription Drug Overdoses in Adults (R21), Funding Opportunity Announcement CE10–002.

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Time and Date: 12:30 p.m.–4 p.m., March 3, 2010 (Closed).

Place: Teleconference.

Status: This meeting was closed to the public in accordance with provisions set forth in 41 CFR part 102 of the General Services Administration Federal Advisory Committee Management Final Rule.

Matters to be Discussed: The meeting included the review, discussion, and evaluation of applications intended for the prevention of unintentional poisonings from drug overdoses in the adult population. Requests for Applications are related to the following individual research announcement: CE10–002.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: J. Felix Rogers, PhD, M.P.H., NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S F63, Atlanta, Georgia 30341–3724, Telephone (770) 488–4334.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 8, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–14633 Filed 6–16–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/Initial Review Group, (NCIPC/IRG)

Correction: This notice was published in the **Federal Register** on February 17, 2010, Volume 75, Number 31, page 7150. The notice should read as follows:

NCIPC/IRG Workgroup: Research Priorities in Acute Injury Care (R01), Funding Opportunity Announcement CE10–003.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Time and Date: 12:30 p.m.–4 p.m., February 25, 2010 (Closed).

Place: Teleconference.

Status: This meeting was closed to the public in accordance with provisions set forth in 41 CFR part 102 of the General Services Administration Federal Advisory Committee Management Final Rule.

Matters To Be Discussed: The meeting included the review, discussion, and evaluation of applications submitted in response to Fiscal Year 2010 Requests for Applications related to the following individual research announcement: CE10–003. This funding opportunity announcement (FOA) solicits grant applications to (1) Evaluate strategies to translate, disseminate, implement, and adopt science-based recommendations and guidelines for the care of acutely injured persons, or (2) Determine and evaluate the components of trauma systems that contribute to improved outcomes for acutely injured persons.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: J. Felix Rogers, PhD, M.P.H., NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S F63, Atlanta, Georgia 30341–3724, Telephone (770)488–4334.

The Director, Management Analysis and Services Office, has been delegated the

authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 8, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–14624 Filed 6–16–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/Initial Review Group, (NCIPC/IRG)

Correction: This notice was published in the **Federal Register** on February 18, 2010, Volume 75, Number 32, page 7284. The notice should read as follows:

NCIPC/IRG Workgroup: Research Grants for Preventing Violence and Violence–Related Injury, Funding Opportunity Announcement CE10–005.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Times and Dates:

8 a.m.–5 p.m., March 11, 2010 (Closed)

8 a.m.–5 p.m., March 12, 2010 (Closed)

Place: JW Marriott Hotel Buckhead, 3300 Lenox Road, Atlanta, Georgia 30326, Telephone (404) 262–3344.

Status: This meeting was closed to the public in accordance with provisions set forth in 41 CFR part 102 of the General Services Administration Federal Advisory Committee Management Final Rule.

Matters to be Discussed: The meeting included the review, discussion, and evaluation of applications intended to expand and advance the understanding of violence, its causes, and prevention strategies. Requests for Applications are related to the following individual research announcement: CE10–005.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: J. Felix Rogers, PhD, M.P.H., NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S F63, Atlanta, Georgia 30341–3724, Telephone (770) 488–4334.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 8, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–14623 Filed 6–16–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/Initial Review Group, (NCIPC/IRG)

Correction: This notice was published in the **Federal Register** on February 1, 2010, Volume 75, Number 20, pages 5089–5090. The notice should read as follows:

NCIPC/IRG Workgroup: Preventing Unintentional Childhood Injuries (R21), Funding Opportunity Announcement CE10–001.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Time and Date: 12:30 p.m.—4 p.m., February 16, 2010 (Closed).

Place: Teleconference.

Status: This meeting was closed to the public in accordance with provisions set forth in 41 CFR part 102 of the General Services Administration Federal Advisory Committee Management Final Rule.

Matters To Be Discussed: The meeting included the review, discussion, and evaluation of cooperative agreement applications submitted in response to Fiscal Year 2010 Requests for Applications related to the following individual research announcement: CE10–001.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: J. Felix Rogers, PhD, M.P.H., Telephone (770)488–4334, NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S F63, Atlanta, Georgia 30341–3724.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 8, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–14622 Filed 6–16–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0291]

Converged Communications and Health Care Devices Impact on Regulation; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) and the Federal Communications Commission (FCC) are jointly sponsoring a public meeting entitled "Enabling the Convergence of Communications and Medical Systems: Ways to Update Regulatory and Information Processes." The purpose of this meeting is to identify the challenges and risks posed by the proliferation of new sophisticated medical implants and other devices that utilize radio communications to effectuate their function, as well as challenges and risks posed by the development and integration of broadband communications technology with healthcare devices and applications. While the general format for this meeting is outlined in this document, the details will be further informed by the comments received, and a final agenda will be published on the Internet in the future.

Dates and Times: The public meeting is scheduled for July 26 and 27, 2010, from 8 a.m. to 5:30 p.m. Persons interested in attending and/or participating in the meeting must register by 5 p.m. EDT on July 19, 2010. Submit either electronic or written comments related to the agenda, by 5 p.m. EDT on June 25, 2010. All other comments must be submitted by August 16, 2010.

Location: The public meeting will be held at the FCC Commission Meeting Room, 445 12th St. SW., Washington, DC 20554.

Contact Persons: Bakul Patel, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 3543, Silver Spring, MD 20993, 301–796–5528, email: *bakul.patel@fda.hhs.gov*; or Bruce Romano, Federal Communications Commission, 445 12th St. SW., rm. 7–C140, Washington, DC 20554, 202–418–2470, email: *bruce.romano@fcc.gov*.

Registration and Requests for Oral Presentations: Registration requests must be received by 5 p.m. EDT on July

19, 2010. Interested persons may register by emailing *FCC-FDAMeeting@fcc.gov*. Registrants must provide the following information: (1) Name, (2) title, (3) company or organization, (4) mailing address, (5) telephone number, and (6) email address. Registrants will receive confirmation once they have been accepted. Persons interested in attending the meeting are encouraged to register as registrants will have seating priority in order of registration and can be best assured of receiving information by email regarding any changes that may occur in meeting particulars. Also, registration will be required for all speakers. Overflow rooms with closed circuit video monitors will be provided as needed to accommodate the public. FDA and FCC may limit the number of registrants from each organization based on space limitations.

If you wish to make an oral presentation during any of the open comment sessions at the meeting, you must indicate this at the time of registration. FDA and FCC have included specific questions for comment in section III of this document. You should also identify which discussion topic you wish to address in your presentation. In order to keep each open comment session focused on the topic at hand, each oral presentation should address only the topic specified for that session. FDA and FCC will do their best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA and FCC will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

If you need special accommodations due to a disability, please send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY) at least 7 days in advance of the meeting.

Comments: FDA and FCC are holding this public meeting to gather information on a number of questions regarding challenges and safety for patients and other users of medical devices that include radio elements and of systems that can be tied into broadband communication networks. The deadline for submitting comments related to the agenda is 5 p.m. EDT on June 25, 2010. The comment period for this public meeting closes on August 16, 2010.

Regardless of attendance at the public meeting, interested persons may submit electronic comments to *http://www.regulations.gov*, or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and to the Federal Communications Commission, Office of the Secretary, 445 12th St. SW., rm. TW–A235, Washington, DC 20554. Send one paper copy of mailed comments if you are submitting to FDA and two paper copies of mailed comments if you are submitting to FCC, except that individuals may submit one paper copy. Identify comments with the docket number found in brackets in the heading of this document (use docket number ET 10–120 for written submissions to FCC). In addition, when responding to specific questions as outlined in this document, please identify the question you are addressing. Received comments are available at all times via the Federal eRulemaking Portal: *http://www.regulations.gov*. They may also be seen in FDA's Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday or at the Federal Communications Commission, Reference Information Center, 445 12th St. SW., rm. CY–A257, Washington, DC 20554, Monday through Thursday between 8 a.m. and 4:30 p.m. and on Fridays between the hours of 8 a.m. and 12 noon.

SUPPLEMENTARY INFORMATION:

I. Background

There have been significant developments in recent years in medical and health care devices using radio technology to monitor various body functions and conditions, including critical elements, and to deliver treatment and therapy. There has also been an increasing proliferation of devices using established commercial communications networks such as Internet connectivity to communicate with care providers. Mobile devices like smartphones and personal digital assistants (PDAs) are transforming the transmission of information used by physicians to help manage patient care, including communication networks to relay information for patient health monitoring and decision support.

Examples of the latest implant or body-worn monitoring, therapeutic, and treatment technologies include blood glucose monitors and automated insulin pumps, heart monitors, pacemakers, defibrillators, and neural pathway replacements that stimulate muscle movement.

Examples of devices and applications that use commercial communications networks and represent the convergence of communications and medicine include a smartphone application that displays real-time fetal heartbeat and maternal contraction data allowing obstetricians to track a mother's labor and wearable wireless patch-like sensors that transmit health data over commercial wireless networks to practitioners, caregivers, and patients.

These and other products cover a broad range of health care solutions. At one end, general-purpose communications devices such as smartphones, wireless routers and certain video-conferencing equipment are regulated by FCC. At the other end, medical devices that critically monitor patient health or provide treatment or therapy are regulated by FDA. Devices that do provide critical care and also use communications, such as life-critical wireless devices like remotely controlled drug-release mechanisms, are regulated by both agencies. In addition, device applications that would not be governed by FCC but transmit over wireless networks might warrant FDA oversight, while FCC might have better capability to assess the reliability of their communications capability.

The objective of this meeting is to gather information and to better understand issues and perspectives from various stakeholders so the Agencies can identify potential areas where each Agency's jurisdiction can be identified and clarified for affected parties, collection and assessment of each Agency's respectively appropriate information can be improved, expertise can be shared, and regulatory approval can be coordinated and simplified. These concerns relate both to devices operating on designated frequencies and to convergent medical device and information technology, as described previously. This includes challenges faced by manufacturers and innovators in ensuring compliance with various regulatory requirements and risks associated with medical device systems using spectrum shared by other medical devices, using spectrum shared by other types of devices and services, and using broadband communication capabilities.

FDA and FCC recognize the need to work with all stakeholders to identify pathways and strive to improve processes that will help continue to spur innovation in these areas while maintaining safety and effectiveness and promoting public health.

II. Public Meeting

The information gathered during the meeting will be used to enhance the coordination between FDA and FCC for such devices and applications, and clarify and delineate the respective

areas of expertise and jurisdiction between the Agencies. This information will simplify and expedite the introduction of new and important medical technologies and techniques while maintaining safety and efficacy levels appropriate to the various technologies and devices.

During each session, members of the public may present oral comments related to the topic of that session. Specific questions for comment are listed in section III of this document. Individuals who are interested in giving an oral presentation during any of the sessions must indicate this interest at the time of registration and must also identify the session(s) at which they would like to present (see *Registration and Requests for Oral Presentation*). In order to keep each session focused on the topic at hand, each oral presentation should address only the topic specified for that session. Persons who wish to comment are free to submit written comments on any topic(s) to the open docket (see *Comments*). FDA and FCC will schedule speakers for each session as time permits.

In advance of the meeting, additional information, including a meeting agenda with a speakers' schedule for each session, will be made available on the Internet. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov* and in the FDA and FCC public reference rooms listed previously. This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list) and from *http://www.fcc.gov/workshops*.

III. Questions for Comment

FDA and FCC are planning to focus the public meeting on the following topics:

1. Data integrity and reliability issues arising from the use of allocated spectrum, the use of unlicensed devices, and the use of commercial networks and applications, and needs, uses, and risks for 'medical-grade' wireless technology and communications.

2. Medical device and system security issues—inadvertent and intentional intrusion—nonfunction and malfunction.

3. Trends in medical devices using allocated spectrum and using unlicensed operation, and medical devices and applications using commercial networks. Consideration of various wireless networking scenarios and use cases.

4. Risks Management:

• The need to define levels of "criticality" of device function that can be used for determining reliability requirements.

• Environmental factors and delivery setting—hospitals, users, clinics, home, travel, etc.

5. Views on current FDA and FCC regulatory requirements:

• Relationship between FDA approval/clearance and FCC certification of applications, post market and compliance requirements.

Each of the previous topics will cover:

1. Defining topics and scope;

2. Identifying the needs, goals, and stakeholders; and

3. Recommendations.

FDA and FCC are seeking comments on the topics and soliciting suggestions on alternate or additional topics that commenters deem closely related. All comments and suggestions will be considered with the constraint of completing the workshop in no more than 2 days. To be considered, topics proposed must be relevant to the objective and intent of the workshop.

IV. Transcripts

Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857 or at the Federal Communications Commission, Reference Information Center, 445 12th St. SW., rm. CY–A257, Washington, DC 20554, Monday through Thursday, between the hours of 8 a.m. and 4:30 p.m. and on Fridays between 8 a.m. and 12 noon, approximately 15 working days after the public meeting at a cost of 10 cents per page. A transcript of the public meeting will be available on the Internet at *http://www.regulations.gov*.

Dated: June 14, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–14687 Filed 6–14–10; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Effectiveness Research on Smoking Cessation in Hospitalized Patients.

Date: June 22–23, 2010.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shelley S. Sehnert, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924. 301–435–0303.*ssehnert@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14648 Filed 6–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract

proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Novel Technologies in Newborn Screening.

Date: July 8, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14646 Filed 6–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Adolescent Medicine Trials Network for HIV/AIDS Interventions.

Date: July 8–9, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd. Room 5b01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14644 Filed 6–16–10; 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: Technology-Based Adherence Interventions for Substance Abusing Populations with HIV (R34).

Date: July 9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–08–999: Family Planning Service Delivery Improvement Research (R01).

Date: July 9, 2010.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Hematology.

Date: July 12–13, 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: Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Experimental Cancer Therapeutics.

Date: July 14–15, 2010.

Time: 11 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: Denise R. Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Social Science and Population Studies.

Date: July 14, 2010.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Valerie Durrant, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 408–9882, *durrantv@csr.nih.gov*.

(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)

June 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14641 Filed 6–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0274]

Oversight of Laboratory Developed Tests; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

Summary: The Food and Drug Administration (FDA) is announcing the following public meeting: "Oversight of Laboratory Developed Tests." The purpose of the public meeting is to create a forum for interested stakeholders to discuss the agency's oversight of laboratory developed tests (LDTs). FDA is seeking input and requesting comments on this topic.

Date and Time: The public meeting will be held on July 19 and 20, 2010, from 8 a.m. to 5 p.m.

Location: The public meeting will be held at Crowne Plaza Washington, DC - Rockville, 3 Research Court, Rockville, MD 20850. For directions, please contact the hotel 301–840–0200 or refer to the meeting web page at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*.

Contact: Katherine Serrano, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5613, Silver Spring MD 20993–0002, 301–796–6652, e-mail: *Katherine.Serrano@fda.hhs.gov*.

Registration and Requests for Oral Presentations: There is no registration fee to attend the public meeting. Registration can be completed online at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*. Online registration is available until 5 p.m. on July 12, 2010. Persons without Internet access may call Katherine Serrano at 301–796–6652 by July 12, 2010, to register for the meeting. Early registration is recommended because seating is limited. If space permits, onsite registration will be permitted on a first-come, first-served basis.

Interested persons who would like to make a presentation during the meeting will be given 10 minutes to do so if they submit their request (either electronic or written) to the contact person at the address shown in the *Contact* section of this document, and to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 (including name, title, firm name, address, telephone, and fax number). All requests should indicate in which of the four sessions of the meeting the person would like to present. Persons who would like to present in multiple sessions should indicate this in their request as well as provide a prioritization of the sessions in which they would like to present. A copy of the material to be presented may also be submitted with requests. Depending upon the number of individuals and organizations that submit requests to present, the allotted time may be expanded or shortened to provide all interested parties an opportunity to present. Requests to present are to be identified with the docket number found in brackets in the heading of this document.

If you need special accommodations due to a disability, please contact Katherine Serrano (see *Contact*) at least 7 days in advance of the meeting.

Comments: FDA is holding this public meeting to provide a public forum in which it will hear presentations and comments from interested stakeholders regarding reasonable and effective regulation of LDTs. The comment period for this public meeting closes on August 15, 2010.

Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments regarding this document. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

Since the implementation of the Medical Device Amendments of 1976, FDA has generally exercised enforcement discretion and not enforced applicable regulations with respect to LDTs, a class of *in vitro* diagnostics that are manufactured, including being developed and validated, and offered, within a single laboratory. Thus, FDA has not actively regulated most LDTs.

Initially, laboratories manufactured LDTs that were generally relatively simple, well-understood pathology tests or that diagnosed rare diseases and conditions that were intended to be used by physicians and pathologists within a single institution in which both were actively part of patient care. These tests were ordinarily either well-characterized, low-risk diagnostics or for rare diseases for which adequate validation would not be feasible and the tests were being used to serve the needs of the local patient population. In addition, the components of traditional LDTs were regulated individually by FDA as analyte specific reagents or other specific or general reagents, and the tests were developed and offered in laboratories with certificates to perform high complexity tests under the Clinical Laboratory Improvement Amendments of 1988, which are laboratories that have extensive experience in complex laboratory testing. Today, while these tests are still performed in laboratories with high complexity certificates, they often use components that are not regulated individually by FDA, and they are often used to assess high-risk but relatively common diseases and conditions and to inform critical treatment decisions and are often performed in geographically distant commercial laboratories instead of within the patient's health care setting under the supervision of a patient's pathologist and treating physician, or may be marketed directly to consumers. In addition, even when FDA-approved tests are available for a disease or condition, laboratories often continue to use LDTs that have not been reviewed by the agency. Finally, an increasing number of LDT manufacturers are corporations rather than hospitals or public health laboratories, which represent a significant shift in the types of tests developed and the business model for developing them.

At the same time as LDTs are becoming more complex, diagnostic tests are playing an increasingly important role in clinical decisionmaking and disease management, particularly in the context of personalized medicine. However, LDTs that have not been properly validated for their intended use put patients at risk. Risks include missed diagnosis, wrong diagnosis, and failure to receive appropriate treatment. In April of 2008, the Secretary's Advisory Committee on Genetics, Health, and Society, in its report entitled "U.S. System of Oversight of Genetic Testing," recommended that "FDA should address all laboratory tests in a manner that takes advantage of its current experience in evaluating laboratory tests."

FDA also recognizes that while the absence of FDA oversight may make it

easier for laboratories to develop and offer tests on a rapid timeline, the absence of a level playing field creates a competitive disadvantage and potential disincentive to innovation by other manufacturers whose tests are approved or cleared by the agency for similar indications. In addition, as set out above, it means that some diagnostics critical for patient care may not be developed in a manner that provides a reasonable assurance of safety and effectiveness.

In response to these public health concerns, the agency believes it is time to reconsider its policy of enforcement discretion over LDTs. The public must be assured that the tests used in the provision of health care, whether developed by a laboratory or other manufacturer, are safe and effective. However, The FDA recognizes that there are issues unique to the laboratory community that should be taken into consideration so that patients will receive the desired benefits of innovative, yet safe and effective, diagnostic tests. FDA recognizes the importance of implementing an oversight framework that fosters innovation in this area while assuring that such tests are safe and effective. For example, the field of genomics and genetic testing has the potential to revolutionize patient care. As a second example, fostering innovation in tests for rare diseases and conditions is another important public health concern. In these and other categories, it is important that FDA provide a reasonable, predictable, and consistent regulatory policy for ensuring the safety and effectiveness of LDTs and provide sufficient time for implementation. Therefore, this policy should encourage innovation, improve patient outcomes, strengthen patient confidence in the reliability of these products, and help reduce health care costs.

At this time, FDA believes that a risk-based application of oversight to LDTs is the appropriate approach to achieve the desired public health goals and would like to hear from stakeholders, including laboratory professionals, clinicians, patients, and industry, as we develop our draft oversight framework, to define the issues that pose the greatest concern to the public health. The public meeting announced in this notice will serve as a forum to discuss issues and stakeholder concerns surrounding LDT oversight. Following the public meeting and the close of the public docket the FDA will move forward expeditiously to develop a draft oversight framework for public comment to provide predictability as quickly as possible. The FDA also intends to phase in such a framework over time based on the level of risk of the test.

II. Agenda

FDA will start the public meeting with a series of presentations introducing the history and current regulatory status of LDTs. The remainder of the meeting will be divided into four sessions highlighting areas in which FDA hopes to gain public input from critical perspectives in response to its proposal to develop an oversight framework, as well as to hear stakeholder opinions on which issues around laboratory developed testing present the greatest concern to the public health. These sessions include the following: (1) Patient Considerations, (2) Challenges for Laboratories, (3) Direct to Consumer Marketing of Testing, and (4) Education and Outreach. Each session will consist of approximately 2 hours of public presentations focused on the session topic followed by an expert panel discussion and a question-and-answer period. This public meeting agenda will be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*.

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. A link to the transcripts will also be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* approximately 45 days after the meeting. The transcript may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: June 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14654 Filed 6–16–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Council on Graduate Medical Education (COGME).

Dates and Times: July 13, 2010, 12 p.m.–2 p.m. EST.

Place: This meeting will be held via conference call. The access information for the call is:

1–866–646–2286, and the Participant Passcode is: 3379871.

Status: The meeting will be open to the public.

Agenda: On July 13, the meeting will be called to order with remarks from the COGME Chair. The Council members will review the draft version of the 20th COGME report entitled, "Advancing Primary Care." The draft report was sent to select organizations for feedback. The purpose of this call is to discuss the comments offered. The Council members may vote to finalize the report.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerald M. Katzoff, Executive Secretary, COGME, Division of Medicine and Dentistry, Bureau of Health Professions, Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4443. The Web address for information on the Council is: *http://cogme.gov*.

Dated: June 10, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–14562 Filed 6–16–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0004]
FDA 225–09–0012

Memorandum of Understanding Between the Food and Drug Administration and Drugs.Com; Correction of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is providing

notice to correct the effective date of the memorandum of understanding (MOU) between FDA and Drugs.Com that published in the **Federal Register** of May 26, 2010 (75 FR 29561). The purpose of the cooperative program is to extend the reach of FDA Consumer Health Information and to provide consumers with better information and timely content concerning public health and safety topics, including alerts of emerging safety issues and product recalls.

DATES: The agreement became effective October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Jason Brodsky, Consumer Health Information Staff, Office of External Relations, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5378, Silver Spring, MD 20993–0002, 301–796–8234, e-mail: *Jason.Brodsky@fda.hhs.gov*.

Dated: June 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14599 Filed 6–16–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 75 FR 28811–28813, dated April 24, 2010) is amended to reflect the establishment of the Office of the Associate Director for Program, Office of the Director, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in their entirety the titles and function statements for the Office of Strategy and Innovation (CAM) and the Office of Chief of Public Health Practice (CAR) and insert the following:

Office of the Associate Director for Program (CAF). The mission of the Office of the Associate Director for Program is to increase the impact and effectiveness of public health programs and eliminate health disparities through the application of science to practice, the promotion of policy interventions, and the use of performance and evaluation data for continuous improvement.

Office of the Director (CAF1). (1) Provides agency-wide direction, standards, and technical assistance for program planning, performance and accountability, and program evaluation and effectiveness; (2) serves as advisor to the CDC Director, HHS and the Administration on key programmatic activities; (3) provides intensive analytic and advisory assistance to enable effective redesign of select program priorities; (4) represents CDC vision, mission, and program strategy internally and externally; (5) develops and promotes new initiatives based on emerging issues, science, and policy; (6) supports the harmonization and integration of performance measurement, accountability, and program evaluation; (7) provides agency-wide direction, standards, and technical assistance to support and guide program evaluation, monitoring, and performance measurement by programs; (8) supports the harmonization and integration of performance measurement, accountability, and program evaluation; (9) guides the collection and analysis of performance and accountability data, including Healthy People 2020, the Program Assessment Rating Tool, the Government Performance and Results Act, and the American Recovery and Reinvestment Act; (10) conducts quarterly program reviews; (11) supports assessment of program effectiveness to guide further science, policy, and programmatic efforts; (12) provides financial support to conduct both innovative program evaluations and innovative methods for evaluating programs; (13) manages evaluation contracts; (14) guides performance-based strategic planning; (15) drives short-term and long-term program planning; (16) establishes routine, continuous improvement based on effective program evaluation, and performance measurement; (17) supports implementation of policy as intervention; (18) supports evidence-driven program redesign; (19) coordinates action planning for high impact initiatives; and (20) develops, promotes and coordinates new initiatives.

Office of Women's Health (CAF13). The mission of the Office of Women's Health (OWH) is to provide leadership, advocacy, and support for the agency's research, policy, and prevention initiatives to promote and improve the health of women and girls. As the agency's leader for women's health issues, OWH: (1) Advises the CDC Director and leads the Women's Health Workgroup in the advancement of research, policies, and programs related to the health of women and girls; (2) provides leadership, assistance, and consultation to the agency's centers, offices, and programs to address women's health issues; (3) advances sound scientific knowledge, promotes the role of prevention, and works to improve the communication and understanding of women's health priorities for public health action by CDC and a diverse group of state and local programs, providers, consumers, and organizations; (4) creates, publishes, and disseminates communicative products and materials that highlight CDC priorities, opportunities, and strategies to improve health; (5) establishes and fosters relationships with others (*i.e.,* government agencies, professional groups, academic institutions, organizations and small businesses) to increase awareness and strengthen implementation of women's health programs and practices; (6) represents the agency and serves as a liaison on women's health issues within and outside HHS; and (7) coordinates and manages efforts through dialogues, meetings, and other activities to increase awareness of public health and women's health issues.

Dated June 6, 2010.

William P. Nichols,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–14424 Filed 6–16–10; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOMELAND SECURITY

[DHS Docket No. DHS–2009–0032]

Office for Civil Rights and Civil Liberties; Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Office for Civil Rights and Civil Liberties, DHS.

ACTION: Notice; proposed policy guidance.

SUMMARY: The Department of Homeland Security is publishing for public comment proposed guidance to recipients of Federal financial assistance regarding Title VI's prohibition against national origin discrimination affecting persons with limited English proficient persons. This proposed guidance is

issued pursuant to Executive Order 13166 and is consistent with government-wide guidance previously issued by the Department of Justice.

DATES: Written comments are invited from interested persons and organizations no later than July 11, 2010.

ADDRESSES: Comments should be sent to:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Officer for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528, Mail Stop 0190. To ensure proper handling, please reference DHS Docket No. DHS–2009–0032 on the correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions. DHS will accept comments in alternate formats such as Braille, audiotape, *etc.* by mail.
- *E–Mail: crcl@dhs.gov.* The subject line should include "LEP Docket DHS–2009–0032."
- *TTY:* 202–401–0470, Toll Free TTY: 1–866–644–8361. TTY callers may also contact us through the Federal Relay Service TTY at (800) 877–8339. Other Federal Relay Service options are available at *http://www.gsa.gov/fedrelay.*
- *Facsimile:* (202) 401–4708 (not a toll-free number).

Instructions for filing comments: All submissions received must include the agency name and DHS docket number DHS–2009–0032. All comments received (including any personal information provided) will be posted without change to *http://www.regulations.gov.*

Reviewing comments: Public comments may be viewed online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rebekah Tosado, Senior Advisor to the Officer for Civil Rights and Civil Liberties, Office for Civil Rights and Civil Liberties, Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528, Mail Stop 0190. Toll free: 1–866–644–8360 or TTY 1–866–644–8361. Local: 202–401–1474 or TTY: 202–401–0470.

SUPPLEMENTARY INFORMATION: Executive Order 13166 directs each Federal agency that extends assistance subject to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.,* to publish guidance for its respective recipients clarifying that obligation. Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency,* 65 FR 50121 (August 16, 2000). Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed by the Department of Justice (DOJ). *See Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency,* 65 FR 50121 (August 16, 2000) (DOJ LEP Guidance).

In this document, the Department of Homeland Security (DHS) is proposing to adopt guidance that adheres to the Government-wide compliance standards and framework detailed in the model DOJ LEP Guidance, as modified. *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,* 67 FR 41455 (June 18, 2002). The Departments of Commerce, Education, Health and Human Services, Energy, Housing and Urban Development, Labor, Interior, State Transportation, Treasury, and Veterans Affairs, and the Environmental Protection Agency, have issued similar guidance. DHS specifically solicits comments on the nature, scope, and appropriateness of the DHS-specific examples set out in this guidance explaining and/or highlighting how those Federal-wide guidelines are applicable to recipients of DHS financial assistance.

This guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. This guidance is published in the **Federal Register** pursuant to the instructions in Executive Order 13166. DHS, however, is seeking public comment as a matter of discretion.

This Guidance is applicable to all LEP persons seeking services and shall be interpreted to be consistent with Executive Order 13404, Task Force on New Americans (June 7, 2006).

I. Introduction

Most individuals living in the United States read, write, speak, and understand English. Many individuals, however, do not read, write, speak, or understand English as their primary language. Based on the 2000 census, over 28 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or LEP. The 2000 census indicates that 28.1 percent of all Spanish-speakers, 28.2 percent of all Chinese-speakers, and 32.3 percent of all Vietnamese-speakers reported that they spoke English "not well" or "not at all." More recent data from the 2008 American Community Survey estimates that 24.4 million individuals in America, or 8.6 percent of the population 5 years and older, speak English less than "very well."

For LEP individuals, language can be a barrier to accessing important benefits or services, understanding and exercising important rights, providing timely and critical information to first responders in times of emergency, complying with applicable responsibilities, or understanding other information provided by Federally funded programs and activities. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and DHS Title VI regulations against national origin discrimination, 6 CFR part 21. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by

[1] DHS recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP population it encounters, and its prior experience in providing language services in the community it serves.

providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria DHS uses in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

Consistency among agencies of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this guidance discusses that balance in some detail, it is important to note the basic principles. First, we must ensure that Federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those individuals encountered in Federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal Government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in Federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, DHS plans to continue to work with the Department of Justice (DOJ) and recipients to explore how language assistance measures, resources, and activities can effectively be shared or otherwise made available to recipients. An interagency working group on LEP has developed a Web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity "to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d–1.

DHS regulations promulgated pursuant to section 602 forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin." 6 CFR 21.5(b)(2).

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, 45 CFR 80.3(b)(2), which is similar to the DHS Title VI interim regulation, 6 CFR part 21, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs.

On August 11, 2000, the President signed Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency,* 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

At the same time, DOJ provided further guidance to Executive Agency civil rights officers, setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. "Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency," 65 FR 50123 (August 16, 2000) (DOJ LEP Guidance).

Subsequently, the Supreme Court decided that Title VI does not create a private right of action to enforce regulations promulgated under Section 602. *Alexander* v. *Sandoval,* 532 U.S. 275, 293 (2001). Federal agencies raised questions regarding the requirements of the Executive Order, in light of the Supreme Court's decision in *Alexander* v. *Sandoval.* On October 26, 2001, DOJ's Assistant Attorney General for the Civil Rights Division advised agency General Counsels and civil rights directors, clarifying and reaffirming the DOJ LEP Guidance in light of *Sandoval.*[3] The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities—the Executive Order remains in force.

This guidance document is published pursuant to Executive Order 13166 and reflects Assistant Attorney General's

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

[3] The memorandum noted that some commenters have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. *See, e.g., Sandoval,* 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that § 602 confers the authority to promulgate disparate-impact regulations; * * *. We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service or, and inseparably intertwined with' § 601 * * * when § 601 permits the very behavior that the regulations forbid."). The memorandum, however, made clear that DOJ disagreed with the commenters' interpretation. Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. The court explicitly stated in Sandoval that it did not address the validity of those regulations or Executive Order 13166 or otherwise limits the authority and responsibility of Federal grant agencies to enforce their own implementing regulations. 532 U.S. at 279.

October 26, 2001, clarifying memorandum.

III. Covered Recipients

DHS regulations 6 CFR 21.5(b)(2) and 44 CFR 7.5(b) require all recipients of Federal financial assistance from DHS to provide meaningful access to LEP persons.[4] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DHS assistance include, but are not limited to:

a. State and local fire departments;

b. State and local police departments;

c. State and local emergency management agencies;

d. State and local governments, together with certain qualified private non-profit organizations, when they receive assistance pursuant to a Presidential declaration of disaster or emergency;

e. Certain non-profit agencies that receive funding under the Emergency Food and Shelter Program;

f. Urban areas and mass transit authorities that enhance local emergency, prevention and response agencies' ability to prepare for and respond to threats of terrorism or other emergencies;

g. Community Emergency Response Teams (CERT), which conduct training and other activities to enhance individual, community, family, and workplace preparedness;

h. Jails and detention facilities that house detainees of Immigration and Customs Enforcement;

i. Coast Guard assisted boating safety programs;

j. Entities that receive specialized training through the Federal Law Enforcement Training Center (FLETC);

k. Intercity buses.

The Catalogue of Federal Domestic Assistance (CFDA) contains current information on DHS Federal financial assistance and can be found at *http://www.cfda.gov/.* Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipient.

Coverage extends to a recipient's entire program or activity, *i.e.* to all parts of a recipient's operations. This is true even if only one part of the recipient receives the Federal assistance.[5] For example, if DHS provides assistance to a particular division of a State emergency management agency to improve planning capabilities in that division, all of the operations of the entire State emergency management agency—not just the particular division—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, DHS recipients continue to be subject to Federal non-discrimination requirements including those applicable to access to and provision of Federally assisted programs and activities to persons with limited English proficiency.

IV. Limited English Proficient Individual

Individuals who do not speak English as their primary language and those who have a limited ability to read, write, speak, or understand English can be limited English proficient, or "LEP," and entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by DHS recipients and should be considered when planning language services include but are not limited to:

a. Persons who require the aid of a local or State police or fire department, or other emergency services;

b. Persons who seek assistance at airports that receive TSA funds;

c. Persons who are applying for assistance under a FEMA or State disaster relief program;

d. Persons who seek to enroll in a safe boating course that is offered by a State receiving funds;

e. Persons who use mass transit services such as buses or subways that receive DHS financial assistance;

f. Persons subject to or serviced by law enforcement activities, including for example, suspects, violators, witnesses, victims, those subject to immigration-related investigations by recipient law enforcement agencies, agencies, and community members seeking to participate in crime prevention and awareness activities; or

g. Parents and family members of LEP individuals.

V. Recipient Determination of the Extent of Its Obligation To Provide LEP Services

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;

2. The frequency with which LEP individuals come in contact with the program;

3. The nature and importance of the program, activity, or service provided by the program to people's lives; and

4. The resources available to the grantee/recipient and costs.

As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small non-profits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DHS recipients should apply the four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

1. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's

[4] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of Federal agencies, including DHS.

[5] However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area.

However, where, for instance, a fire station serves a large LEP population, the appropriate service area is most likely the area served by that station, and not the entire population served by the agency. Where no service area has previously been approved, the relevant service area may be that which is approved by State or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents access or encounter the recipients' services.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems, and from community organizations, and data from State and local governments.[6] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities if language services were provided.

2. The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use a commercially available telephonic interpretation service to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

3. The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate with individual disaster applicants or to provide fire safety information to residents of a predominantly LEP neighborhood differ, for example, from those to provide recreational programming on the part of a municipal parks department receiving disaster aid. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory, such as the requirement to complete an application to receive certain State disaster assistance benefits, can serve as strong evidence of the program's importance.

4. The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers may, for example, help reduce costs.[7] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral and written.

Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation"): Oral interpretation can range from on-site interpreters for critical services

[6] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

[7] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

provided to a high volume of LEP persons to access through commercially available telephonic interpretation services.

Written translation (hereinafter "translation"): Written translation, likewise, can range from translation of an entire document to translation of a short description of the document.

In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a fire department in a largely Hispanic community may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many fire departments have already made such arrangements). In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high, such as in the case of a voluntary general public tour of a firehouse, in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services, namely, oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in, and ability to communicate information accurately in both English and in the other language, and identify and employ the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person; [8] and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires;
- Understand and adhere to their role as interpreters without deviating into a role as a counselor, legal advisor, or other roles (particularly during the assistance application process, in administrative hearings, or public safety contexts).

Some recipients, such as certain private nonprofit organizations or administrative courts, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, such as in the context of application for disaster or food and shelter assistance or administrative hearings, the use of certified interpreters is strongly encouraged.[9] Where the process is lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While the quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services at a State-operated emergency assistance center, for example, must be extraordinarily high, while the quality and accuracy of language services in recreational programs sponsored by a DHS recipient need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DHS recipients providing evacuation coordination, food and shelter, medical care, and fire and rescue services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the services. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

- *Hiring Bilingual Staff.* When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact and other positions involving potential contact with LEP individuals, such as 911 operators, law enforcement officers, fire safety educators, or application takers, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are

[8] Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some disaster-specific, nautical or legal terms, for example, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

[9] For those languages in which no formal accreditation or certification currently exists, recipients should consider a formal process for establishing the credentials of the interpreter.

also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

• *Hiring Staff Interpreters.* Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide such on-site interpreters in order to assure accurate and meaningful communication with an LEP person.

• *Contracting for Interpreters.* Contract interpreters may be a cost-effective option when there is no regular need for interpreters in a particular language. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

• *Using Telephone Interpreter Lines.* Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

• *Using Community Volunteers.* In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations, may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less crucial programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

• *Use of Family Members, Friends, or Other Applicants, Detainees, or Inmates as Interpreters.* Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, acquaintance, or other applicant), in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, friend, fellow inmate or detainee, or other applicant acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or mission-related interests in accurate interpretation. In many circumstances, family members (especially children), friends, inmates, detainees, or other applicants, are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement, family or financial information to a family member, friend, acquaintance, or member of the local community.[10] In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to obtain greater assistance than the LEP person from a locally administered mitigation program. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For some DHS recipients, such as those providing disaster assistance, performing law enforcement functions, this is particularly true in processing applications; conducting administrative hearings, managing situations in which health, safety, or access to important benefits and services are at stake; or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when fire service officers investigate an alleged case of arson. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, inmates, detainees, or other applicants often make their use inappropriate, the

[10] For example, special circumstances of confinement may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of inmates and detainees as interpreters, particularly where an important right, benefit, service, disciplinary concern, or access to personal or law enforcement information is at stake. In some situations, inmates could potentially misuse information they obtained in interpreting for other inmates. In addition to ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether an inmate or detainee makes a knowing and voluntary choice to use another inmate or detainee as an interpreter.

use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a firehouse offered to the general public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that the recipient at no cost would provide a competent interpreter.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should Be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. Such written materials could include, for example:

- Complaint forms.
- Intake forms with the potential for important consequences.
- Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings.
- Notices of disciplinary action.
- Notices advising LEP persons of free language assistance.
- Procedural guidebooks.
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for recreational programs should not generally be considered vital, whereas applications for disaster assistance could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful" access. Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents Be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront costs of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Pursuant to the safe harbor provisions, the following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

a. The DHS recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or,

b. If there are fewer than 50 persons in a language group that reaches the five percent trigger in the above, the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, homeless shelters, correctional facilities and detention centers should, where appropriate, ensure that rules have been explained to LEP persons in the language(s) they understand prior to taking action against them that would deprive them of certain rights.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[11] Having a second, independent translator "check" the work of the primary translator can often ensure competence. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of material results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[12] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.,* information or documents of DHS recipients regarding certain law enforcement, health, and safety services and certain legal rights). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of An Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain DHS recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities

[11] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[12] For instance, there may be languages which do not have an appropriate direct translation of some legal or program-specific terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning. The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans:

1. Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak" cards), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say, "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, *etc.* To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau "I speak" card can be found and downloaded at *http://www.lep.gov.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

2. Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available;
- How staff can obtain those services;
- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP individuals who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

3. Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff knows about LEP policies and procedures; and
- Staff having contact with the public, or with individuals in the recipient's custody, is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions, as well as employees who potentially interact with individuals in the recipient's custody, are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only need to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

4. Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or at initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain assistance, such as disaster, medical, or other critical assistance from DHS recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[13]
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

5. Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community. In their reviews recipients may want to consider assessing changes in the following:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.

[13] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm*. These signs could, for example, be modified for recipient use.

• Whether staff knows and understands the LEP plan and how to implement it.

• Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DHS through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that DHS will investigate when it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DHS will inform the recipient in writing of this determination, including the basis for the determination. DHS uses voluntary mediation to resolve most complaints. However, if a complaint is fully investigated and results in a finding of noncompliance, DHS must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DHS must secure compliance through the termination of Federal assistance after the DHS recipients have been given an opportunity for an administrative hearing and/or by referring the matter to the Department of Justice Civil Rights Division to seek injunctive relief or other enforcement proceedings. DHS engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DHS proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DHS's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, DHS acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally assisted programs and activities for LEP persons, DHS will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DHS recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.

IX. Application to Specific Types of Recipients

This Guidance is issued for recipients that receive Federal funds from the Department of Homeland Security. There may be cases in which entities receive Federal funds from other Federal agencies as well as from DHS. Entities that receive funding from other Federal agencies may also look to the LEP guidance issued by those agencies, which are consistent with the DHS Guidance. Other Federal agencies that have issued similar guidance with regard to limited English proficient persons include the Departments of Commerce, Education, Health and Human Services, Energy, Housing and Urban Development, Labor, Interior, State Transportation, Treasury, and Veterans Affairs, and the Environmental Protection Agency. An up-to-date listing of Federal agencies that have published LEP Guidance can be found at *http://www.lep.gov/*. The Department of Justice LEP Recipient Guidance in particular provides many helpful examples of how to apply the four-factor analysis when making decisions about the need for translating documents, obtaining interpreter, and hiring bilingual staff. *See* 65 FR 50123 Part IX (August 16, 2000). These examples are incorporated by reference herein.

As explained in this Guidance, all recipients of Federal financial assistance from DHS must meet the obligation to take reasonable steps to ensure access to programs and activities by LEP persons. This Guidance clarifies the Title VI regulatory obligation to address the language needs of LEP persons, in appropriate circumstances and in a reasonable manner by applying the four-factor analysis. In the context of emergency planning and response, health and safety, immigration and other detention, and law enforcement operations, where the potential for greater consequences are at issue, DHS will look for strong evidence that recipients have taken reasonable steps to ensure access to services to LEP persons. The lessons learned from natural disasters, for example, underscore the need to provide meaningful access to LEP persons who are otherwise eligible in all aspects of Federally assisted programs that serve the public.

Margo Schlanger,

Officer for Civil Rights and Civil Liberties.

[FR Doc. 2010–14630 Filed 6–16–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1881–DR; Docket ID FEMA–2010–0002]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1881–DR), dated March 2, 2010, and related determinations.

DATES: *Effective Date:* June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event

declared a major disaster by the President in his declaration of March 2, 2010.

Jefferson, Mercer, and Randolph Counties for Public Assistance.

Jefferson, Mercer, and Randolph Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–14554 Filed 6–16–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1902–DR; Docket ID FEMA–2010–0002]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1902–DR), dated April 21, 2010, and related determinations.

DATES: *Effective Date:* June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 21, 2010.

Dixon and Sherman Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–14556 Filed 6–16–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of charter renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463, as amended). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the Glen Canyon Dam Adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to advise and to provide recommendations to the Secretary with respect to the operation of Glen Canyon Dam and the exercise of other authorities pursuant to applicable Federal law.

FOR FURTHER INFORMATION CONTACT: Linda Whetton, 801–524–3880.

The certification of renewal is published below.

Certification

I hereby certify that Charter renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–14627 Filed 6–16–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2010–N102; 40120–1112–0000–F2]

Draft Supplemental Environmental Impact Statement for Incidental Take and Wetland Fill Permits for Two Condominium Developments on the Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: receipt of applications for incidental take permits (ITPs) for Habitat Conservation Plan (HCP); availability of proposed HCP and draft Supplemental Environmental Impact Statement (dSEIS); request for comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a proposed HCP, accompanying ITP applications, and a dSEIS related to two proposed developments that would take the Alabama beach mouse (*Peromyscus polionotus ammobates*) and place fill in wetlands on the Fort Morgan peninsula, Baldwin County, Alabama. The HCP analyzes the take of the Federally endangered Alabama beach mouse and fill in wetlands incidental to construction and occupation of adjacent residential and recreational condominium developments: Beach Club West and Gulf Highlands Condominiums (collectively BCWGH) projects. Fort Morgan Paradise Joint Venture and Gulf Highlands Condominiums, LLC (applicants) request ITPs under the Endangered Species Act of 1973, as amended, (Act) as well as permits from the Department of the Army, Corps of Engineers (Corps) for placing fill in wetlands under jurisdiction of the Clean Water Act. The Applicants' HCP describes the minimization and mitigation measures proposed to address the effects to the species and to wetlands.

DATES: We must receive any written comments on the ITP applications, joint HCP, and dSEIS at our Regional Office (*see* **ADDRESSES**) on or before September 15, 2010.

ADDRESSES: Documents will be available for public inspection by appointment

during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: David Dell), or at the Fish and Wildlife Service Field Office, 1208–B Main Street, Daphne, AL 36526 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator (*see* **ADDRESSES**), telephone: 404/679–4144, or Mr. Carl Couret, Field Office Project Manager, at the Alabama Field Office (*see ADDRESSES*), telephone: 251/441–5868.

SUPPLEMENTARY INFORMATION: We announce the availability of applications for two ITPs, a joint HCP, and the availability of a dSEIS. The dSEIS is a combined assessment addressing the environmental impacts associated with these projects both individually and cumulatively. The applicants request 30-year ITPs under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*) and also request permits from the Corps under section 404 of the Clean Water Act to place fill in jurisdictional wetlands. The Corps is a cooperating agency in the development of the dSEIS.

We specifically request information, views, and opinions from the public via this notice on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the dSEIS under NEPA regulations (40 CFR 1506.6). Further, we specifically request information regarding the adequacy of the HCP per 50 CFR parts 13 and 17.

The dSEIS analyzes the preferred alternative, as well as a full range of reasonable alternatives and the associated impacts of each. Alternative 3 (Preferred Alternative) is located 1,100 to 1,300 feet from the Gulf of Mexico and north of tertiary dune habitat. This alternative mitigates for the unavoidable loss of 1.36 acres of wetlands and dedicates 135.2 acres of applicant-owned lands into conservation status via covenants, conditions and restrictions attached to the property, and conditions of any ITP that may be issued.

The Service previously issued ITPs in 2007 for one of the BCWGH alternatives that was preferred at that time. Following legal challenges and resultant court rulings, those ITPs were abandoned by the applicants. The Environmental Impact Statement for those previous ITPs has been revised to evaluate a new preferred alternative and now serves as the dSEIS for the new ITP applications.

Public Comments

If you wish to comment, you may submit comments by any one of several methods. Please reference application numbers TE08894A–0 and TE08896A–0 in such comments. You may mail comments to our Regional Office or the Alabama Field Office (*see* **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov* or *carl_couret@fws.gov.* Please include your name and return mailing address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail, contact us directly at either telephone number listed (*see* **FOR FURTHER INFORMATION CONTACT**).

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES**. 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.

Covered Area

The proposed BCWGH developments would be located on approximately 181.9 acres on the Fort Morgan peninsula, Baldwin County, Alabama, between State Highway 180 and the Gulf of Mexico (Section 28, Township 9 South, Range 2 East) about 12 miles west of Highway 59 in Gulf Shores, Alabama, on the Fort Morgan Peninsula. The ITPs would be for development of two condominium complexes totaling 38.7 acres. Under the preferred alternative, project development would result in the permanent and temporary loss of 48.1 acres of Alabama beach mouse habitat.

Next Steps

We will evaluate these ITP applications, including the HCP and any comments we receive, to determine whether these applications meet the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If we determine that the requirements are met, we will issue the ITP for the incidental take of the Alabama beach mouse.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: May 10, 2010.

Jacquelyn B. Parrish,

Acting Regional Director, Southeast Region.

[FR Doc. 2010–14617 Filed 6–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

DEPARTMENT OF AGRICULTURE

U.S. Forest Service

Potomac-Appalachian Transmission Highline (PATH) Environmental Impact Statement, Harpers Ferry National Historical Park, Appalachian National Scenic Trail, Potomac Heritage National Scenic Trail, Chesapeake and Ohio Canal National Historical Park, and Monongahela National Forest, Maryland, Virginia, and West Virginia

AGENCY: National Park Service, Interior and U.S. Forest Service, Agriculture.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for construction and right-of-way permits requested from Harpers Ferry National Historical Park (NHP), Appalachian National Scenic Trail (NST), Potomac Heritage National Scenic Trail, Chesapeake and Ohio Canal National Historical Park, and Monongahela National Forest, in connection with the proposed Potomac-Appalachian Transmission Highline (PATH) project.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS), lead agency, along with cooperating agencies, the U.S. Forest Service (USFS) and U.S. Army Corps of Engineers, are preparing an Environmental Impact Statement (EIS) and conducting public scoping meetings for construction and right-of-way permits requested from the agencies by PATH Allegheny Transmission Company, LLC; PATH Allegheny Virginia Transmission Corporation; Potomac Edison Company; and PATH West Virginia Transmission Company, LLC, collectively referred to herein as Applicants. The Applicants are seeking permits for proposed construction of a new 765kV electric transmission line that would cross federal lands within Maryland, West Virginia, and Virginia. In May 2009, the Applicants submitted

right-of-way applications (Form 299) for those portions of the PATH project proposed to traverse Harpers Ferry NHP, Chesapeake and Ohio Canal NHP, Appalachian NST, Potomac Heritage NST, all managed by the National Park Service; and Monongahela National Forest managed by the U.S. Forest Service. These applications also serve as the application for Special Use Permits for construction of the proposed project.

The Applicants' proposed project would modify and expand existing rights-of-way across Harpers Ferry NHP and Appalachian NST. In particular, the Applicants propose modification and expansion of existing right-of-way agreements held by Potomac Edison Company over Harpers Ferry NHP and Appalachian NST to allow for placement of the 138 kV Millville-Doubs transmission line as an underbuild on the PATH transmission structures; and also the grant of a new 200-feet-wide right-of-way for the PATH transmission line. While the PATH Project would require a 200-feet right-of-way, it would only require an expansion of the existing right-of-way corridor across Harpers Ferry NHP and Appalachian NST by approximately 105 feet.

The Applicants seek a new right-of-way authorization across Chesapeake and Ohio Canal NHP and Potomac Heritage NST. The requested right-of-way would be approximately 200 feet wide, with a distance over the Chesapeake and Ohio Canal NHP and Potomac Heritage NST properties of approximately 400 feet. The proposed crossing route will be adjacent to (on the north side) existing transmission rights-of-way for the 138 kV Millville-Doubs transmission facility operated by Potomac Edison Company and the 500 kV Mt. Storm-Doubs transmission facility operated by Dominion Virginia Power. The Applicants' proposed crossing of the Monongahela National Forest would require USFS authorization for a new 200-feet-wide right-of-way.

The Applicants' stated purpose for the PATH project is to strengthen the electrical transmission grid for reliability purposes at the direction of PJM Interconnection, LLC (PJM), the regional transmission organization. PJM oversees the overall movement of wholesale electricity throughout a region comprising all or parts of 13 states and the District of Columbia. PJM has a duty to maintain reliability of the transmission grid according to standards set by the North American Electric Reliability Corporation and approved by the Federal Energy Regulatory Commission. PJM's Regional Transmission Expansion Plan has identified numerous projected reliability criteria violations that the proposed PATH project is designed to alleviate and has directed construction of a line of sufficient capacity to address these violations by connecting the existing Amos Substation in Putnam County, West Virginia, with two existing 500 kV transmission lines that are in close proximity to each other at a point approximately three miles southeast of New Market, Maryland.

The federal action under consideration in this EIS is the Applicants' proposal that the National Park Service and U.S. Forest Service grant the requested permits. The agencies' purpose in taking action is to respond to the application for permits in consideration of the needs expressed therein and the public interest, and in light of the missions, purposes and resource management of the affected NPS and USFS units, as expressed in statutes, regulations, and policies.

Federal action is needed because the Applicants have submitted the required applications to the National Park Service in accordance with 36 CFR part 14 and applicable NPS management policies and to the U.S. Forest Service in accordance with 36 CFR part 251.54 and Special Uses Handbook (FSH 2709.11). The National Park Service and U.S. Forest Service therefore have a responsibility to consider whether, and with what conditions, if any, to issue the requested permits.

The National Park Service and U.S. Forest Service will analyze no-action and proposed action alternatives and possibly other alternatives or mitigation strategies that respond to the purpose, need, and objectives of this proposal. The goal of the National Park Service and U.S. Forest Service is to identify issues and concerns with the proposed action, additional alternatives, and alternative mitigation strategies through the public scoping process.

This notice initiates the public participation and scoping process for the EIS. The public is invited to comment on the purpose, need and objectives for federal action, the proposed action and alternatives to the proposed action to be analyzed in the EIS, the appropriate scope of analysis, or any issues associated with the proposal. More information about the purpose of and need for federal action, and issues identified to date is available from the NPS planning Web site at *http://parkplanning.nps.gov/appa/*. It is important that reviewers provide their comments at such times and in such a manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewers concerns and comments. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

DATES AND MEETING NOTICES: The public scoping period will commence on the date this notice is published in the **Federal Register** and last for at least 30 days or until 15 days after the last public scoping meeting. The National Park Service and U.S. Forest Service will hold public meetings near the parks and forest to provide the public an opportunity to review the proposal and project information, and provide comments. All public meetings will be announced through local media, mailings, and the NPS planning Web site at *http://parkplanning.nps.gov/appa/,* at least 15 days prior to each meeting. The meetings will be concluded at least 15 days prior to the close of comment.

ADDRESSES: Comments on issues, potential impacts, or suggestions for additional alternatives can be submitted using any one of the following methods. You may submit comments through the NPS planning Web site at *http://parkplanning.nps.gov/appa/,* which is the preferred method. You may mail your comments to the National Park Service, Attention: PATH EIS Planning Team, Denver Service Center—Planning, P.O. Box 25287, Denver, CO 80225. Comments may also be submitted at any of the three public meetings to be announced.

FOR FURTHER INFORMATION CONTACT: Morgan Elmer, Project Manager, Denver Service Center—Planning, P.O. Box 25287, Denver, Co 80225, telephone 303–969–2317.

Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware 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 identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. The National Park Service and U.S. Forest Service will not consider anonymous comments. All others will be included in the administrative record

upon which the National Park Service and U.S. Forest Service will ultimately reach a decision.

Margaret O'Dell,

Regional Director, National Capital Region, National Park Service.

Pam Underhill,

Superintendent, Appalachian National Scenic Trail, National Park Service.

Jason Reed,

District Ranger, Monongahela National Forest, U.S. Forest Service.

[FR Doc. 2010–14581 Filed 6–16–10; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore; South Wellfleet, MA; Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Two hundredth seventy-fourth notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10) of a meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The meeting of the Cape Cod National Seashore Advisory Commission will be held on July 19, 2010 at 1 p.m.

ADDRESSES: The Commission members will meet in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The regular business meeting is being held to discuss the following:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting (May 24, 2010).
3. Reports of Officers.
4. Reports of Subcommittees.

Dune Shack Subcommittee–presentation of draft Preservation and Use Plan.

*Action requested: to endorse plan as Advisory Commission recommendation to the Superintendent.

5. Superintendent's Report.

- Climate Friendly Parks.
- Overview of climate indicators by Seashore Natural Resources Management.

6. Old Business.
7. New Business.
8. Date and agenda for next meeting.
9. Public comment and
10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. 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.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: June 2, 2010.

George E. Price, Jr.,

Superintendent.

[FR Doc. 2010–14580 Filed 6–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2010–N120; 91100–3740–GRNT 7C]

Meeting Announcement: North American Wetlands Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public and interested persons may present oral or written statements.

DATES: *Council Meeting:* July 7, 2010, 11 a.m. to 5 p.m. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than June 21, 2010.

ADDRESSES: The Council meeting will be held at The Hotel Fort Garry, 222 Broadway, Winnipeg, MB R3C 0R3, Canada.

FOR FURTHER INFORMATION CONTACT: Michael J. Johnson, Council Coordinator, by phone at (703) 358–1784; by e-mail at *dbhc@fws.gov;* or by U.S. mail at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop MBSP 4075, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA/Standard/US/Overview.shtm.*

Proposals require a minimum of 50 percent non-Federal matching funds. The Council will consider Canadian and U.S. small grant proposals at the meeting. The Commission will consider the Council's recommendation at its meeting tentatively scheduled for September 8, 2010.

If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than the date under **DATES**.

Dated: June 11, 2010.

Paul R. Schmidt,

Assistant Director, Migratory Birds.

[FR Doc. 2010–14615 Filed 6–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF00000–L18200000–XX0000]

Notice of Meetings, Front Range Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Front Range RAC will meet on:

1. July 21–22, 2010 (July 21; 9 a.m. to 3:30 p.m., July 22; 8:30 a.m. to 1 p.m.)

2. August 19, 2010, 9:15 a.m. to 4:30 p.m.

3. October 13, 2010, 9:15 a.m. to 4:30 p.m.

ADDRESSES: The locations for the meetings are:

1. July 21–22, 2010; Inn of the Rio Grande, 333 Santa Fe Ave., Alamosa, CO.

2. August 19, 2010; BLM Royal Gorge Field Office, 3028 East Main Street, Canon City, CO.

3. October 13, 2010; BLM Royal Gorge Field Office, 3028 East Main Street, Canon City, CO.

FOR FURTHER INFORMATION CONTACT: Cass Cairns, Front Range RAC Coordinator, BLM Royal Gorge Field Office, 3028 E. Main St., Cañon City, CO 81212. Phone: (719) 269–8553. E-mail: *ccairns@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Front Range District, which includes the Royal Gorge Field Office and the San Luis Valley Public Lands Center and its respective field offices: Saguache Field Office, Del Norte Field Office, and La Jara Field Office, Colorado. Topics of discussion during the Front Range RAC meetings may include land use planning, energy and minerals management, travel management, recreation, grazing, and fire management. The meeting on August 19, 2010, will focus on the *Over The River*™ draft Environmental Impact Statement.

All RAC meetings are open to the public. The public is invited to make oral comments to the RAC at 9:30 a.m. or may submit written statements during the meeting for the RAC's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the RAC meetings will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Helen M. Hankins,

State Director.

[FR Doc. 2010–14631 Filed 6–16–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2010–N113; 40120–1112–0000–F2]

Receipt of Application for Renewal of an Incidental Take Permit Associated With a Low-Effect Habitat Conservation Plan; Residential Development, Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comment.

SUMMARY: We, the Fish and Wildlife Service, have received from David Sime (applicant) a request for renewal of an incidental take permit (ITP) associated with an existing habitat conservation plan (HCP), related to the construction of a single-family home that would take 0.33 acre of suitable habitat for the threatened Florida Scrub-jay (*Aphelocoma coerulescens*) in Brevard County, Florida (project).

DATES: We must receive any written comments on the ITP renewal application at our Regional Office (see **ADDRESSES**) on or before July 19, 2010.

ADDRESSES: Documents will be available for public inspection by appointment during normal business hours at the Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Holly Herod); or at the Fish and Wildlife Service Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Ms. Holly Herod, Regional Project Manager (see **ADDRESSES**), telephone: 404/679–7089; or Ms. Erin Gawera, Field Office Project Manager, at the Jacksonville Field Office (see **ADDRESSES**), telephone: (904) 731–3121.

SUPPLEMENTARY INFORMATION: We announce our receipt of a request for renewal of an ITP application that authorizes the loss of 0.33 acre of suitable habitat for the Florida Scrub-jay. David Sime, the applicant, requests a 5-year ITP under section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act; 16 U.S.C. 1531 *et seq.*), as amended. The applicant remains in compliance with all the conditions and authorizations in the original permit (TE086774).

After our receipt of the applicant's original application, we published a **Federal Register** notice making available the application and proposed HCP for a 30-day public review and comment period (July 20, 2004; 69 FR 43429). We determined at the time that the applicant's original proposal, including the proposed mitigation and minimization measures, would individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, we determined that the ITP was a "low-effect" project qualifying as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2 Appendix 1 and 516 DM 6 Appendix 1). We issued the applicant an ITP on March 11, 2005, which expired on March 31, 2010. The ITP described the mitigation and minimization measures proposed to address the effects of the project to the Florida Scrub-jay. Since the issuance of the original ITP, the parcel has remained undisturbed. The applicant remains in compliance with the original ITP and HCP, and requests a 5-year renewal of the ITP. Our proposed action is renewed issuance of the ITP and implementation of the existing HCP as submitted by the applicant. The HCP covers activities associated with the construction and maintenance of a single-family home. Avoidance, minimization, and mitigation measures include seasonal restrictions on vegetation removal and donating funds to the Florida Scrub-jay Conservation Fund.

We specifically request information, views, and opinions from the public via this notice on our proposed Federal action.

Public Comments

If you wish to comment, you may submit comments by any one of several methods. Please reference TE086774–1 in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (*see* **ADDRESSES**). You may also comment via the Internet to *holly_herod@fws.gov.* Please include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES.** 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.

Covered Area

The area encompassed under the HCP and ITP application is a 0.33-acre parcel of property that contains 0.33 acres of suitable, currently undeveloped Florida Scrub-jay habitat. The Project area is located in Brevard County, Florida. The Florida Scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The Florida Scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub).

Next Steps

We will evaluate the ITP renewal application, including the existing HCP and any comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act and our implementing regulations at 50 CFR 17.32(b). We will also evaluate whether reissuance of the section 10(a)(1)(B) ITP complies with section 7 of the Endangered Species Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If we determine that the requirements are met, we will issue the ITP for the incidental take of the Florida Scrub-jay.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: May 27, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–14629 Filed 6–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCADO6800 L17110000 PM0000]

Notice of Reestablishment of the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972. Notice is hereby given that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) have reestablished the charter of the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, Legislative Affairs and Correspondence (620), Bureau of Land Management, 1620 L Street, NW., MS–LS–401, Washington, DC 20036, telephone (202) 912–7434.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretaries with respect to the preparation and implementation of the Santa Rosa and San Jacinto National Monument Management Plan on lands administered by the Bureau of Land Management (Interior) and the U.S. Forest Service (Agriculture).

Certification Statement

I hereby certify that the reestablishment of the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee is necessary and in the public interest in connection with the responsibilities of the Secretary of the Interior to manage the lands, resources, and facilities administered by the BLM and of the Secretary of Agriculture for National Forest System lands.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–14642 Filed 6–16–10; 8:45 am]

BILLING CODE 4310–11–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted to OMB for Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of survey forms to the Office of Management and Budget for review.

Purpose of Information Collection: The forms are for use by the Commission in connection with analysis of the effectiveness of Section 337 remedial exclusion orders, issued under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337)

Summary of Proposal:

(1) *Number of forms submitted:* two

(2) *Title of form:* 2010 USITC Survey Regarding Outstanding § 337 Exclusion Orders

(3) *Type of request:* new

(4) *Frequency of use:* survey, single data gathering, scheduled for 2010

(5) *Description of responding firms:* Complainants that obtained exclusion orders from the Commission following investigations under Section 337 that remain in effect at the time of the survey

(6) *Estimated number of responding firms:* 79

(7) *Estimated number of hours to complete the forms:* 79

(8) Information obtained from the firm that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm

DATES: To be assured of consideration, written comments must be received not later than thirty (30) days after publication of this notice.

ADDITIONAL INFORMATION OR COMMENT: Copies of the survey forms are posted on the Commission's Internet server at *http://www.usitc.gov/intellectual_property* or may be obtained from Vu Q. Bui, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone, 202–205–2560. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Steve McLaughlin, Chief Information Officer, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Persons with mobility impairments who will need special assistance in gaining access to the Commission

should contact the Secretary at 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). Also, general information about the Commission can be obtained from its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Issued: June 9, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–14593 Filed 6–16–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–475 and 731–TA–1177 (Preliminary)]

Certain Aluminum Extrusions From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of certain aluminum extrusions, provided for in subheadings 7604.21, 7604.29, and 7608.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of China.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 31, 2010, a petition was filed with the Commission and Commerce by the Aluminum Extrusions Fair Trade Committee [2] and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of certain aluminum extrusions from China. Accordingly, effective March 31, 2010, the Commission instituted countervailing duty investigation No. 701–TA–475 and antidumping duty investigation No. 731–TA–1177 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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** of April 6, 2010 (75 FR 17436). The conference was held in Washington, DC, on April 21, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 17, 2010. The views of the Commission are contained in USITC Publication 4153 (June 2010), entitled *Certain Aluminum Extrusion from China: Investigation Nos. 701–TA–475 and 731–TA–1177 (Preliminary).*

Issued: June 8, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–14594 Filed 6–16–10; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Committee is comprised of the following members: Aerolite Extrusion Company, Youngstown, OH; Alexandria Extrusion Company, Alexandria, MN; Benada Aluminum of Florida, Inc., Medley, FL; William L. Bonnell Company, Inc., Newnan, GA; Frontier Aluminum Corporation, Corona, CA; Futura Industries Corporation, Clearfield, UT; Hydro Aluminum North America, Inc., Linthicum, MD; Kaiser Aluminum Corporation, Foothill Ranch, CA; Profile Extrusion Company, Rome, GA; Sapa Extrusions, Inc., Des Plaines, IL; and Western Extrusions Corporation, Carrollton, TX.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–720]

Certain Biometric Scanning Devices, Components Thereof, Associated Software, and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 11, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cross Match Technologies, Inc. of Palm Beach Gardens, Florida. An amended complaint was filed on May 26, 2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain biometric scanning devices, components thereof, associated software, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 5,900,993; 6,483,932; 7,203,344; and 7,277,562. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access

to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 10, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain biometric scanning devices, components thereof, associated software, or products containing the same that infringe one or more of claims 10–13 and 15–18 of U.S. Patent No. 5,900,993; claims 6–8, 13–15, and 19–21 of U.S. Patent No. 6,483,932; claims 1, 4, 30, 32, and 41–44 of U.S. Patent No. 7,203,344; and claims 1, 2, and 7 of U.S. Patent No. 7,277,562, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Cross Match Technologies, Inc., 3950 RCA Boulevard, Suite 5001, Palm Beach Gardens, Florida 33410.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Suprema, Inc., 16F Parkview Office Tower, Jeongja-dong, Bundang-gu, Seongnam-Si, Gyeonggi-Do, 463–863, Korea. Mentalix, Inc., 1255 W. 15th Street, Suite # 370, Plano, Texas 75075.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: June 11, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–14595 Filed 6–16–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–722]

In the Matter of Certain Automotive Vehicles and Designs Therefore; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 14, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Chrysler Group LLC of Auburn Hills, Michigan. An amended complaint was filed on June 4, 2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive vehicles and designs therefore by reason of infringement of U.S. Patent No. D513,395. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 10, 2010, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain automotive vehicles and designs therefore that infringe U.S. Patent No. D513,395, and whether an industry in the United

States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Chrysler Group LLC, 1000 Chrysler Dr., Auburn Hills, MI 48321.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Xingyue Group Co., Ltd., Gushan Industry Zone, Yongkang, Zhejiang Province, China 321307.

Shanghai Xingyue Power Machinery Co. Ltd., No. 1751, Zhouzhu Road, Nanhui District, Shanghai City, Shanghai, China 201321.

Shanghai Xingyue USA, Inc., 719 Nogales Street, City of Industry, CA 91748.

Zhejiang Xingyue Vehicle Co. Ltd., Gushan, Yongkang, Zhejian Province, China 321307.

Shanghai Tandem Industrial Co., Ltd., 53 Building, 3297 Hong Mei Road, Shanghai, China 201103.

Boat N RV Supercenter, 2475 Westel Road, Rockwood, TN 37854.

Vehicles Online, Inc., 537 W. Cama Street, Charlotte, NC 28217.

(c) The Commission investigative attorney, party to this investigation, is Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: June 11, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–14597 Filed 6–16–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–721]

In the Matter of: Certain Portable Electronic Devices and Related Software; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 12, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of HTC Corp. of Taiwan. A supplemental letter was filed on June 3, 2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable electronic devices and related software by reason of infringement of certain claims of U.S. Patent Nos. 6,999,800; 5,541,988; 6,058,183; 6,320,957; and 7,716,505. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 10, 2010, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain portable electronic devices or related software that infringe one or more of claims 1–4, 6, 10, 11, 14, and 15 of U.S. Patent No. 6,999,800; claims 1 and 10 of U.S. Patent No. 5,541,988; claims 20, 21, and 30 of U.S. Patent No. 6,058,183; claims 1, 2, 8, 9, 39, and 42–44 of U.S. Patent No. 6,320,957; and claims 1–3 of U.S. Patent No. 7,716,505, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: HTC Corp., 23 Xinghua Rd. Taoyuan City, Taoyuan County 330, Taiwan.

(b) The respondent is the following entities alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Apple Inc., 1 Infinite Loop, Cupertino, CA 95014.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair

Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 11, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–14596 Filed 6–16–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part.

SUMMARY: The Mine Safety and Health Administration (MSHA) enforces mine operator compliance with mandatory safety and health standards that protect miners and improve safety and health conditions in U.S. mines. This **Federal Register** Notice (FR Notice) notifies the public that it has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web Site at *http://www.msha.gov/indexes/petition.htm.* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Deputy Director, Office of Standards, Regulations and Variances at 202–693–9475 (Voice), *fontaine.roslyn@dol.gov* (E-mail), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

• *Docket Number:* M–2008–001–M.
FR Notice: 73 FR 47981 (August 15, 2008).
Petitioner: EP Minerals, LLC, 2630 Graham Blvd., Vale Oregon 97918.
Mine: Clark Mill, MSHA I.D. No. 26–00677, located in Storey County, Nevada; Colado Plant, MSHA I.D. No. 26–00680, located in Pershing County, Nevada; and Celatom Mill, MSHA I.D. No. 35–03236, located in Malheur County, Oregon.
Regulation Affected: 30 CFR 56.20001 (Intoxicating beverages and narcotics).

• *Docket Number:* M–2009–045–C.
FR Notice: 74 FR 67924 (December 21, 2009).
Petitioner: Newtown Energy, Inc., P.O. Box 189, Comfort, West Virginia 25049.
Mine: Eagle Mine, MSHA I.D. No. 46–08759 and Coalburg No. 2 Mine, MSHA I.D. No. 46–09231, located in Kanawha County, West Virginia; and Coalburg No. 1 Mine, MSHA I.D. No. 46–08993, located in Boone County, West Virginia.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Docket Number: M–2009–046–C.
FR Notice: 74 FR 67924 (December 21, 2009).
Petitioner: FKZ Coal Inc., P.O. Box 62, Locust Gap, Pennsylvania 17840.
Mine: No. 1 Slope Mine, MSHA I.D. No. 36–08637, located in Northumberland County, Pennsylvania.
Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

• *Docket Number:* M–2009–047–C.
FR Notice: 74 FR 67924 (December 21, 2009).
Petitioner: Nufac Mining Company, Inc., P.O. Box 1085, Beckley, West Virginia.
Mine: Buckeye Mine, MSHA I.D. No. 46–08769, located in McDowell County, West Virginia.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2009–048–C.
FR Notice: 74 FR 67924 (December 21, 2009).
Petitioner: Pay Car Mining, Inc., P.O. Box 1085, Beckley, West Virginia 25801.
Mine: No. 58 Mine, MSHA I.D. No. 46–08884, located in McDowell County, West Virginia.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2009–051–C.
FR Notice: 75 FR 3257 (January 20, 2010).
Petitioner: Rockhouse Creek Development, LLC, 210 Larry Joe Harless Drive, P.O. Box 1389, Gilbert, West Virginia 25621.
Mine: No. 3A Mine, MSHA I.D. No. 46–09279, located in Mingo County, West Virginia.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2009–059–C.
FR Notice: 75 FR 3254 (January 20, 2010).
Petitioner: McClane Canyon Mining, LLC, P.O. Box 98, Loma, Colorado 81524.

Mine: McClane Canyon Mine, MSHA I.D. No. 05–03013, located in Garfield County, Colorado.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2009–060–C.

FR Notice: 75 FR 3254 (January 20, 2010).

Petitioner: Brooks Run Mining Company, LLC, 25 Little Birch Road, Sutton, West Virginia 26601.

Mine: Saylor Mine, MSHA I.D. No. 46–09126, located in Braxton County, West Virginia, and Poplar Ridge Deep Mine, MSHA I.D. No. 46–08885, located in Webster County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Dated: Dated: June 11, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–14591 Filed 6–16–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before July 19, 2010.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*

2. *Facsimile:* 1–202–693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Numbers: M–2010–024–C, M–2010–025–C, M–2010–026–C, M–2010–027–C, and M–2010–028–C.

Petitioners: Panther Mining, LLC, Mine #1, MSHA I.D. No. 15–18198, located in Harlan County, Kentucky (Docket No. M–2010–024–C); North Fork Coal Corp., Mine #5, MSHA I.D. No. 15–18732 (Docket No. M–2010–025–C) and Mine #4, MSHA I.D. No. 15–18340 (Docket No. M–2010–026–C), located in Letcher County, Kentucky; and Stillhouse Mining, LLC, Mine #1, MSHA I.D. No. 15–17165 (Docket No. M–2010–027–C) and Mine #2, MSHA I.D. No. 15–18869 (Docket No. M–2010–028–C), located in Harlan County, Kentucky.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioners requests a modification of the existing standard to permit an increase in the maximum length of trailing cables supplying power to permissible pumps at the above referenced mines. The petitioner states that: (1) This petition will apply only to trailing cables supplying three-phase, 480-volt power for permissible pumps; (2) the maximum length of the 480-volt power for permissible power will be 4000 feet; (3) all circuit breakers used to protect trailing cables exceeding the pump approval length or Table 9 of 30 CFR part 18 will have an instantaneous trip unit calibrated to trip at 70 percent of phase-to-phase short-circuit current. The trip setting of these circuit breakers will be sealed or locked, and these circuit breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting the trailing cables. This label will be maintained legible. In instances where a 70 percent instantaneous set point will not allow a pump to start due to motor inrush, a thermal magnetic breaker will be furnished. The thermal rating of the circuit breaker will be no greater than 70 percent of the available short-circuit current and the instantaneous setting will be adjusted one setting above the motor inrush trip point. This setting will also be sealed or locked; (4) replacement instantaneous trip units, used to protect pump trailing cables exceeding required lengths of cables will be calibrated to trip at 70 percent of the available phase-to-phase short-circuit current and this setting will be sealed or locked; (5) permanent warning labels shall be installed and maintained on the covers of the power center to identify the location of each sealed or locked short-circuit protection device. These labels will warn miners not to change or alter these short-circuit settings; (6) all pump installations with cable lengths that are specified in Table 9 will have short-circuit surveys conducted and items 1–5 will be implemented. A copy of each pump short-circuit survey will be available at the mine site for inspection; (7) the alternative method will not be implemented until miners who have been designated to examine the integrity of seals or locks, verify the short-circuit setting, and proper procedures for examining trailing cables for defects and damage have received the element of trailing herein; (8) within sixty (60) days after this petition is granted, proposed revisions for their approved 30 CFR Part

48 training plans will be submitted to the Coal Mine Safety and Health District Manager for the area in which the mine is located. The proposed training will include the following elements: (a) Training in mining methods and operating procedures that will protect the trailing cables against damage; (b) training in the proper procedures for examining the trailing cables to ensure the cables are in a safe operating condition; (c) training in hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; (d) training in how to verify the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The petitioner further states that the procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners than is provided by the existing standard.

Docket Numbers: M–2010–002–M.

Petitioner: Solvay Chemicals, Inc., P.O. Box 1167, 400 County Road 85, Green River, Wyoming 82935.

Mine: Solvay Chemicals, Inc., Trona Underground Mine, MSHA I.D. No. 48–01295, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines)).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of certain non-permissible equipment for the purpose of thermographic measurements in or beyond the last open crosscut. The petitioner proposes to use an infrared camera for the purpose of preventative maintenance under specific conditions and while continuously monitoring for methane levels. Immediately prior to the use of the non-permissible equipment, the mine atmosphere will be tested for methane within 6 inches, and would be continuously monitored with an approved instrument capable of providing both visual and audible alarms. Methane levels would be continuously monitored during thermographic measurements by utilizing the longwall continuous methane monitors located at the shear, headgate and tailgate. The continuous monitors alarm at 1% methane and de-energize the longwall mining machine at 1.5% methane. Methane levels will also be monitored by an appropriate continuous monitoring meter carried by the operator. The petitioner asserts that the proposed alternative method will guarantee the miners no less than the same measure of protection as would the existing standard.

Dated: June 11, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–14592 Filed 6–16–10; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA), *Notice:* (10–067).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Brenda J. Maxwell, Office of the Chief Information Officer, Mail Suite 2S71, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brenda J. Maxwell, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 2S71, Washington, DC 20546, (202) 358–4616, *brenda.maxwell@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Langley Research Center has a need to baseline employees' work environment. The intent is to use a valid and reliable survey that can assess employees' (both civil servants and on-site contractors) perceptions of their current work environment. The results of the survey will establish a baseline and provide general themes on areas to focus on in order to enhance creativity and innovation at the Center.

II. Method of Collection

Electronic.

III. Data

Title: The KEYS Creativity and Innovation Survey.

OMB Number: 2700–XXXX.

Type of Review: Regular.

Affected Public: Individuals and households.

Estimated Number of Respondents: 1000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Brenda J. Maxwell,

NASA PRA Clearance Officer.

[FR Doc. 2010–14578 Filed 6–16–10; 8:45 am]

BILLING CODE P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings (by Conference Call)

DATE AND TIMES: June 25, 2010, 1 p.m.–3 p.m.

PLACE: NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: National Summit on Disability Policy 2010.

CONTACT PERSON FOR MORE INFORMATION: Mark Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004, 202–272–2074 (TTY).

Dated: June 10, 2010.

Joan M. Durocher,

Executive Director.

[FR Doc. 2010–14828 Filed 6–15–10; 4:15 pm]

BILLING CODE 6820–MA–P

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Fund for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Fund's [Fund's] Loan Program beginning in June 2010, subject to availability of funds. The Fund's total appropriation for loans is $13.4 million.

Applications and procedures for the 2010 Fund Loan Program will be posted to the NCUA Web site.

ADDRESSES: Applications for participation may also be obtained from and should be submitted to: NCUA, Office of Small Credit Union Initiatives, 1775 Duke Street, Alexandria, VA 22314–3428.

DATES: Applications can be submitted starting on June 11, 2010 and closing when funding is exhausted.

FOR FURTHER INFORMATION CONTACT: Tawana James, Director, Office of Small Credit Union Initiatives at the above address or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA Rules and Regulations implements the Community Development Revolving Loan Fund (Fund) for Credit Unions. The purpose of the Fund is to assist officially designated "low-income" credit unions in providing basic financial services to residents in their communities that result in increased income, home ownership, and employment. The Fund makes available low interest loans in the aggregate amount of $300,000 to qualified participating "low-income" designated credit unions. Interest rates are currently set at 1 percent, subject to change depending on market interest rates.

Fund participation is limited to existing credit unions with an official "low-income" designation.

This notice is published pursuant to Section 705.9 of the NCUA Rules and Regulations that states NCUA will provide notice in the **Federal Register** when funds in the program are available.

By the National Credit Union Administration Board on June 9, 2010.

Mary F. Rupp,

Secretary, NCUA Board.

[FR Doc. 2010–14652 Filed 6–16–10; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Matter To Be Deleted From the Agenda of a Previously Announced Open Meeting; and Notice of Matter To Be Added to the Agenda of a Previously Announced Closed Meeting

TIME AND DATE: 10 a.m., Thursday, June 17, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

Matter To Be Deleted

3. Proposed Rule—Part 741 of NCUA's Rules and Regulations, Requirements for Insurance, Interest Rate Risk Policy and Program.

TIME AND DATE: 11:45 a.m., Thursday, June 17, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Matter To Be Added

1. Consideration of Supervisory Activities (3). Closed pursuant to some or all of the following exemptions: (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304

Mary Rupp,

Board Secretary.

[FR Doc. 2010–14820 Filed 6–15–10; 4:15 pm]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 170th Meeting; Correction

This notice is to correct the previously announced dates of the meeting of the National Council on the Arts. The meeting will be held on June 24–25, 2010 not June 24–25, 2009, in Rooms 527 and M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 12:30 p.m.–2 p.m. on June 24th, will be closed for National Medal of Arts review and recommendations. The remainder of the meeting, from 9 a.m. to 11 a.m. on June 25th (ending time is approximate) in Room M–09, will be open to the public on a space available basis. After opening remarks and announcements, there will be Congressional/White House updates, followed by a Research & Analysis report. There also will be a presentation on the Blue Star Museum Initiative by Kathy Roth-Douquet, the board chairman of Blue Star Families. The Council will then review and vote on applications and guidelines, and the meeting will adjourn after concluding remarks.

The closed portions of meetings are for the purpose of review, discussion, evaluation, and recommendations on awards under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TTY–TDD (202) 682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at (202) 682–5570.

Dated: June 14, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2010–14716 Filed 6–16–10; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Week of June 14, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of June 14, 2010

Thursday, June 17, 2010

8:55 a.m. Affirmation Session (Public Meeting) (Tentative).

c. South Texas Project Nuclear Operating Co. (South Texas Project Units 3 and 4), Intervenors' Notice of Appeal, Brief in Support of Intervenors' Appeal of Atomic Safety and Licensing Board's Order of January 29, 2010 (Feb. 9, 2010) (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* 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.*

ADDITIONAL INFORMATION: Affirmation of South Texas Project Nuclear Operating Co. (South Texas Project Units 3 and 4), Intervenors' Notice of Appeal, Brief in Support of Intervenors' Appeal of Atomic Safety and Licensing Board's Order of January 29, 2010 (Feb. 9, 2010), previously tentatively scheduled on May 27, 2010, has been tentatively rescheduled on June 17, 2010.

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.*

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–14748 Filed 6–15–10; 4:15 pm]

BILLING CODE 7590–01–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 A; OMB Control No. 3235–0286; SEC File No. 270–110 (Forms 1–A and 2–A).

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 A (17 CFR 230.251 through 230.263) provides an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain limited offerings of securities by issuers who do not otherwise file reports with the Commission. Form 1–A is an offering statement filed under Regulation A. Form 2–A is used to report sales and use of proceeds in Regulation A offerings. We estimate that approximately 100 issuers file Forms 1–A and 2–A annually. We estimated that Form 1–A takes approximately 608 hours to prepare, Form 2–A takes approximately 12 hours to prepare, and Regulation A takes one administrative hour to review for a total of 621 hours per response. We estimate that 75% of the 621 hours per response (465.75 hours) is prepared by the company for a total annual burden of 46,575 hours (465.75 hours per response × 100 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden 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 10, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14677 Filed 6–16–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues (*see* also Pub. L. 111–117, section 621) will hold an Open Meeting on Tuesday, June 22, 2010, in the Auditorium, L–002.

The meeting will begin at 1 p.m. and will be open to the public, with seating on a first-come, first-served basis. Doors will open at 12:30 p.m. Visitors will be subject to security checks. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes: (i) Committee organizational matters; (ii) testimony by representatives from various exchanges and firms regarding the market events of May 6; (iii) updates from staff; and (iv) discussion of next steps for the Committee.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: June 14, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14722 Filed 6–15–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62258; File No. SR–BX–2010–027]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change To Establish New Fee for TotalView Service Available to Non-Professionals and to Establish an Optional Non-Display Usage Cap for Internal Distributors of TotalView

June 10, 2010.

I. Introduction

On April 23, 2010, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to (i) establish a $1 per month fee for non-professional use of real-time quotation and order information from the BX Market Center quoting and trading of The NASDAQ Stock Market LLC ("Nasdaq")-, The New York Stock Exchange LLC ("NYSE")-, NYSE Amex LLC ("Amex")- and other regional exchange-listed securities; and (ii) approve the creation of an optional non-display usage cap of $16,000 per month for internal distributors of BX TotalView. The proposed rule change was published for comment in the **Federal Register** on May 6, 2010.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange is proposing to establish a $1 per month fee for non-professional subscribers to BX TotalView.[4] BX TotalView consists of real-time market participant quotation information regarding the Exchange's trading of Nasdaq-, NYSE-, Amex- and other exchange-listed stocks. The new fee for the BX TotalView data product is similar to the fees charged by Nasdaq. Like Nasdaq TotalView, BX TotalView provides all displayed quotes and orders in the market, with attribution to the relevant market participant, at every price level, as well as total displayed anonymous interest at every price level.

The Commission has previously only approved a fee of $20 per month for both BX TotalView for Nasdaq and BX TotalView for NYSE and all other regional exchange-listed issues combined.[5] BX intended to establish these as separate fees, and charged users beginning in January 2010, a fee of $20 per month for BX TotalView for Nasdaq and an additional fee of $20 for BX TotalView for NYSE and all other regional exchange-listed issues. Therefore, BX is proposing to amend Rule 7023(a)(1) to clearly establish a fee of $20 per month for BX TotalView for Nasdaq issues and a separate fee of $20 per month for BX TotalView for NYSE and all other regional exchange-listed issues, as BX originally intended. The Exchange has represented that all such fees charged exceeding the $20 combined fee as currently stated in the rulebook are being refunded.

Rule 7023(a) is also being amended to clarify the data that is included in the BX TotalView Entitlement specifically includes trade data for executions that occur within the NASDAQ OMX BX Equities System. BX notes that the data included remains consistent with what has always been included in the BX TotalView Entitlement, as well as the data included in the Nasdaq TotalView Entitlement. This revision is intended for clarification purposes only.

In addition, the Exchange is proposing to amend Rule 7023 to establish an optional $16,000 per month non-display BX TotalView fee cap for internal distributors, which would encompass both BX TotalView for Nasdaq issues and BX TotalView for NYSE and regional issues. The BX TotalView fee cap would not include distributor fees. The Exchange notes that this fee cap is substantially similar to a recent Nasdaq filing.[6]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, it is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[10] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[11] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[12]

On December 2, 2008, the Commission issued an approval order ("Order") that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for "non-core" market data products, such as the BX TotalView data feeds.[13] The Commission believes that that the proposed rule change is consistent with the Act for the reasons noted in the NYSE Arca Order and the 2009 Order approving fees for the BX TotalView data feeds.[14]

The proposal before the Commission relates to fees for BX TotalView, which are non-core, depth of book market data

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62001 (April 29, 2010), 75 FR 25014 (May 6, 2010) ("Notice").

[4] Both NYSE Arca, Inc. and the New York Stock Exchange LLC offer full-depth products. *See, e.g.,* Securities Exchange Act Release No. 53469 (March 10, 2006), 71 FR 14045 (March 20, 2006) (SR–PCX–2006–24) and Securities Exchange Act Release No. 44138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42), respectively.

[5] *See* Securities Exchange Act Release No. 59615 (March 20, 2009), 74 FR 14604 (March 31, 2009) (SR–BX–2009–005).

[6] *See* Securities Exchange Act Release No. 61700 (March 12, 2010), 75 FR 13172 (March 18, 2010) (SR–NASDAQ–2010–034).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 17 CFR 242.603(a).

[12] BX is an exclusive processor of BX depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[13] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data) (the "NYSE Arca Order").

[14] *See supra* notes 5 and 13.

products. As in the Commission's NYSE Arca Order analysis, at least two broad types of significant competitive forces applied to BX in setting the terms of this proposal: (i) BX's compelling need to attract order flow from market participants; and (ii) the availability to market participants of alternatives to purchasing BX's depth-of-book order data. Attracting order flow is the core competitive concern of any national securities exchange, including BX. Attracting order flow is an essential part of a national securities exchange's competitive success. If a national securities exchange cannot attract order flow to its market, it will not be able to execute transactions. If a national securities exchange cannot execute transactions on its market, it will not generate transaction revenue. If a national securities exchange cannot attract orders or execute transactions on its market, it will not have market data to distribute, for a fee or otherwise, and will not earn market data revenue and thus not be competitive with other exchanges that have this ability.

BX must compete vigorously for order flow to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on BX to act reasonably in setting its fees for BX market data, particularly given that the market participants that must pay such fees often will be the same market participants from whom BX must attract order flow. These market participants particularly include the large broker-dealer firms that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one trading venue to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival.[15]

In addition to the need to attract order flow, the availability of alternatives to BX's TotalView data significantly affects the terms on which BX can distribute this market data.[16] In setting the fees for its BX TotalView data, BX must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data.[17] Of course, the most basic source of information generally available at an exchange is the complete record of an exchange's transactions that is provided in the core data feeds.[18] In this respect, the core data feeds that include an exchange's own transaction information are a significant alternative to the exchange's market data product.[19] For more specific information concerning depth, market participants can choose among products offered by the various exchanges and ECNs.[20] The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data are all sources of competition. In addition, market participants can assess depth with tools other than market data, such as "pinging" orders that search out both displayed and nondisplayed size at all price points within an order's limit price.[21]

In sum, there are a variety of alternative sources of information that impose significant competitive pressures on BX in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as BX's compelling need to attract order flow, imposed significant competitive pressure on BX to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because BX was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis. Further, the Commission did not receive any comment letters raising concerns of a substantial countervailing basis that the terms of the proposal failed to meet the requirements of the Act or the rules thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–BX–2010–027) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14600 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62269; File No. SR–Phlx–2010–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Trading Halts in Options During a Trading Pause in the Underlying Security

June 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 10, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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 Exchange Rule 1047, Trading Rotations, Halts and Suspensions, to state that Trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market. Trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no

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[15] *See* NYSE Arca Order, *supra* note 13, at 74783.

[16] *See* Richard Posner, *Economic Analysis of Law* § 9.1 (5th ed. 1998) (discussing the theory of monopolies and pricing). *See also* U.S. Dep't of Justice & Fed'l Trade Comm'n, Horizontal Merger Guidelines § 1.11 (1992), as revised (1997) (explaining the importance of alternatives to the presence of competition and the definition of markets and market power). Courts frequently refer to the Department of Justice and Federal Trade Commission merger guidelines to define product markets and evaluate market power. *See, e.g., FTC* v. *Whole Foods Market, Inc.,* 502 F. Supp. 2d 1 (D.D.C. 2007); *FTC* v. *Arch Coal, Inc.,* 329 F. Supp. 2d 109 (D.D.C. 2004). In considering antitrust issues, courts have recognized the value of competition in producing lower prices. *See, e.g., Leegin Creative Leather Products* v. *PSKS, Inc.,* 127 S. Ct. 2705 (2007); *Atlanta Richfield Co.* v. *United States Petroleum Co.,* 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.,* 475 U.S. 574 (1986); *State Oil Co.* v. *Khan,* 522 U.S. 3 (1997); *Northern Pacific Railway Co.* v. *U.S.,* 356 U.S. 1 (1958).

[17] *See* NYSE Arca Order, *supra* note 13, at 74783.

[18] *Id.*

[19] *Id.*

[20] *Id.* at 74784.

[21] *Id.*

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange.

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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to ensure that the Exchange maintains fair and orderly markets in options upon the imposition of a single stock pause ("trading pause") [4] by the listing market for the underlying security. Accordingly, as proposed, if such a trading pause is imposed, it will be considered a halt on the primary market for the underlying security and a trading halt in the overlying option will be imposed.

Transactions that occur between the time the pause is imposed on the listing market and the halt is processed on PHLX will be nullified pursuant to PHLX Rule 1092(c)(iv)(B).[5]

Trading in the affected option will resume upon a determination by the Exchange that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange.

Orders in the affected option that are received during the halt on PHLX will be treated as pre-opening orders and will be included in the re-opening process upon the resumption of trading on the listing market for the underlying security pursuant to PHLX Rule 1017(h).[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] 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. Specifically, the Exchange believes that the proposal benefits customers by halting trading in options during times of uncertainty regarding the price of the underlying security due to a trading pause in such underlying security.

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 does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, 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 [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange requested that the Commission waive the 30-day operative delay. The Exchange notes that such a waiver will permit it to immediately implement the proposed rule change in order to benefit customers by halting trading in options during times of uncertainty regarding the price of the underlying security due to a trading pause in such underlying security. The Commission approved filings from the exchanges and the Financial Industry Regulatory Authority to institute a single stock trading pause for equity securities that experience a 10% change in price during a five minute period.[11] The Commission hereby grants the Exchange's request and believes such waiver is consistent with the protection of investors and the public interest.[12] Accordingly, the Commission designates the proposed rule change operative 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 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

[4] The term "trading pause" is not defined in PHLX's Rules, but for example, *see* Securities Exchange Act Release No. 62129 (May 19, 2010), 75 FR 28839 (May 24, 2010) (SR–NASDAQ–2010–061); and Securities Exchange Act Release No. 62124 (May 19, 2010), 75 FR 28828 (May 24, 2010) (SR–BX–2010–037).

[5] PHLX Rule 1092(c)(iv)(B) states that, respecting equity options (including options overlying ETFs), trades on the Exchange will be nullified when the trade occurred during a trading halt on the primary market for the underlying security.

[6] PHLX Rule 1017(h) states that the procedure described in the Rule (Openings in Options) may be used to reopen an option after a trading halt.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). 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.

[11] *See* Securities Exchange Act Release Nos. 62251 and 62252 (June 10, 2010).

[12] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Number SR–Phlx–2010–82 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–82 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14603 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62271; File No. SR–ISE–2010–58]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Trading Halts

June 10, 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 10, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "SEC" or 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 Rule 702 (Trading Halts) to confirm that the Exchange will halt trading in an options class when a trading pause in the underlying security is initiated by the primary listing exchange. The text of the proposed rule changes is as follows, with additions italicized.

Rule 702. Trading Halts

(a) and (b) no change.

(c) Trading Pauses. Trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market. Trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The primary listing markets for U.S. stocks, as well as all other U.S. equity markets, are in the process of amending their rules so that they may, from time to time, issue a five-minute "trading pause" for an individual security if the price of such security moves 10% or more from a sale in a preceding five-minute period.[3] This uniform market-wide trading pause will initially cover individual securities included in the S&P 500® Index and is being implemented as a pilot concluding on December 10, 2010 ("trading pause pilot").

ISE Rule 702(a)(1) states that an Exchange official may halt trading in any stock option in the interests of fair and orderly market, taking into consideration factors such as whether trading in the underlying security has been halted or suspended in the primary market. ISE Rule 702(a)(3) further provides that the Exchange will halt trading for a class or classes of options contracts whenever there is a halt of trading in an underlying security in the primary market. In this respect, the Exchange notes that its trading system automatically halts trading upon the receipt of a halt message from the primary listing exchange.

The purpose of this rule change is to confirm that the Exchange will automatically halt trading in securities when the primary listing exchanges initiate a trading pause. The proposed rule specifies that trading in options will resume when the Exchange determines that the conditions that led to the pause are no longer present and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *E.g.,* Exchange Act Release No. 34–62126 (May 19, 2010), 75 FR 28831 (May 24, 2010) (Notice for SR–NYSE–2010–39); Exchange Act Release No. 34–62129 (May 19, 2010), 75 FR 28839 (May 24, 2010) (Notice for SR–NASDAQ–2010–61); Exchange Act Release No. 34–62127 (May 19, 2010), 75 FR 28837 (May 24, 2010) (Notice for SR–NYSEAmex–2010–46); Exchange Act Release No. 34–62128 (May 19, 2010), 75 FR 28830 (May 24, 2010) (Notice for SR–NYSEArca–2010–41); Exchange Act Release No. 34–62133 (May 19, 2010), 75 FR 28841 (May 24, 2010) (Notice for SR–FINRA–2010–25). *See also infra* note 4.

that the interests of a fair and orderly market are best served by a resumption of trading. The rule also specifies that the Exchange will not resume trading until the underlying security has resumed trading on at least one exchange.[4]

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and 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 proposal confirms that the Exchange will halt trading in options when a trading pause is initiated by the primary listing market for the underlying security.

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 Exchange 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 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[7] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Commission approved filings from the exchanges and the Financial Industry Regulatory Authority to institute a single stock trading pause for equity securities that experience a 10% change in price during a five minute period.[8] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow ISE to halt trading for individual equity options at the same time that the primary listing market implements the pilot for eligible underlying stocks.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2010–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–58. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2010–58 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14605 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[4] The trading pause pilot allows the non-primary trading markets to initiate trading 10 minutes following a trading pause initiated by a primary listing exchange. *E.g.,* Exchange Act Release No. 34–62123 (May 19, 2010), 75 FR 28844 (May 24, 2010) (Notice for SR–EDGX–2010–01); Exchange Act Release No. 34–62122 (May 19, 2010), 75 FR 28833 (May 24, 2010) (Notice for SR–EDGA–2010–01); Exchange Act Release No. 34–62121 (May 19, 2010), 75 FR 28834 (May 24, 2010) (Notice for SR–BATS–2010–14); Exchange Act Release No. 34–62124 (May 19, 2010), 75 FR 28828 (May 24, 2010) (Notice for SR–BX–2010–37); Exchange Act Release No. 34–62130 (May 19, 2010), 75 FR 28842 (May 24, 2010) (Notice for SR–CHX–2010–10). If trading is initiated by one or more non-primary listing equities exchanges after 10 minutes, the Exchange will determine whether to wait until the primary listing market has resumed trading as well or whether the interests of a fair and orderly market are best served by a resumption of trading at that time.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange has met this requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] *See* Securities Exchange Act Release Nos. 62251 and 62252 (June 10, 2010).

[9] 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. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62273; File No. SR–NYSEAmex–2010–55]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Rule 953NY To Provide That the Exchange Will Halt Trading When an Underlying Security Is the Subject of a Trading Pause

June 10, 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 10, 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 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 Amex Rule 953NY to provide that the Exchange will halt trading when an underlying security is the subject of a trading pause. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* and at *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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 953NY governing Trading Halts and Suspensions to add a new subsection to the rule that would provide that the Exchange shall halt trading in any options contract when the underlying security has been paused by the primary market.

The Exchange proposes this rule to provide for how the Exchange will respond when trading in any underlying security has paused, as set forth in the stock-by-stock circuit breakers proposed by the equities markets to respond to extraordinary market volatility in individual securities.[3] The Exchange believes that when trading has paused on the equities markets pursuant to these proposed rules, trading should also be halted in the options markets.

Accordingly, the Exchange proposes to add a new subsection to Rule 953NY to provide that trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary market. The Exchange proposes that trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading. However, under no circumstances would trading resume before the Exchange has received notification that the underlying security has resumed trading.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[4] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[5] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes a fair and orderly market so that when trading is paused in the equities markets, options contracts related to that security are also paused.

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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[8] However, Rule 19b–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Notice Nos. 62121 (May 19, 2010), 75 FR 28834 (May 24, 2010) (SR–BATS–2010–14); 62122 (May 19, 2010), 75 FR 28833 (May 24, 2010) (SR–EDGA–2010–1); 62123 (May 19, 2010), 75 FR 28844 (May 24, 2010) (SR–EDGX–2010–1); 62124 (May 19, 2010), 75 FR 28828 (May 24, 2010) (SR–BX–2010–37); 62125 (May 19, 2010), 75 FR 28836 (May 24, 2010) (SR–ISE–2010–48); 62126 (May 19, 2010), 75 FR 28831 (May 24, 2010) (SR–NYSE–2010–39); 62127 (May 19, 2010), 75 FR 28837 (May 24, 2010) (SR–NYSEAmex–2010–46); 62128 (May 19, 2010), 75 FR 28830 (May 24, 2010) (SR–NYSEArca–2010–41); 62129 (May 19, 2010), 75 FR 28839 (May 24, 2010) (SR–Nasdaq–2010–061); 62130 (May 19, 2010), 75 FR 28842 (May 24, 2010) (SR–CHX–2010–10); 62131 (May 19, 2010), 75 FR 28845 (May 24, 2010) (SR–NSX–2010–05); 62132 (May 19, 2010), 75 FR 28847 (May 24, 2010) (SR–CBOE–2010–47); 62133 (May 19, 2010), 75 FR 28841 (May 19, 2010), 75 FR 28841 (May 24, 2010) (SR–FINRA–2010–25).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k–1(a)(1).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange has met this requirement.

[8] 17 CFR 240.19b–4(f)(6).

4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[9] which would make the rule change effective and operative upon filing. The Commission approved filings from the exchanges and the Financial Industry Regulatory Authority to institute a single stock trading pause for equity securities that experience a 10% change in price during a five minute period.[10] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NYSE Amex to halt trading for individual equity options at the same time that the primary listing market implements the pilot for eligible underlying stocks.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–55. 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–NYSEAmex–2010–55 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14607 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *See* Securities Exchange Act Release Nos. 62251 and 62252 (June 10, 2010).

[11] 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. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62288; File No. SR–FINRA–2010–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt NASD Rule 3210 (Short Sale Delivery Requirements) as FINRA Rule 4320 in the Consolidated FINRA Rulebook

June 11, 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 21, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. On June 11, 2010, FINRA filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 3210 (Short Sale Delivery Requirements), with minor changes, as FINRA Rule 4320 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4]

[3] Amendment No. 1 was a partial amendment that makes minor clarifications, provides additional detail and makes technical edits to the purpose section of the proposed rule change.

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

FINRA is proposing to adopt NASD Rule 3210 (Short Sale Delivery Requirements), with minor changes, as FINRA Rule 4320 in the Consolidated FINRA Rulebook.

On April 4, 2006, the SEC approved NASD Rule 3210, which applies short sale delivery requirements to those equity securities not otherwise covered by the close-out requirements of Regulation SHO. The Regulation SHO close-out requirements apply only to the equity securities of "reporting" issuers (*i.e.,* issuers that are registered pursuant to Section 12 of the Act[5] or that are required to file reports pursuant to Section 15(d) of the Act[6]).

NASD Rule 3210, among other things, requires participants of registered clearing agencies to take action on failures to deliver that exist for 13 consecutive settlement days in certain non-reporting securities. In addition, if the fail to deliver position is not closed out in the requisite time period, a participant of a registered clearing agency or any broker-dealer for which it clears transactions is prohibited from effecting further short sales in the particular specified security without borrowing, or entering into a bona fide arrangement to borrow, the security until the fail to deliver position is closed out. Pursuant to NASD Rule 3210, FINRA publishes a daily "Threshold Security List."[7] The rule became effective on July 3, 2006. In adopting NASD Rule 3210, FINRA believed that the rule represented an important step in reducing long-term fails to deliver in this sector of the marketplace.

In July 2009, the SEC adopted the substance of temporary Rule 204T[8] under Regulation SHO as a permanent rule, Rule 204 of Regulation SHO.[9] This rule is intended to further the goal of reducing fails to deliver and addressing potentially abusive "naked" short selling in all equity securities by requiring the delivery of securities by settlement date or, in connection with a short sale, the immediate purchase or borrow of such securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the following settlement day.[10] Notwithstanding the SEC's adoption of this new rule, proposed FINRA Rule 4320 continues to be necessary to provide regulatory coverage for fails to deliver in non-reporting over-the-counter equity securities that pre-exist the SEC's implementation of temporary Rule 204T in September 2008.[11]

Therefore, FINRA is proposing to adopt NASD Rule 3210 as FINRA Rule 4320 with minor changes to delete language that provided allowances for "grandfathered" securities during the initial implementation period of NASD Rule 3210 and that, therefore, is no longer relevant. The proposed rule change also clarifies, consistent with Regulation SHO, the borrowing requirements for clearing agency participants, including broker-dealers for which they clear transactions, that sell short non-reporting threshold securities for which a fail to deliver position has not been closed out in the requisite time. Specifically, if a fail to deliver position is not closed out in accordance with Rule 4320(a), the clearing agency participant and any broker-dealer for which it clears, including market makers otherwise entitled to rely on the Rule 203(b)(2)(iii) exception of Regulation SHO, would not be able to short sell the non-reporting threshold security either for itself or for the account of another, unless it has previously arranged to borrow or borrowed the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency. In addition, the rule change makes certain technical amendments to the rule, including changing references to "NASD" to "FINRA."

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no more than 180 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that adopting the proposed rules as part of the Consolidated FINRA Rulebook continues to be necessary to provide regulatory coverage for fails to deliver in non-reporting over-the-counter equity securities and will continue to help reduce long-term fails to deliver in this sector of the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[5] 15 U.S.C. 78*l.*

[6] 15 U.S.C. 78*o*(d).

[7] For purposes of Rule 3210, a non-reporting threshold security is any equity security that is not a reporting security and, for five consecutive settlement days, has: (1) Aggregate fails to deliver at a registered clearing agency of 10,000 shares or more; and (2) a reported last sale during normal market hours (9:30 a.m. to 4 p.m., Eastern Time (ET)) for the security on that settlement day that would value the aggregate fail to deliver position at $50,000 or more.

[8] *See* Securities Exchange Act Release No. 58785 (Oct. 14, 2008), 73 FR 61678 (Oct. 17, 2008).

[9] *See* Securities Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38266 (July 31, 2009).

[10] Rule 204 of Regulation SHO further provides that fails to deliver resulting from long sales or certain bona fide market making activity must be closed out by no later than the beginning of regular trading hours on the third settlement day after settlement date (*i.e.,* T+6).

[11] Likewise, the SEC is retaining Rule 203(b)(3) of Regulation SHO in order to cover pre-existing temporary Rule 204T fails in threshold securities as defined in Rule 203(c)(6) of Regulation SHO.

[12] 15 U.S.C. 78*o*–3(b)(6).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–028 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–FINRA–2010–028. 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 FINRA. 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–FINRA–2010–028 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14609 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62284; File No. SR–NYSE–2010–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Rule 80C To Clarify Reopening Procedures

June 11, 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 June 10, 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 Rule 80C to clarify reopening procedures. 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

The Exchange proposes to amend Rule 80C to clarify the procedures applicable during a Trading Pause for the reopening of a security on the Exchange following the invocation of a Trading Pause.[4] Rule 80C was approved by the Commission on June 10, 2010.[5]

Currently, Rule 80C states that indications "shall" be published as close to the beginning of the Trading Pause as possible and should be updated. While the clause "as possible" is intended to provide for those circumstances where it is not feasible to publish an indication prior to a reopening, to avoid confusion, the Exchange believes that section (b)(i) of the Rule should be clarified to state instead that indications may be published to the Consolidated Tape during a Trading Pause.

The rule would be further amended to clarify that Floor Official approval is not required before publishing an indication, an indication does not need to be updated before reopening the security, and the security may reopen outside any prior indication. The Exchange also proposes to add a subsection to Rule 80C(b) to clarify that Floor Official approval under Rule 79A.20 is not required when reopening a security following a Trading Pause.

The Exchange believes that these clarifications are necessary to avoid inconsistent regulatory obligations. Similar in concept to Rule 48, which suspends the requirements for published indications or Floor Official approval during a market-wide volatility condition at the open, Rule 80C would suspend the same requirements on a security-by-security basis because of the volatility that the security is already experiencing. The Exchange notes that notwithstanding whether an indication is published, order imbalance information and indicative price information will be disseminated by the Exchange pursuant to Rule 15(c) as Order Imbalance Information. Additionally, a DMM may publish and update indications and may consult with a Floor Official concerning the reopening process.

The Exchange also proposes to amend Rule 80C to provide that in the event of an early scheduled close, the rule would be in effect until 25 minutes before such scheduled close.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[6] which requires the rules of an exchange to promote just and equitable principles of trade, to remove

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex Exchange. *See* Securities Exchange Act Release No. 62283 (June 11, 2010)(SR–NYSEAmex–2010–56).

[5] *See* Securities Exchange Act Release No. 62252 (June 10, 2010).

[6] 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed amendments provide the Exchange with the necessary tools to ensure a fair and orderly reopening of a security following a market-wide Trading Pause.

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[8] and Rule 19b–4(f)(6) thereunder.[9] 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)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[11] 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 notes that the proposed rule change is clarifying how the Exchange handles Trading Pauses in the case of an early scheduled closing of the Exchange, and how indications will be published during all Trading Pauses. The proposed rule change does not raise any new substantive issues. For these reasons, the Commission believes that the waiver of the 30-day operative date is consistent with the protection of investors and the public interest.[12]

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–2010–45 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–2010–45. 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 copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE'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–NYSE–2010–45 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14670 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[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 of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62282; File No. SR–ISE–2010–54]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Qualification Standards for Market Makers To Receive a Rebate for Adding Liquidity

June 11, 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 26, 2010, the International Securities Exchange, LLC (the "ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the qualification standards for market makers to receive a rebate under the Exchange's maker/taker pricing program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the qualification standards for market makers to receive a rebate under the Exchange's maker/taker pricing program. The Exchange recently adopted transaction fees and rebates for adding and removing liquidity ("maker/taker fees").[3] The maker/taker fees currently apply to trading in a select number of options classes[4] to the following categories of market participants: (i) Market Maker; (ii) Market Maker Plus; (iii) Non-ISE Market Maker;[5] (iv) Firm Proprietary; (v) Customer (Professional);[6] (vi) Priority Customer,[7] 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.

In order to promote and encourage liquidity in options classes that are subject to maker/taker fees, the Exchange currently offers a $0.10 per contract rebate for Market Maker Plus orders sent to the Exchange.[8] A Market Maker Plus is currently defined by the Exchange as a market maker who is on the National Best Bid or National Best Offer 80% of the time in that symbol during the current trading month for series trading between $0.03 and $5.00 in premium.

The Exchange now proposes to amend the qualification standards in order for a market maker to qualify for the $0.10 per contract rebate. Specifically, the Exchange proposes to define a Market Maker Plus as a market maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 in premium in each of the front two expiration months and 80% of the time for all series trading between $0.03 and $5.00 in premium for all expiration months for that symbol during the current trading month.

The Exchange currently determines whether a market maker qualifies as a Market Maker Plus at the end of each month by looking back at each market maker's quoting statistics during that month. If at the end of the month, a market maker meets the current 80% criteria, the Exchange rebates $0.10 per contract for transactions executed by that market maker during that month. The Exchange will continue to monitor each market maker's quoting statistics to determine whether a market maker qualifies for a rebate under the standards proposed herein.

The Exchange also currently provides market makers a report on a daily basis with quoting statistics so that market makers can determine whether or not they are meeting the 80% criteria. Again, the Exchange will continue to provide market makers a daily report so that market makers can determine whether or not they are meeting the Exchange's new quoting requirement to qualify for a rebate.

The Exchange believes the proposed rule change will encourage market makers to post tighter markets in the options classes that are subject to maker/taker fees and thereby increase liquidity and attract order flow to the Exchange.

The Exchange has designated this proposal to be operative on June 1, 2010.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in the options classes that are subject to the Exchange's maker/taker fees. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the fees it charges for options classes that are subject to the Exchange's maker/taker fees remain competitive with fees charged by other exchanges and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The Exchange further believes that amending the qualification standards for market makers to qualify for a rebate will encourage these market participants to post tighter markets in the options classes that are subject to the Exchange's maker/taker fees and thereby increase liquidity and attract order flow to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any

[3] *See* Securities Exchange Act Release Nos. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010); and 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010).

[4] As of May 3, 2010, the following options classes were subject to maker/taker fees: QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN and X.

[5] A Non-ISE Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

[6] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] The concept of incenting market makers with a rebate is not novel. In 2008, the CBOE established a program for its Hybrid Agency Liaison whereby it provides a $0.20 per contact rebate to its market makers provided that at least 80% of the market maker's quotes in a class during a month are on one side of the national best bid or offer. Market makers not meeting CBOE's criteria are not eligible to receive a rebate. *See* Securities Exchange Act Release No. 57231 (January 30, 2008), 73 FR 6752 (February 5, 2008). The CBOE has since lowered the criteria from 80% to 60%. *See* Securities Exchange Act Release No. 57470 (March 11, 2008), 73 FR 14514 (March 18, 2008).

unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [9] and Rule 19b 4(f)(2) [10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2010–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2010–54 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14676 Filed 6–16–10; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62283; File No. SR–NYSEAMEX–2010–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 80C To Clarify Reopening Procedures

June 11, 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 June 10, 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 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 Amex Equities Rule 80C to clarify reopening procedures. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

The Exchange proposes to amend NYSE Amex Equities Rule 80C to clarify the procedures applicable during a Trading Pause for the reopening of a security on the Exchange following the invocation of a Trading Pause.[4] Rule 80C was approved by the Commission on June 10, 2010.[5]

Currently, Rule 80C states that indications "shall" be published as close to the beginning of the Trading Pause as possible and should be updated. While the clause "as possible" is intended to provide for those circumstances where it is not feasible to publish an indication prior to a reopening, to avoid confusion, the Exchange believes that section (b)(i) of the Rule should be clarified to state instead that indications may be published to the Consolidated Tape during a Trading Pause.

The rule would be further amended to clarify that Floor Official approval is not required before publishing an indication, an indication does not need to be updated before reopening the security, and the security may reopen outside any prior indication. The Exchange also proposes to add a subsection to Rule 80C(b) to clarify that Floor Official approval under Rule 79A.20 is not required when reopening a security following a Trading Pause.

The Exchange believes that these clarifications are necessary to avoid inconsistent regulatory obligations. Similar in concept to Rule 48, which suspends the requirements for published indications or Floor Official approval during a market-wide volatility

[4] The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Exchange. *See* Securities Exchange Act Release No. 62284 (June 11, 2010) (SR–NYSE–2010–45).

[5] *See* Securities Exchange Act Release No. 62252 (June 10, 2010).

condition at the open, Rule 80C would suspend the same requirements on a security-by-security basis because of the volatility that the security is already experiencing. The Exchange notes that notwithstanding whether an indication is published, order imbalance information and indicative price information will be disseminated by the Exchange pursuant to Rule 15(c) as Order Imbalance Information. Additionally, a DMM may publish and update indications and may consult with a Floor Official concerning the reopening process.

The Exchange also proposes to amend Rule 80C to provide that in the event of an early scheduled close, the rule would be in effect until 25 minutes before such scheduled close.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[6] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed amendments provide the Exchange with the necessary tools to ensure a fair and orderly reopening of a security following a market-wide Trading Pause.

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[8] and Rule 19b–4(f)(6) thereunder.[9] 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)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[11] 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 notes that the proposed rule change is clarifying how the Exchange handles Trading Pauses in the case of an early scheduled closing of the Exchange, and how indications will be published during all Trading Pauses. The proposed rule change does not raise any new substantive issues. For these reasons, the Commission believes that the waiver of the 30-day operative date is consistent with the protection of investors and the public interest.[12]

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–2010–56 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–2010–56. 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 copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE'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–NYSEAMEX–2010–56 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[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 of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62274; File No. SR–NYSEArca–2010–50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 6.65 To Provide That the Exchange Will Halt Trading When an Underlying Security Is the Subject of a Trading Pause

June 10, 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 10, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 Arca Rule 6.65 to provide that the Exchange will halt trading when an underlying security is the subject of a trading pause. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* and at *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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 6.65 governing Trading Halts and Suspensions to add a new subsection to the rule that would provide that the Exchange shall halt trading in any options contract when the underlying security has been paused by the primary market.

The Exchange proposes this rule to provide for how the Exchange will respond when trading in any underlying security has paused, as set forth in the stock-by-stock circuit breakers proposed by the equities markets to respond to extraordinary market volatility in individual securities.[3] The Exchange believes that when trading has paused on the equities markets pursuant to these proposed rules, trading should also be halted in the options markets.

Accordingly, the Exchange proposes to add a new subsection to Rule 6.65 to provide that trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary market. The Exchange proposes that trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading. However, under no circumstances would trading resume before the Exchange has received notification that the underlying security has resumed trading.

2. *Statutory Basis*

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[4] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[5] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes a fair and orderly market so that when trading is paused in the equities markets, options contracts related to that security are also paused.

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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[8] However, Rule 19b–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Notice Nos. 62121 (May 19, 2010), 75 FR 28834 (May 24, 2010) (SR–BATS–2010–14); 62122 (May 19, 2010), 75 FR 28833 (May 24, 2010) (SR–EDGA–2010–1); 62123 (May 19, 2010), 75 FR 28844 (May 24, 2010) (SR–EDGX–2010–1); 62124 (May 19, 2010), 75 FR 28828 (May 24, 2010) (SR–BX–2010–37); 62125 (May 19, 2010), 75 FR 28836 (May 24, 2010) (SR–ISE–2010–48); 62126 (May 19, 2010), 75 FR 28831 (May 24, 2010) (SR–NYSE–2010–39); 62127 (May 19, 2010), 75 FR 28837 (May 24, 2010) (SR–NYSEAmex–2010–46); 62128 (May 19, 2010), 75 FR 28830 (May 24, 2010) (SR–NYSEArca–2010–41); 62129 (May 19, 2010), 75 FR 28839 (May 24, 2010) (SR–Nasdaq–2010–061); 62130 (May 19, 2010), 75 FR 28842 (May 24, 2010) (SR–CHX–2010–10); 62131 (May 19, 2010), 75 FR 28845 (May 24, 2010) (SR–NSX–2010–05); 62132 (May 19, 2010), 75 FR 28847 (May 24, 2010) (SR–CBOE–2010–47); 62133 (May 19, 2010), 75 FR 28841 (May 19, 2010), 75 FR 28841 (May 24, 2010) (SR–FINRA–2010–25).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k–1(a)(1).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange has met this requirement.

[8] 17 CFR 240.19b–4(f)(6).

4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[9] which would make the rule change effective and operative upon filing. The Commission approved filings from the exchanges and the Financial Industry Regulatory Authority to institute a single stock trading pause for equity securities that experience a 10% change in price during a five minute period.[10] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NYSE Arca to halt trading for individual equity options at the same time that the primary listing market implements the pilot for eligible underlying stocks.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–50. 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–2010–50 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14671 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *See* Securities Exchange Act Release Nos. 62251 and 62252 (June 10, 2010).

[11] 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. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62281; File No. SR–NYSEARCA–2010–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca US LLC Amending NYSE Arca Equities Rule 7.11 To Set Forth How the Exchange Will Handle Order Flow During a Trading Pause for a Security Listed on an Exchange Other Than NYSE Arca

June 11, 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 June 10, 2010, NYSE Arca US LLC (the "Exchange" or "NYSE Arca") 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 Arca Equities Rule 7.11 to set forth how the Exchange will handle order flow during a Trading Pause for a security listed on an exchange other than NYSE Arca. 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

The Exchange proposes to amend Rule 7.11 to set forth how the Exchange will handle order flow during a Trading Pause for a security listed on an exchange other than NYSE Arca.

Rule 7.11 was approved by the Commission on June 10, 2010.[4] The Exchange proposes to add subsection (f) to the Rule to address how orders will be handled when another primary listing market issues a trading pause. Upon the receipt of a trading pause message from another primary listing market, the Exchange will take the following actions: (i) Maintain all resting orders in the Book; (ii) cancel any unexecuted portion of Market Orders and Pegged Orders; (iii) accept

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62252 (June 10, 2010).

and process all cancellations; (iv) accept and route new Market Orders to the primary market; (v) accept and route PO and PO+ Orders to the primary market; and (vi) reject all other orders until the stock has reopened. The Exchange proposes to follow these procedures during a regulatory halt called by another market as well.

Once trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume, the Exchange will resume normal order processing in accordance with its rules.

The Exchange believes that these procedures will ensure that following a Trading Pause or regulatory halt, the primary listing market will be able to conduct a fair and orderly reopening because any new order flow during the pause will be available to the primary market to conduct price discovery for the reopening.

The Exchange also proposes to amend Rule 7.11 to provide that in the event of an early scheduled close, the rule would be in effect until 25 minutes before such scheduled close.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[5] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[6] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency for how order flow will be handled during a Trading Pause for a security listed on an exchange other than NYSE Arca. The proposed rule also promotes a fair and orderly market by enabling the primary listing market to properly price a security for the reopening following a Trading Pause.

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.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78k–1(a)(1).

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[7] and Rule 19b–4(f)(6) thereunder.[8] 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)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] 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 notes that the proposed rule change clarifies how the Exchange will handle order flow during a Trading Pause for a security listed on an exchange other than NYSE Arca. The proposed rule change does not raise any new substantive issues. For these reasons, the Commission believes that the waiver of the 30-day operative date is consistent with the protection of investors and the public interest.[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.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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–2010–52 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–NYSEARCA–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 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 copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE'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–2010–52 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14669 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62285; File No. SR–NASDAQ–2008–014]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Amend Certain Corporate Governance Disclosure Requirements for Listed Companies

June 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2008, 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. Nasdaq filed Amendment No. 1 to the proposed rule change on December 18, 2009 and Amendment No. 2 to the proposed rule change on April 30, 2010.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes changes to Listing Rules 5605 and 5610, as well as IM–5605–4 and IM–5610, to replace certain disclosure requirements with references to the applicable disclosure requirements of Regulation S–K, require the same disclosure as required by SEC Rules 10A–3(d)(1) and (2) and permit disclosure through a Web site and/or a press release to satisfy certain Nasdaq disclosure requirements.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].[4]

* * * * *

5605. Boards of Directors and Committees.

(a) No change.

IM–5605. No change.

(b) No change.

IM–5605–1 and IM–5605–2. No change.

(c) Audit Committee Requirements.

(1) No change.

IM–5605–3. No change.

(2) Audit Committee Composition.

(A) No change.

(B) Non-Independent Director for Exceptional and Limited Circumstances Notwithstanding paragraph (2)(A)(i), one director who: (i) Is not independent as defined in Rule 5605(a)(2); (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not a current officer or employee or a Family Member of such officer or employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the Company and its Shareholders[, and the board discloses, in the next annual proxy statement subsequent to such determination (or, if the Company does not file a proxy, in its Form 10–K or 20–F), the nature of the relationship and the reasons for that determination]. *A Company, other than a Foreign Private Issuer, that relies on this exception must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S–K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20–F or 40–F) the nature of the relationship that makes the individual not independent and the reasons for the board's determination.* A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

IM–5605–4. Audit Committee Composition.

Audit committees are required to have a minimum of three members and be comprised only of Independent Directors. In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), audit committee members must meet the criteria for independence set forth in Rule 10A–3(b)(1) under the Act (subject to the exemptions provided in Rule 10A–3(c) under the Act): They must not accept any consulting, advisory, or other compensatory fee from the Company other than for board service, and they must not be an affiliated person of the Company. *As described in Rule 10A–3(d)(1) and (2), a Company must disclose reliance on certain exceptions from Rule 10A–3 and disclose an assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of Rule 10A–3.* It is recommended *also* that a Company disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10–K or 20–F) if any director is deemed independent but falls outside the safe harbor provisions of Rule 10A–3(e)(1)(ii) under the Act. A director who qualifies as an audit committee financial expert under Item 407(d)(5)(ii) and (iii) of Regulation S–K is presumed to qualify as a financially sophisticated audit committee member under Rule 5605(c)(2)(A).

(3) No change.

IM–5605–5. No change.

(4)–(5) No change.

(d) Independent Director Oversight of Executive Officer Compensation.

(1)–(2) No change.

(3) Non-Independent Committee Member under Exceptional and Limited Circumstances.

Notwithstanding paragraphs 5605(d)(1)(B) and 5605(d)(2)(B) above, if the compensation committee is comprised of at least three members, one director who is not independent as defined in Rule 5605(a)(2) and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its [shareholders, and the board discloses,] *Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or* in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10–K or 20–F), the nature of the relationship and the reasons for the determination. In addition, *the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S–K regarding its reliance on this exception.* A member appointed under this exception may not serve longer than two years.

IM–5605–6. No change.

(e) Independent Director Oversight of Director Nominations.

(1)–(2) No change.

(3) Non-Independent Committee Member under Exceptional and Limited Circumstances.

Notwithstanding paragraph 5605(e)(1)(B) above, if the nominations committee is comprised of at least three members, one director, who is not independent as defined in Rule 5605(a)(2) and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the nominations committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders[, and the board discloses,]. *A Company that relies on this exception must disclose either on or through the Company's website or* in the proxy statement for next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10–K or 20–F), the nature of the relationship and the reasons for the determination. In addition, *the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S–*

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety, and Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com/.*

K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

(4)–(5) No change.

IM–5605–7. No change.

5610. Code of Conduct.

Each Company shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act of 2002 ("the Sarbanes-Oxley Act") and any regulations promulgated thereunder by the Commission. *See* 17 CFR 228.406 and 17 CFR 229.406. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or Executive Officers must be approved by the Board. Companies, other than Foreign Private Issuers, shall disclose such waivers [in a]*within four business days by filing a current report on* Form 8–K *with the Commission* [within four business days]*or, in cases where a Form 8–K is not required, by distributing a press release.* Foreign Private Issuers shall disclose such waivers either *by distributing a press release or including disclosure* in a Form 6–K or in the next Form 20–F or 40–F. *Alternatively, a Company, including a Foreign Private Issuer, may disclose waivers on the Company's website in a manner that satisfies the requirements of Item 5.05(c) of Form 8–K.*

IM–5610. Code of Conduct.

Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of a Company is intended to demonstrate to investors that the board and management of Nasdaq Companies have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For Company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.

Rule 5610 requires Companies to adopt a code of conduct complying with the definition of a "code of ethics" under Section 406(c) of the Sarbanes-Oxley Act of 2002 ("the Sarbanes-Oxley Act") and any regulations promulgated thereunder by the Commission. *See* 17 CFR 228.406 and 17 CFR 229.406. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 5610 must apply to all directors, officers, and employees. Companies can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a "code of ethics."

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the Company, as when the individual receives improper personal benefits as a result of his or her position with the Company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the Company. Also, the disclosures a Company makes to the Commission are the essential source of information about the Company for regulators and investors—there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for Executive Officers or directors may be made only by the board and must be disclosed to Shareholders, along with the reasons for the waiver. All Companies, other than Foreign Private Issuers, must disclose such waivers [in a]*within four business days by filing a current report on* Form 8–K *with the Commission* [within four business days], *providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8–K, or, in cases where a Form 8–K is not required, by distributing a press release.* Foreign Private Issuers must disclose such waivers either *by providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8–K, by including disclosure* in a Form 6–K or in the next Form 20–F or 40–F *or by distributing a press release.* This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the Company and its Shareholders to the greatest extent possible.

Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.

* * * * *

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 proposes to make changes to its rules to replace certain disclosure requirements with references to the applicable disclosure requirements of Regulation S–K, require the same disclosure as required by SEC Rules 10A–3(d)(1) and (2) and permit disclosure through a Web site and/or a press release to satisfy certain Nasdaq disclosure requirements.

Nasdaq currently requires a listed company to disclose in its proxy statement (or if the company does not file a proxy, in its Form 10–K or 20–F) any reliance on the provisions of Nasdaq's audit, compensation and nominating committee requirements that allow a company to have one non-independent director on the committee under exceptional and limited circumstances.[5] With respect to the audit committee, Nasdaq proposes to replace its current disclosure requirement in Listing Rule 5605(c)(2)(B) with a reference to the disclosure requirement in Item 407(d)(2) of Regulation S–K, which requires similar disclosure.[6] A foreign private issuer, which is not subject to Item 407(d)(2), would continue to be required to comply with Nasdaq's current disclosure requirements. Nasdaq believes that this proposed change will avoid duplication and confusion, given that the current Nasdaq disclosure requirement is duplicative of the disclosure required by Item 407(d)(2) and will facilitate compliance for listed companies while continuing to provide transparency to investors. Nasdaq also proposes to add a reference to IM–5605–4 to require the disclosures specified in SEC Rules 10A–3(d)(1) and (2), which require disclosure of reliance on certain exceptions contained in SEC Rule 10A–3.[7] Nasdaq believes that this addition will highlight listed companies' disclosure requirements and help facilitate compliance.

With respect to the compensation and nominating committees, Nasdaq proposes to revise Listing Rules 5605(d)(3) and 5605(e)(3) to require the disclosures described in Instruction 1 to Item 407(a) of Regulation S–K from issuers that are otherwise subject to this requirement. For further disclosures that are required by Nasdaq's rules, but not also by Instruction 1 to Item 407(a) of Regulation S–K, Nasdaq proposes to broaden the methods of disclosure

[5] Nasdaq Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

[6] *See* 17 CFR 229.407(d)(2) (requiring a company that is relying on the exceptional and limited circumstances exception to disclose the nature of the relationship that makes an individual not independent and the reasons for the board of directors' determination to appoint the individual to the audit committee).

[7] 17 CFR 240.10A–3.

available to issuers to permit Web site disclosure. Nasdaq believes that allowing companies to rely on the Internet to satisfy these disclosure requirements will allow companies to provide investors with information in a more timely, efficient and cost effective manner, consistent with other disclosures that may be made on the issuer's Web site. As such, the proposal is consistent with Nasdaq's rule that permits Web site postings for the distribution of an annual report to shareholders [8] and the Commission's recent changes to require companies to post their proxy materials on a Web site.[9] Also, allowing Web site disclosure would eliminate the need for a company to amend a public filing if the company discovers that it failed to make a disclosure required solely by Nasdaq's rules.

In addition, Nasdaq requires that each listed company adopt a code of conduct applicable to all directors, officers and employees.[10] Any waivers to the code of conduct must be approved by the board of directors, and issuers, other than foreign private issuers, must disclose such waivers in a Form 8–K within four business days. Foreign private issuers must disclose such waivers either in a Form 6–K or in the next Form 20–F or 40–F. In Listing Rule 5610 and IM–5610, Nasdaq proposes to broaden the methods of disclosure of waivers to a code of conduct to include distributing a press release if a Form 8–K is not required [11] or posting on the company's Web site in a manner consistent with Item 5.05 of Form 8–K.[12] This proposal will conform Nasdaq's rule with that of the Commission [13] and other markets.[14]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general and with Section 6(b)(5) of the Act,[16] in particular. The proposed rule change would remove disclosure requirements in Nasdaq's rules that duplicate Commission disclosure requirements and provide cross references to Commission requirements. In addition, the proposed rule change would allow additional methods of disclosure for Nasdaq-listed companies for certain disclosures not required by the Commission, thereby reducing costs for those companies, and allowing them to rely on technology to provide information to investors in a timelier manner. As such, the proposed rule change is 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–2008–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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–2008–014 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14608 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[8] Nasdaq Listing Rule 5250(d)(1).

[9] *See* Securities Exchange Act Release No. 56135 (July 26, 2007), 72 FR 42222 (August 1, 2007).

[10] Nasdaq Listing Rule 5610 and IM–5610.

[11] A Form 8–K is required for waivers that apply to a company's principal executive officer, principal financial officer, principal accounting officer, controller or persons performing similar functions. In these cases, the waiver cannot be disclosed only by distributing a press release.

[12] Item 5.05 of Form 8–K allows Web site disclosure of waivers to a code of ethics, provided that an issuer has disclosed in its most recently filed annual report its Internet address and its intention to provide disclosure in this manner.

[13] *Id.*

[14] *See* Section 303A.10 of the NYSE Listed Company Manual.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62272; File No. SR–CBOE–2010–055]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Individual Equity Options Overlying Stocks Subject to Trading Pauses Due to Extraordinary Market Volatility

June 10, 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 10, 2010, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 CBOE is proposing to amend its trading procedures on a pilot basis for individual equity options overlying certain stocks. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary, at the Commission, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, 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 primary listing markets for U.S. stocks are in the process of amending their rules so that they may, from time to time, issue a trading pause for an individual stock if the price of such stock moves 10% or more from a sale in a preceding five-minute period. The Exchange is proposing the rule change described below in consultation with U.S. listing markets and the Commission staff to provide for uniform market-wide trading pause standards for certain individual stocks that experience rapid price movement and for individual equity options overlying those stocks.[5]

The Exchange proposes to add a new Interpretation and Policy .06 to Rule 6.3, *Trading Halts,* to provide that CBOE would halt trading in the options on a Circuit Breaker Stock, as defined below, when the primary listing market for such stock issues a trading pause. CBOE would resume trading in the options once trading has resumed on the primary listing market in the underlying Circuit Breaker Stock. If, however, trading has not resumed on the primary listing market in the underlying Circuit Breaker Stock after ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, CBOE may resume trading in the options if at least one other market has resumed trading in the stock.

The proposed rule would apply to trading pauses issued by primary listing markets in "Circuit Breaker Stocks." Specifically, on a pilot basis, set to end on December 10, 2010, Circuit Breaker Stocks would mean the stocks included in the S&P 500 Index and such other eligible underlying stocks as may be designated for inclusion in the pilot from time to time by the stock markets. Thus, proposed Interpretation and Policy .06 to Rule 6.3 would be in effect with respect to individual equity options overlying stocks in the S&P 500 Index and individual equity options overlying such other eligible underlying stocks as may be designated for inclusion in the pilot.

Upon receipt of a trading pause message from the single plan processor responsible for consolidation of information for the stock, the Exchange would automatically implement a trading halt in the overlying options traded on the Exchange. During the halt, the Exchange would maintain existing orders in the Book, continue accepting orders, and process cancels. In this regard the Exchange notes that, consistent with its existing rotation processes, the Exchange would accept opening-only orders during the halt, any unfilled portion of which would automatically cancel upon conclusion of the reopen.

Upon reopening, a rotation shall be held in the options on CBOE in accordance with Rule 6.2B, *Hybrid Opening System ("HOSS"),* unless the Exchange concludes that a different method of reopening is appropriate under the circumstances, including but not limited to, no rotation, an abbreviated rotation or any other variation in the manner of the rotation.

Lastly, nothing in the proposed Rule shall be construed to limit the ability of the Exchange to halt or suspend trading in any security or securities traded on the Exchange pursuant to any other Exchange rule or policy.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a stock and the individual equity options overlying that stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has separately proposed a rule change for CBOE Stock Exchange, the CBOE's stock trading facility ("CBSX"), to provide for uniform market-wide trading pause standards for individual stocks in the S&P 500 Index traded on CBSX. Securities Exchange Act Release No. 62132 (May 19, 2010), 75 FR 28847 (May 24, 2010) (SR–CBOE–2010–047).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change effective and operative upon filing. The Commission approved filings from the exchanges and the Financial Industry Regulatory Authority to institute a single stock trading pause for equity securities that experience a 10% change in price during a five minute period.[13] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow CBOE to halt trading for individual equity options at the same time that the primary listing market implements the pilot for eligible underlying stocks.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–055 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–055. 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–CBOE–2010–055 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14606 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange has met this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release Nos. 62251 and 62252 (June 10, 2010).

[14] 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. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62270; File No. SR–NASDAQ–2010–071]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market LLC Relating to Trading Halts in Options During a Trading Pause in the Underlying Security

June 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 10, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASDAQ. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to modify NASDAQ Options Market ("NOM") Rule Chapter V, Section 3 by adopting new sub-paragraph (3)(a)vi to state that Trading on the Exchange in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market. Trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to ensure that the Exchange maintains fair and orderly markets in options upon the imposition of a single stock pause ("trading pause") [4] by the listing market for the underlying security. Accordingly, as proposed, if such a trading pause is imposed, it will be considered a halt or suspension on the primary market for the underlying security and a trading halt in the overlying option will be imposed.

Transactions that occur between the time the pause is imposed on the listing market and the halt is processed on NOM may be nullified pursuant to NOM Rules, Chapter V, Section 6.[5]

Trading in the affected option will resume upon a determination by Nasdaq that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange.

Orders in the affected option that are received during the halt on NOM will be treated as pre-opening orders and will be re-opened upon resumption of trading on the listing market for the underlying security using the opening cross process described in NOM Rules, Chapter VI, Section 8.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of 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. Specifically, NASDAQ believes that the proposal benefits customers by halting trading in options during times of uncertainty regarding the price of the underlying security due to a trading pause in such underlying security.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition 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 does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, 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]

The Exchange requested that the Commission waive the 30-day operative delay. The Exchange notes that such a waiver will permit it to immediately implement the proposed rule change in order to benefit customers by halting trading in options during times of uncertainty regarding the price of the underlying security due to a trading pause in such underlying security. The Commission approved filings from the exchanges and the Financial Industry Regulatory Authority to institute a single stock trading pause for equity securities that experience a 10% change in price during a five minute period.[10] The Commission hereby grants the Exchange's request and believes such waiver is consistent with the protection of investors and the public interest as it will allow the Exchange to honor pauses triggered on individual equity securities.[11] Accordingly, the Commission designates the proposed rule change operative 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.

[4] For an example of the use of the term "trading pause," *see* Securities Exchange Act Release No. 62129 (May 19, 2010), 75 FR 28839 (May 24, 2010) (SR–NASDAQ–2010–061); and Securities Exchange Act Release No. 62124 (May 19, 2010), 75 FR 28828 (May 24, 2010) (SR–BX–2010–037).

[5] Chapter V, Section 6 is the NOM rule governing Obvious Errors.

[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] *See* Securities Exchange Act Release Nos. 62251 and 62252 (June 10, 2010).

[11] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2010–071 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–2010–071. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–071 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14604 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62268; File No. SR–BX–2010–039]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Halting Trading Whenever Trading in the Underlying Security Has Been Paused by the Primary Listing Market

June 10, 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 10, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Chapter V, Section 10 of the Rules of the Boston Options Exchange Group, LLC ("BOX") to state that trading in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Securities and Exchange Commission recently approved rules changes relating to trading pauses due to extraordinary market volatility ("trading pause").[5] The purpose of the proposed rule change is to ensure that the Exchange maintains a fair and orderly market upon the imposition of a trading pause. Accordingly, as proposed, trading in any option contract shall be halted whenever trading in the underlying security has been paused by the primary listing market. Trading in such options contracts may be resumed upon a determination by the Exchange that the conditions that led to the pause are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading, which in no circumstances will be before the Exchange has received notification that the underlying security has resumed trading on at least one exchange. The Exchange anticipates that all U.S. options exchanges will be submitting similar proposals.

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

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 34–62252 (June 10, 2010), (SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; SR–CBOE–2010–047). The term trading pause is not defined in the BOX Trading Rules, but is described in these recently approved rules.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general to protect investors and the public interest. Specifically, the Exchange believes that the proposal benefits Participants by halting trading in options during times of uncertainty regarding the price of the underlying security due to a trading pause in such underlying security.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, 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]

The Exchange requested that the Commission waive the 30-day operative delay. The Exchange notes that such a waiver will permit it to immediately implement the proposed rule change in order to benefit customers by halting trading in options during times of uncertainty regarding the price of the underlying security due to a trading pause in such underlying security. The Commission approved filings from the exchanges and the Financial Industry Regulatory Authority to institute a single stock trading pause for equity securities that experience a 10% change in price during a five minute period.[10]

The Commission hereby grants the Exchange's request and believes such waiver is consistent with the protection of investors and the public interest.[11] Accordingly, the Commission designates the proposed rule change operative 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 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–BX–2010–039 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–BX–2010–039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–039 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14602 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[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] *See* Securities Exchange Act Release Nos. 62251 and 62252 (June 10, 2010).

[11] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62263; File No. SR–NYSEAmex–2010–49]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Rescind Rule 60A—NYSE Amex Equities

June 10, 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 20, 2010, NYSE Amex LLC ("NYSE Amex" 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 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 rescind Rule 60A—NYSE Amex Equities ("Vendor Liability Disclaimer"). The text of the proposed rule change is available on NYSE Amex's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

principal office of NYSE Amex, 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 Exchange proposes to rescind Rule 60A—NYSE Amex Equities ("Vendor Liability Disclaimer").

Background

Effective October 1, 2008, NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger dated January 17, 2008 (the "Acquisition"). Pursuant to the Acquisition the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext.[3] In connection with the Acquisition, on December 1, 2008, the Exchange relocated all equities trading to systems and facilities located at 11 Wall Street, New York, New York (the "NYSE Amex Equities Trading Systems"), which are operated by the Exchange's corporate affiliate, the New York Stock Exchange LLC ("NYSE"), on behalf of the Exchange.[4] Correspondingly, the Exchange adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Equities Trading Systems.[5]

Rule 60A—NYSE Amex Equities

Shortly after the Acquisition, the Exchange adopted the provisions of legacy Amex Rule 60 as Rule 60A—NYSE Amex Equities ("Vendor Liability Disclaimer") to address third-party vendor liability.[6] Rule 60A—NYSE Amex Equities provides that, in connection with member or member organization use of any electronic system, service or facility provided by the Exchange to members for the conduct of their business on the Exchange, the Exchange may expressly provide in the contract with the vendor(s) providing all or part of such electronic system, service or facility to the Exchange, that the vendor will not be liable for any damages sustained by a member or member organization arising out of the use of the vendor's system. In addition, the Rule provides that members and member organizations must indemnify both the Exchange and the vendor for any and all damages as a result of any claim or proceeding that arises out of or relates to the member's or member organization's use of such vendor's system.

At the time the NYSE Amex Equities Rules were adopted, Rules 17– and 18–NYSE Amex Equities did not address third-party vendor liability.

Current Rules 17– and 18–NYSE Amex Equities

In March 2009, concurrent with the NYSE, the Exchange amended Rules 17– and 18–NYSE Amex Equities to address third-party vendor liability in the context of the NYSE and NYSE Amex Compensation Review Panels.[7]

Pursuant to these amendments, Rule 17(b)–NYSE Amex Equities currently provides that, except as provided in Rule 18–NYSE Amex Equities, the Exchange is not liable for any damages sustained by a member, principal executive or member organization arising out of its use or enjoyment of any third-party electronic system, service or facility ("third-party vendor") provided by the Exchange for the conduct of business on the Exchange.

Rule 18–NYSE Amex Equities permits a member or member organization to file a claim with the Exchange for losses arising out of a "system failure", which includes "any malfunction of any third-party electronic system, service, or facility * * * provided by the Exchange that results in an incorrect execution of an order or no execution of a marketable order that was received in Exchange systems." In addition, Rule 18–NYSE Amex Equities specifies that each month a "Compensation Review Panel" consisting of three Floor Governors and three Exchange employees reviews claims submitted pursuant to the Rule and determines their eligibility for payment and whether the claims are subject to reduction. The Exchange then submits all eligible claims to the NYSE for reimbursement under the terms of NYSE Rule 18.[8] If the aggregate claims submitted by the Exchange cannot be fully satisfied because they exceed the funds available for payment, the available funds are allocated among all eligible claims based on the proportion that each claim bears to the total amount eligible to receive payment. Where claims arising out of a third-party vendor system failure cannot be fully satisfied, the aggrieved member or member organization may file a claim directly against the third-party vendor for the unpaid loss.

Proposed Rule Changes

The Exchange proposes to rescind Rule 60A–NYSE Amex Equities as it is duplicative of Rule 17–NYSE Amex Equities. Rules 17– and 18– NYSE Amex Equities comprehensively address third-party vendor liability, and maintaining Rule 60A–NYSE Amex Equities in the NYSE Amex Equities rulebook is potentially confusing to members and member organizations since, unlike the other Rules, it does not specify the process for submission of claims for losses arising out of the use of third-party vendor systems provided by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6 of the Act,[9] in general, and further the objectives of Section

[3] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Acquisition).

[4] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approving the equities trading relocation and the adoption of the NYSE Amex Equities rules).

[5] *See* Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63); 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106); 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10); and 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11).

[6] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63).

[7] *See* Securities and Exchange Act Release Nos. 59482 (March 2, 2009, 74 FR 10114 (March 9, 2009) (SR–NYSEALTR–2009–13) (amending Rules 17– and 18–NYSE Amex Equities) and 59486 (March 2, 2009), 74 FR 10104 (March 9, 2009) (SR–NYSE–2009–16) (amending NYSE Rules 17 and 18).

[8] Because the Exchange and the NYSE share a common trading platform, NYSE Rule 18 provides a mechanism for the Exchange to seek reimbursement from NYSE for the amounts that the Exchange undertakes to pay out to NYSE Amex Equities members and member organizations under Rule 18–NYSE Amex Equities. Each claim by an Exchange member or member organization under these Rules is considered separately. *See* NYSE Rule 18. *See* e-mail from Jason Harman, NYSE Regulation, Inc., to Ira L. Brandriss, Special Counsel, Commission, dated June 8, 2010.

[9] 15 U.S.C. 78f.

6(b)(5) of the Act,[10] 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 rescinding a duplicative rule and fully conforming NYSE and NYSE Amex Equities rules regarding vendor liability.

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 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 [11] and Rule 19b–4(f)(6) thereunder.[12]

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 believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposal raises no novel issues and seeks to rescind a duplicative rule that was left in the NYSE Amex Equities rulebook after the Acquisition. Therefore, 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–NYSEAmex–2010–49 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–2010–49. 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–NYSEAmex–2010–49 and should be submitted on or before July 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14601 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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.

[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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

American Energy Services, Inc., Dynacore Patent Litigation Trust, Earth Sciences, Inc., Empiric Energy, Inc., Future Carz, Inc., NBI, Inc., Noble Group Holdings, Inc. (f/k/a Leasing Solutions, Inc. and Le Bon Table Brand Foods Corp.), Reliance Acceptance Group, Inc., and Vegas Equity International Corp.; Order of Suspension of Trading

June 15, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Energy Services, Inc. because it has not filed any periodic reports since the period ended November 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dynacore Patent Litigation Trust because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Earth Sciences, Inc. because it has not filed any periodic reports since the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Empiric Energy, Inc. because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Future Carz, Inc. because it has not filed any periodic reports since the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NBI, Inc. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Noble Group Holdings, Inc. (f/k/a Leasing Solutions, Inc. and Le Bon Table Brand Foods Corp.) because it has not filed any periodic reports since the period ended December 31, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Reliance Acceptance Group, Inc. because it has not filed any periodic reports since the period ended September 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vegas Equity International Corp. because it has not filed any periodic reports since the period ended December 31, 2005.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 15, 2010, through 11:59 p.m. EDT on June 28, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–14735 Filed 6–15–10; 11:15 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice: 7054]

Bureau of Educational and Cultural Affairs; Edmund S. Muskie Graduate Fellowship Program

Notice: Correction to original Request for Grant Proposals.

SUMMARY: The United States Department of State, Bureau of Educational and Cultural Affairs, announces a revision to the original Request for Grant Proposals (RFGP) for the Edmund S. Muskie Graduate Fellowship Program, announced in the **Federal Register** on May 13, 2010 (Volume 75, Number 92):

Due to a clerical error, section IV.3f of the announcement states the deadline for this competition as June 21. The correct deadline, as stated in the header of the announcement, is June 23, 2010. All other terms and conditions of the original announcement remain the same.

Additional Information

Interested organizations should contact Micaela Iovine, U.S. Department of State, Office of Academic Exchange Programs, ECA/A/E/EUR, (202) 632–9462 prior to the deadline.

Dated: June 11, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–14702 Filed 6–16–10; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice: 7055]

Determination and Waiver of Section 7073(a) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. H, Pub. L. 111–117) Relating to Assistance for the Independent States of the Former Soviet Union

Pursuant to the authority vested in me as Deputy Secretary of State, including by section 7073(a) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. H, Pub. L. 111–117) (the Act), Executive Order 13118 of March 31, 1999, and State Department Delegation of Authority No. 245–1, I hereby determine that it is in the national security interest of the United States to make available funds appropriated under the heading "Assistance for Europe, Eurasia and Central Asia" of the Act, without regard to the restriction in section 7073(a).

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated: May 21, 2010.

James B. Steinberg,

Deputy Secretary of State.

[FR Doc. 2010–14698 Filed 6–16–10; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice: 7056]

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended; Continuation of Waiver Authority for Belarus

Pursuant to the authority vested in the President under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter "the Act"), and assigned to the Secretary of State by virtue of Section 1(a) of Executive Order 13346 of July 8, 2004, I determine, pursuant to Section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by Section 402 of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that continuation of the waiver applicable to Belarus will substantially promote the objectives of Section 402 of the Act.

This determination shall be published in the **Federal Register**.

Dated: May 27, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–14705 Filed 6–16–10; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice: 7052]

Issuance of an Amended Presidential Permit Authorizing the Construction, Operation, and Maintenance of a Two-Span International Bridge Near Brownsville, Texas, at the International Boundary Between the United States and Mexico

SUMMARY: At the request of the permittee, the Department of State has amended the Presidential permit, originally issued in 1993, that authorizes Cameron County, Texas to construct, operate, and maintain an international bridge known as "Veterans Bridge at Los Tomates" near Brownsville, Texas, at the international boundary between the United States and Mexico. The amendment allows the permittee to build a second adjacent bridge, essentially identical to the existing four-lane bridge, to accommodate increasing traffic volume, to improve pedestrian safety, and to allow more efficient separation of different types of traffic as it approaches the border inspection station owned by the General Services Administration and operated by the Department of Homeland Security/Customs and Border Protection. In making its determination

to amend the permit, the Department provided public notice of the proposed amendment and provided the opportunity for comment (73 FR 55586, Sept. 25, 2008) and also consulted with other Federal agencies, as required by Executive Order 11423, as amended.

FOR FURTHER INFORMATION CONTACT: Stewart Tuttle, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov;* by phone at 202–647–6356; or by mail at Office of Mexican Affairs—Room 3909, Department of State, 2201 C St., NW., Washington, DC 20520. Information about Presidential permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/.*

SUPPLEMENTARY INFORMATION: The following is the text of the amended permit:

Amended Presidential Permit Authorizing Cameron County, Texas, to Construct, Operate, and Maintain a Two-span International Bridge, its Approaches, and Facilities at the International Boundary between the United States and Mexico.

By virtue of the authority vested in me as Under Secretary of State for Economic, Energy, and Agricultural Affairs under Executive Order 11423 of August 16, 1968, 33 FR 11741; as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511; Executive Order 13284 of January 23, 2003, 68 FR 4075; Executive Order 13337 of April 30, 2004, 69 FR 25299; the International Bridge Act of 1972 (86 Stat. 731; 33 U.S.C. 535 *et seq.*); and Department of State Delegation of Authority number 118–2 of January 26, 2006; having considered the environmental effects of the proposed action in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 *et seq.*), having considered the proposed action in accordance with the National Historic Preservation Act (80 Stat. 917, 16 U.S.C. 470f *et seq.,* and having requested and received the views of various of the Federal departments and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to Cameron County, Texas (herinafter referred to as "permittee") in partnership with the City of Brownsville, Texas, pursuant to interlocal agreement, to construct, operate, and maintain a two-span international vehicular and pedestrian bridge in the "Los Tomates" vicinity of Brownsville, Texas and Matamoros, Tamaulipas, Mexico.

The term "facilities" as used in this permit means the bridge, its approaches, and any land, structure, or installations appurtenant thereto.

The term "United States facilities" as used in this permit means that part of the facilities in the United States.

This permit is subject to the following conditions:

Article 1. The United States facilities herein described, and all aspects of their operation, shall be subject to the conditions, provisions, and requirements of this permit or any amendment thereof; further that this permit may be terminated at the will of the Secretary of State or the Secretary's delegate or may be amended by the Secretary of State or the Secretary's delegate at will or upon proper application therefor; further that the permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate.

Article 2. (1) Standards for, and manner of, the construction, operation and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of appropriate Federal or State agencies. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

(2) Prior to initiation of construction, the permittee shall obtain the approval of the United States Coast Guard (USCG) to such construction, in conformity with Section 5 of the International Bridge Act of 1972 (33 U.S.C. 535c) and Department of Homeland Security (DHS) Delegation of Authority Number 0170.1.

Article 3. The permittee shall comply with all Federal and State laws and regulations regarding the construction, operation, and maintenance of the United States facilities, and with all applicable industrial codes.

Article 4. Upon the termination, revocation, or surrender of this permit, and unless otherwise agreed by the Secretary of State or the Secretary's delegate, the United States facilities in the immediate vicinity of the international boundary shall be removed by and at the expense of the permittee within such time as the Secretary of State or the Secretary's delegate may specify, and upon failure of the permittee to remove this portion of the United States facilities as ordered, the Secretary of State or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 5. If, in the future, it should appear to the United States Coast Guard and the Secretary of Homeland Security or the Secretary's delegate that any facilities or operations permitted hereunder cause unreasonable obstructions to the free navigation of any of the navigable waters of the United States, the permittee may be required, upon notice from the Secretary of Homeland Security or the Secretary's delegate, to remove or alter such of the facilities as are owned by it so as to render navigation through such waters free and unobstructed.

Article 6. This permit and the operation of the United States facilities hereunder shall be subject to the regulations issued by any competent agency of the United States Government, including but not limited to the United States Coast Guard, the Department of Homeland Security, and the United States Section of the International Boundary and Water Commission (USIBWC). This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in exact accordance with such limitations, terms and conditions.

Article 7. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management or control thereof for such length of time as may appear to the President to be necessary; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 8. Any transfer of ownership or control of the United States facilities or any part thereof shall be immediately notified in writing to the United States Department of State, including the submission of information identifying the transferee. This permit shall remain in force subject to all the conditions, permissions and requirements of this permit and any amendments thereto unless subsequently terminated or

amended by the Secretary of State or the Secretary's delegate.

Article 9. (1) The permittee shall acquire such right-of-way grants, easements, permits and other authorizations as may become necessary and appropriate.

(2) The permittee shall save harmless the United States from any claimed or adjudged liability arising out of the construction, completion or maintenance of the facilities.

(3) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation.

Article 10. The permittee shall provide to the General Services Administration (GSA), at no cost to the Federal government, a site that is adequate and acceptable to GSA on which to construct border station facilities at the United States terminal of the bridge. The permittee shall fully comply with all National Environmental Policy Act and National Historic Preservation Act mitigation provisions and stipulations for transfer of the site to the General Services Administration.

Article 11. The permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the construction, operation and maintenance of the United States facilities. The permittee shall submit to the USIBWC the plans approved by the Texas Water Commission for sewage collection and treatment facilities, and their discharge limitations, along with any plans approved by the Texas Water Commission regarding water rights for water diversion facilities in the Rio Grande.

Article 12. The permittee shall submit to the U.S. Commissioner, IBWC, for review by the USIBWC the conceptual and final levee relocation plan that forms a part of the international bridge proposal. Permittee shall comply with any appropriate changes required by the USIBWC and also arrange for transfers of lands, rights-of-way and other works proposed as part of the new bridge construction and levee relocation plan.

Article 13. The permittee shall comply with all agreed actions and obligations undertaken to be performed by it in the Supplemental Environmental Assessment dated June 4, 1993, including but not limited to the mitigation Plan attached thereto as Appendix A, as supplemented by the Environmental Assessment dated October 2009 and the Finding of No Significant Impact dated January 10, 2010. Construction of the United States facilities shall be performed in substantial conformity with Alternatives A or C described in the Supplemental Environmental Assessment dated June 4, 1993, as supplemented by the Environmental Assessment dated October 2009 and the Finding of No Significant Impact dated January 10, 2010.

Article 14. The permittee shall file with the appropriate agencies of the Government of the United States such statements or reports under oath with respect to the United States facilities, and/or permittee's actions in connection therewith, as are now or may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

Article 15. The permittee shall send notice to the Department of State at such time as the construction authorized by this permit is begun, and again at such time as construction is completed, interrupted, or discontinued.

In witness thereof, I, Robert D. Hormats, Under Secretary of State for Economic, Energy, and Agricultural Affairs, have hereunto set my hand this 1st day of June, 2010, in the City of Washington, District of Columbia.

This permit supersedes the permit signed on October 7, 1993 by Under Secretary of State Joan E. Spero.

End Permit text.

Dated: June 10, 2010.

Alex Lee,

Director, Office of Mexican Affairs, Department of State.

[FR Doc. 2010–14696 Filed 6–16–10; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 7049]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (TITLE VIII)

The Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) will convene on Thursday, July 8, 2010 beginning at 9:30 a.m. in Room 1406 of the U.S. Department of State, Harry S Truman Building, 2201 C Street, NW., Washington, DC, and lasting until approximately 10:30 a.m.

The Advisory Committee will recommend grant recipients for the FY 2010 competition of the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the Chair and members of the committee, and, within the committee, discussion, approval and recommendation that the Department of State negotiate grant agreements with certain "national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the Independent States of the Former Soviet Union," based on the guidelines contained in the call for applications published in Grants.gov on February 18, 2010. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however attendance will be limited to the seating available. Entry into the Harry S Truman building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify the Title VIII Program Office at the U.S. Department of State on (202) 736–4661 by Thursday, July 1, providing the following information: Full Name, Date of Birth, Driver's License Number and Issuing State, Country of Citizenship, and any requirements for special accommodation. All attendees must use the 2201 C Street entrance and must arrive no later than 9 a.m. to pass through security before entering the building. Visitors who arrive without prior notification and without photo identification will not be admitted.

The identifying data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

Dated: June 4, 2010.

Susan Nelson,

Executive Director, Advisory Committee for Study of Eastern Europe and Eurasia (the Independent States of the Former Soviet Union).

[FR Doc. 2010–14704 Filed 6–16–10; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice: 7053]

Bureau of Educational and Cultural Affairs; U.S. Professional Development Program for EducationUSA Advisers

Notice: Correction to original Request for Grant Proposals.

Summary: The United States Department of State, Bureau of Educational and Cultural Affairs, announces a revision to the original Request for Grant Proposals (RFGP) for the U.S. Professional Development Program for EducationUSA Advisers, announced in the **Federal Register** on May 6, 2010 (Volume 75, Number 87):

Due to a clerical error, the header of the announcement states the deadline for this competition as July 7. The correct deadline, as stated in section IV.3f of the announcement, is July 9, 2010. All other terms and conditions of the original announcement remain the same.

Additional Information

Interested organizations should contact ECA/A/S/A Branch Chief Caryn Danz or Program Officer Dorothy Mora, U.S. Department of State, Educational Information and Resources Branch, ECA/A/S/A, SA–5, 4th Floor, ECA/A/S/A–11–05, 2200 C Street, NW., Washington, DC 20522–0503. Telephone for Caryn Danz is (202) 632–6353; E-mail address: *DanzCB@state.gov.* Telephone for Dorothy Mora is (202) 632–6347; E-mail address: *MoraDD@state.gov.* Fax: 202–632–9478.

Dated: June 11, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–14686 Filed 6–16–10; 8:45 am]

BILLING CODE 4710–11–P

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: U.S. Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the U.S. Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Carolyn Hum, Administrative Officer, U.S. Trade and Development Agency, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209 (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314 (c)(1) through (5), U.S.C., requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the U.S. Trade and Development Agency: James Wilderotter, General Counsel, U.S. Trade and Development Agency. Geoffrey Jackson, Director for Policy and Program, U.S. Trade and Development Agency; Christopher Wyant, Chief of Staff, U.S. Trade and Development Agency; and Jeri Jensen, Managing Director for Private Sector Initiatives, Millennium Challenge Corporation.

Dated: June 15, 2010.

Carolyn Hum,

Administrative Officer.

[FR Doc. 2010–14683 Filed 6–16–10; 8:45 am]

BILLING CODE 8040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Environment; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC) Environment Subcommittee; notice of meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Environment Subcommittee, which will be held at the office of The Boeing Company in Arlington, Virginia. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Environment Subcommittee is charged with examining steps and strategies that can be taken by aviation-sector stakeholders and the Federal Government to reduce aviation's environmental footprint and foster sustainability gains in cost-effective ways. This includes consideration of potential approaches to promote effective international actions through the International Civil Aviation Organization.

DATES: The meeting will be held on June 30, 2010, from 9 a.m. to 12 p.m., Eastern Daylight time.

ADDRESSES: The meeting will be held at The Boeing Company, 1200 Wilson Boulevard, Arlington, Virginia, 22209, in Room 816. The meeting location is close to the Rosslyn Metro Station, on the Orange and Blue Lines.

Public Access: The meeting is open to the public. (*See below* for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or environment subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.Regulations.Gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Environment Subcommittee, the term "Environment" should be listed in the subject line of the message. In order to ensure that such comments can be considered by the Subcommittee before its June 30, 2010, meeting, public comments must be filed by 5 p.m. Eastern Daylight time on Monday, June 21, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Environment Subcommittee of the Future of Aviation Advisory Committee taking place on June 30, 2010, from 9 a.m. to 12 p.m., at The Boeing Company, 1200 Wilson Boulevard, Arlington, Virginia, 22209, in Room 816. The agenda includes—

1. Discussion of topics offered by subcommittee members for referral to the full Committee on the subject of meeting the environmental and energy challenges needed to accommodate increases in the demand for air transportation.

2. Establishment of a plan and timeline for further work.

3. Identification of priority issues for the second subcommittee meeting.

Registration

The meeting room can accommodate up to 18 members of the public. Persons desiring to attend must pre-register through e-mail to *FAAC@dot.gov.* The term "Registration: Environment" should be listed in the subject line of the message and admission will be limited to the first 18 persons to pre-register and receive a confirmation of their pre-registration. All foreign visitors must provide their nationality when registering.

Arrangements to attend by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section by 5 p.m. Monday, June 21, 2010. Callers outside the Washington metropolitan area are responsible for paying long-distance charges. Minutes of the meeting will be taken and will be made available to the public.

Requests for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business Monday, June 21, 2010.

FOR FURTHER INFORMATION CONTACT: Lynne Pickard, Deputy Director, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591; telephone (202) 267–3577; fax (202) 267–5594; *Lynne.Pickard@faa.gov.*

Issued in Washington, DC, on June 11, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–14567 Filed 6–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Aviation Safety Subcommittee; Notice of Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC): Aviation Safety Subcommittee; notice of meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Aviation Safety Subcommittee, which will be held July 6, 2010, in Chicago, Illinois. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Aviation Safety Subcommittee will develop a list of priority safety issues to be referred to the full committee for deliberation. The Subcommittee will also discuss a plan of action and timeline for further work and identification of priority issues for the second Subcommittee meeting.

DATES: The meeting will be held on July 6, 2010, at 1 p.m. c.d.t.

ADDRESSES: The meeting will be held at 100 North Riverside Plaza, Chicago, Illinois 60606.

Public Access: The meeting is open to the public. (*See below* for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or Subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.Regulations.Gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Aviation Safety Subcommittee, the term "Aviation Safety" should be listed in the subject line of the message. In order to ensure that such comments can be considered by the Subcommittee before its July 6, 2010, meeting, public comments must be filed by close of business on Monday, June 28, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of an FAAC Aviation Safety Subcommittee meeting taking place on July 6, 2010, at 1 p.m. c.d.t., at 100 North Riverside Plaza, Chicago, Illinois 60606. The Subcommittee will—

1. Develop a list of priority safety issues to be referred to the full committee for deliberation.

2. Discuss a plan of action and timeline for further work and identification of priority issues for the second Subcommittee meeting.

Registration

Due to space constraints and planning considerations, persons desiring to attend must pre-register through e-mail to *FAAC@dot.gov.* The term "Registration: Safety Subcommittee" must be listed in the subject line of the message, and admission will be limited to the first 25 to pre-register and receive a confirmation of their pre-registration. No arrangements are being made for audio or video transmission, or for oral statements or questions from the public at the meeting. Minutes of the meeting will be posted on the FAAC Web site at *http://www.dot.gov/FAAC.*

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on June 25, 2010.

FOR FURTHER INFORMATION CONTACT: Tony Fazio, Deputy Director, Office of Accident Investigation and Prevention, Federal Aviation Administration, 800 Independence Ave., SW., Washington DC; telephone (202) 267–9612; *Tony.Fazio@FAA.gov.*

Issued in Washington, DC, on June 14, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–14668 Filed 6–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-Class Workforce; Notice of Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-class Workforce; notice of meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Subcommittee on Labor and World-class Workforce, which will be held at 501 3rd Street NW., Washington, DC 20001. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of

Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Subcommittee is charged with ensuring the availability and quality of a workforce necessary to support a robust, expanding commercial aviation industry in light of the changing socio-economic dynamics of the world's technologically advanced economies. Among other matters, the Subcommittee will examine the future employment requirements of the aviation industry, its educational requirements, and the critical/technical skills that will be needed by our future aviation workforce.

DATES: The meeting will be held on July 8, 2010, from 1 p.m. to 4 p.m. e.d.t.

ADDRESSES: The meeting will be held at the Communications Workers of America Building, 501 3rd Street, NW., Washington, DC 20001.

Public Access: The meeting is open to the public. (*See below* for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or Subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.Regulations.Gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Subcommittee on Labor and World-class Workforce, the term "Labor/Workforce" should be listed in the subject line of the message. In order to ensure that such comments can be considered by the Subcommittee before its July 8, 2010, meeting, public comments must be filed by 5 p.m e.d.t. on Monday, June 28, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the FAAC Subcommittee on Labor and World-class Workforce taking place on July 8, 2010, from 1 p.m. to 4 p.m. e.d.t., at 501 3rd Street, NW., Washington, DC 20001. Background information may be found at the FAAC Web site, located at *http://www.dot.gov/faac/.* The agenda includes—

1. Discussion of topics offered by Subcommittee members for referral to the full Committee on the subject of competitiveness and viability of the aviation industry.

2. Establishment of a plan and timeline for further work.

3. Identification of priority issues for the second Subcommittee meeting.

Registration

The meeting room can accommodate up to 50 members of the public. Persons desiring to attend must pre-register through e-mail to *FAAC@dot.gov.* The term "Registration: Labor/Workforce" must be listed in the subject line of the message, and admission will be limited to the first 50 persons to pre-register and receive a confirmation of their pre-registration. No arrangements are being made for audio or video transmission or for oral statements or questions from the public at the meeting. Minutes of the meeting will be taken and will be posted on the FAAC Web site at *http://www.dot.gov/faac/.*

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on June 28, 2010.

FOR FURTHER INFORMATION CONTACT: Terri L. Williams, Acting Executive Director, Corporate Learning and Development Office of Corporate Learning and Development, Assistant Administrator for Human Resources Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; (202) 267–3456, extension 7472; or Regis P. Milan, Office of Aviation Analysis, U.S. Department of Transportation; Room 86W309, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–2349.

Issued in Washington, DC, on June 14, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–14667 Filed 6–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2010–0085]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before August 16, 2010.

ADDRESSES: Comments must refer to the docket notice number cited at the beginning of this Notice and be submitted by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document. You may call the Docket at (202) 366–9324.

Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Management Facility is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Samuel Daniel, Jr., NHTSA, 1200 New Jersey Ave., SE., W43–474, Washington, DC 20590. Telephone number is (202) 366–4921, fax number is (202) 366–7002.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and

otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR Part 571.116, Motor Vehicle Brake Fluids.

OMB Number: 2127–0521.

Type of Request: Extension of a currently approved collection.

Abstract: Federal Motor Vehicle Safety Standard No. 116, "Motor Vehicle Brake Fluids," specifies performance and design requirements for motor vehicle brake fluids and hydraulic system mineral oils. Section 5.2.2 specifies labeling requirements for manufacturers and packagers of brake fluids as well as packagers of hydraulic system mineral oils. The information on the label of a container of motor vehicle brake fluid or hydraulic system mineral oil is necessary to insure: The contents of the container are clearly stated; these fluids are used for their intended purpose only; and the containers are properly disposed of when empty. Improper use or storage of these fluids could have dire safety consequences for the operators of vehicles or equipment in which they are used.

Affected Public: Business or other for profit organizations.

Estimated Total Annual Burden: 7000 hours.

Estimated Number of Respondents: 200.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: June 11, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–14573 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHIMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before July 2, 2010.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 8, 2010.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
Modification Special Permits				
8445–M		Clean Harbors Environmental Services, Inc., Norwell, MA.	49 CFR Part 173, Subparts A, B, C, D, E.	To modify the special permit to authorize the assignment of a generic description from the 49 CFR 172.101 Table to describe hazardous materials with different primary hazard classes packed in accordance with this special permit.
10785–M		Thermo Process Instruments, LP (Former Grantee: Thermo Measure Tech), Sugar Land, TX.	49 CFR 173.301(a) (1), 173.302a, 175.3.	To modify the special permit to authorize the addition of boron trifluoride to the "Type V" cylinder under paragraph 7.a.(vi) as an alternative to Helium-3 and in Section 7.d to increase the amount of boron trifluoride that is allowed in passenger or cargo aircraft.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
11789–M		Mallard Creek Polymers, Inc., Charlotte, NC.	49 CFR 174.67(i), (j)	To modify the special permit to authorize an additional Class 3 hazardous material.
12929–M		Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.301(j)(1)	To modify the special permit to incorporate updates that have to do with the HMR and the Dangerous Goods Model Regulations.
14190–M		Cordis Corporation, Miami Lakes, FL.	49 CFR 172.200, 172.300, 172.400.	To modify the special permit to remove certain of Class 3 and 9 materials from paragraph 6 and to add additional Class 3, 8, and Division 4.1 materials.
14904–M		Tatonduk Outfitters Limitd dba Everts Air Alaska, Fairbanks, AK.	49 CFR 173.302(f)	To modify the special permit to extend the date in paragraph 11(b) to September 30, 2010.
14906–M		Arctic Transportation Services, Anchorage AK.	49 CFR 173.302(f)	To modify the special permit to extend the date in paragraph 11(b) to September 30, 2010.
14922–M		Peninsula Airways Inc. (PenAir), Anchorage, AK.	49 CFR 173.302(f)	To modify the special permit to extend the date in paragraph 11(b) to September 30, 2010.
14923–M		Spernak Airways, Anchorage, AK.	49 CFR 173.302(f)	To modify the special permit to extend the date in paragraph 11(b) to September 30, 2010.
14925–M		Warbelow's Air Ventures, Inc., Fairbanks, AK.	49 CFR 173.302(f)	To modify the special permit to extend the date in paragraph 11(b) to September 30, 2010.
14931–M		Tucker Aviation Inc., Dillingham, AK.	49 CFR 173.302(f)	To modify the special permit to extend the date in paragraph 11(b) to September 30, 2010.
14974–M		Continental Batteries, Dallas, TX.	49 CFR 173.159(e)(4)	To reissue the special permit originally issued on an emergency basis to authorize transportation in commerce of lead batteries from more than one shipper without voiding the exception in § 173.159(e).

[FR Doc. 2010–14425 Filed 6–16–10; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 19, 2010.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials, Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

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

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
NEW SPECIAL PERMITS				
15025–N		Burlington Containers Brooklyn, NY.	49 CFR 173.226 and 173.227.	To authorize the transportation in commerce of certain materials toxic by inhalation, Hazard Zone A and B, in alternative packaging (mode 1).
15027–N		Northrop Gruman Corporation Baltimore, MD.	49 CFR 173.304a and 173.301(f).	To authorize the transportation in commerce of anhydrous ammonia in non-DOT specification packaging (heat pipes) (modes 1, 3, 4).
15028–N		Roeder Cartage Company LIMA, OH.	49 CFR § 180.407	To authorize the transportation in commerce of certain DOT specification cargo tank motor vehicles that have been tested using alternative methods for the internal visual inspection. (mode 1).

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15031–N	.....	Euro Asia Packaging (Guangdon) Co., Ltd. ZhongShan, Canton.	49 CFR 173.304(d), 173.306(a) and 178.33a.	To authorize the manufacture, marking, sale and use of inner metal receptacles similar to the DOT 2Q specification for the transportation in commerce of certain compressed gases. (modes 1, 2, 3, 4).
15036–N	.....	UTLX Manufacturing, Incorporated Alexandria, LA.	49 CFR 173.31(e)(2)(ii), 173.244(a)(2), 173.314, 179.100, 179.101, 179.102–3, 179.15(b) and 179.16.	To authorize the manufacture, marking, sale and use of a non-DOT specification tank car for transportation of chlorine and certain other materials toxic by inhalation. (mode 2).
15037–N	.....	National aeronautics and Space Administration (NASA) Washington, DC.	49 CFR 173.226 and 173.336.	To authorize the transportation in commerce of non-DOT specification packaging for the transportation in commerce of Dinitrogen tetroxide and Methylhydrazine by motor vehicle. (mode 1).
15038–N	.....	The American Pacific Corporation—In Space Propulsion Niagara Falls, NY.	49 CFR 173.24 (a)(1) and (2) and 173.201.	To authorize the transportation in commerce of Hydrazine, anhydrous in non-DOT specification packaging (Propellant Storage Assembly) by motor vehicle. (mode 1).

[FR Doc. 2010–14426 Filed 6–16–10; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0078]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards or because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

DATES: These decisions became effective on the dates specified in Annex A.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and/or sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notices in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notices of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No substantive comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable FMVSS, is either substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable FMVSS or has safety features that comply with, or is capable of being altered to comply with, all applicable Federal Motor Vehicle Safety Standards.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 9, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

Annex A

Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–2010–0045

Nonconforming Vehicles: 2006–2007 Mercedes Benz G-Class Long Wheelbase Multi-Purpose Passenger Vehicle.

Substantially Similar U.S. Certified Vehicles: 2006–2007 Mercedes Benz G-Class Long Wheelbase Multi-Purpose Passenger Vehicle.

Notice of Petition

Published at: 75 FR 19461 (April 14, 2010).

Vehicle Eligibility Number: VSP–527. (Effective date May 25, 2010.)

2. Docket No. NHTSA–2010–0031

Nonconforming Vehicles: 1991 Porsche 911 Series Passenger Cars.

Substantially Similar U.S. Certified Vehicles: 1991 Porsche 911 Series Passenger Cars.

Notice of Petition

Published at: 75 FR 14484 (March 25, 2010).

Vehicle Eligibility Number: VSP–526. (Effective date May 20, 2010.)

3. Docket No. NHTSA–2009–0191

Nonconforming Vehicles: 2005–2006 Mercedes Benz S Class Passenger Cars Manufactured Before September 1, 2006.

Substantially Similar U.S. Certified Vehicles: 2005–2006 Mercedes Benz S Class Passenger Cars Manufactured Before September 1, 2006.

Notice of Petition

Published at: 75 FR 1117 (January 8, 2010).

Vehicle Eligibility Number: VSP–525. (Effective date February 22, 2010.)

4. Docket No. NHTSA–2009–193

Nonconforming Vehicles: 2001–2002 Ducati MH900E Motorcycles.

Substantially Similar U.S. Certified Vehicles: 2001–2002 Ducati MH900E Motorcycles.

Notice of Petition

Published at: 75 FR 1681 (January 12, 2010).

Vehicle Eligibility Number: VSP–524. (Effective date February 22, 2010.)

5. Docket No. NHTSA–2009–0169

Nonconforming Vehicles: 1994–1999 Bimota SB6 Motorcycles.

Substantially Similar U.S. Certified Vehicles: 1994–1999 Bimota SB6 Motorcycles.

Notice of Petition

Published at: 74 FR 57734 (November 9, 2009).

Vehicle Eligibility Number: VSP–523. (Effective date December 29, 2009.)

6. Docket No. NHTSA–2009–0161

Nonconforming Vehicles: 2009 Harley Davidson FX, FL, XL and VR Series Motorcycles.

Substantially Similar U.S. Certified Vehicles: 2009 Harley Davidson FX, FL, XL and VR Series Motorcycles.

Notice of Petition

Published at: 74 FR 51943 (October 8, 2009).

Vehicle Eligibility Number: VSP–522. (Effective date November 18, 2009.)

7. Docket No. NHTSA–2009–0148

Nonconforming Vehicles: 2003–2006 Mercedes Benz C Class (W203 Chassis) Passenger Cars Manufactured Before September 1, 2006.

Substantially Similar U.S. Certified Vehicles: 2003–2006 Mercedes Benz C Class (W203 Chassis) Passenger Cars Manufactured Before September 1, 2006.

Notice of Petition

Published at: 74 FR 42734 (August 24, 2009).

Vehicle Eligibility Number: VSP–521. (Effective date October 20, 2009.)

8. Docket No. NHTSA–2009–0102

Nonconforming Vehicles: 2006 BMW M3 Passenger Cars Manufactured Before September 1, 2006.

Substantially Similar U.S. Certified Vehicles: 2006 BMW M3 Passenger Cars Manufactured Before September 1, 2006.

Notice of Petition

Published at: 74 FR 26762 (June 3, 2009).

Vehicle Eligibility Number: VSP–520. (Effective date July 29, 2009.)

9. Docket No. NHTSA–2009–0101

Nonconforming Vehicles: 2006 Porsche Cayenne Multipurpose Passenger Vehicles Manufactured Before September 1, 2006.

Substantially Similar U.S. Certified Vehicles: 2006 Porsche Cayenne Multipurpose Passenger Vehicles Manufactured Before September 1, 2006.

Notice of Petition

Published at: 74 FR 26764 (June 3, 2009).

Vehicle Eligibility Number: VSP–519. (Effective date July 29, 2009.)

10. Docket No. NHTSA–2009–0094

Nonconforming Vehicles: 2006 Ferrari 599 Passenger Cars Manufactured Before September 1, 2006.

Substantially Similar U.S. Certified Vehicles: 2006 Ferrari 599 Passenger Cars Manufactured Before September 1, 2006.

Notice of Petition

Published at: 74 FR 24895 (May 26, 2009).

Vehicle Eligibility Number: VSP–518. (Effective date July 7, 2009.)

11. Docket No. NHTSA–2009–0067

Nonconforming Vehicles: 2008 Harley Davidson FX, FL, XL and VR Series Motorcycles.

Substantially Similar U.S. Certified Vehicles: 2008 Harley Davidson FX, FL, XL and VR Series Motorcycles.

Notice of Petition

Published at: 74 FR 18036 (April 20, 2009).

Vehicle Eligibility Number: VSP–517. (Effective date May 27, 2009.)

12. Docket No. NHTSA–2009–0212

Nonconforming Vehicles: 2007 Chevrolet Trailblazer Multipurpose Passenger Vehicle Manufactured Before September 1, 2007, for sale in Kuaiti Market.

Substantially Similar U.S. Certified Vehicles: 2007 Chevrolet Trailblazer Multipurpose Passenger Vehicle Manufactured Before September 1, 2007.

Notice of Petition

Published at: 74 FR 1276 (January 12, 2009).

Vehicle Eligibility Number: VSP–514. (Effective date February 18, 2009.)

13. Docket No. NHTSA–2008–0186

Nonconforming Vehicles: 2005–2006 Porsche 911 Carrera Cabriolet Passenger Cars Manufactured Before September 1, 2006.

Substantially Similar U.S. Certified Vehicles: 2005–2006 Porsche 911 Carrera Cabriolet Passenger Cars Manufactured Before September 1, 2006.

Notice of Petition

Published at: 73 FR 75172 (December 10, 2008).

Vehicle Eligibility Number: VSP–513. (Effective date January 16, 2009.)

14. Docket No. NHTSA–2008–0139

Nonconforming Vehicles: 2005–2006 Mercedes Benz SLK Class (171 Chassis) Passenger Cars.

Substantially Similar U.S. Certified Vehicles: 2005–2006 Mercedes Benz SLK Class (171 Chassis) Passenger Cars.

Notice of Petition

Published at: 73 FR 51550 (September 3, 2008).

Vehicle Eligibility Number: VSP–511. (Effective date October 14, 2008.)

15. Docket No. NHTSA–2010–0014

Nonconforming Vehicles: 2009 AL–SPAW EMA Mobile Stage Trailers.

Because there are no substantially similar U.S.-certified version 2009 AL–SPAW EMA Mobile Stage Trailers, the petitioner sought import eligibility under 49 U.S.C. 30141 (a) (1) (B).

Notice of Petition

Published at: 75 FR 9019 (February 26, 2010).

Vehicle Eligibility Number: VCP–42. (Effective date April 6, 2010.)

[FR Doc. 2010–14565 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Ritron, Incorporated

[Waiver Petition Docket Number FRA–2009–0015]

Ritron, Incorporated (Ritron) seeks a waiver of compliance from certain provisions of 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, Section 232.409(d)—Inspection and testing of end-of-train devices, which requires the telemetry equipment to be tested for accuracy and calibrated, if necessary at least every 368 days. It also requires that the date and location of the last calibration or test, as well as the name of the person performing the calibration or test, be legibly displayed on a weather-resistant sticker or other marking device affixed to the outside of both the front and the rear unit.

This petition concerns Ritron models DTX–445 and DTX–454 radio transceiver modules. While the DTX–445 is a new product, it is similar in mechanical and electrical design to the model DTX–442, and its field reliability statistical performance should be representative of the performance of the DTX–445. The DTX–454 is an established product, having been in production for 7 years. These modules are used in a large number of U.S. railroad head-of-train (HOT) and end-of-train (EOT) devices manufactured and sold by various companies. The Ritron DTX transceiver module line has been in production from 4 to 8 years, depending upon the specific module. These transceivers use a master reference oscillator to determine the frequency stability of the transmitted signal. The actual transmitted signal is phase-locked to this master oscillator by the phase-locked loop (PLL). Circuitry within the PLL determines when the system is in "lock" and will prevent or inhibit transmission if the transmitted signal is not on frequency. The master oscillator, itself, is specified to a much higher accuracy than that required by Federal regulations. This oscillator is used in all of Ritron's extensive radio offerings and, to date, has never had a failure due to being out of tolerance.

In addition, the modulation circuitry used in the DTX radios is based upon very stable limiting operational amplifiers followed by passive filters and potentiometers. This has proven to be extremely reliable and has not produced any failures related to out-of-band emissions. The power control circuitry is different in the various versions of the DTX family, but is based either on a closed loop final amplifier current sensing design or an open loop lookup table. Both have shown to work well in the field and are believed to have caused little, if any, service issues.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0015) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on June 10, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–14479 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Ford Petition for Exemption From the Vehicle Theft Prevention Standard; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice; correction.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) published a document in the **Federal Register** of May 28, 2010, granting in full Ford Motor Company's (Ford) petition for an exemption of its new Explorer vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This document corrects certain aspects of the new Explorer vehicle line published in

the "Summary" and "Supplemental Information" section. All previous information associated with the published notice remains the same.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

Correction

In the **Federal Register** of May 28, 2010, in FR Doc. 2010–12950, on page 30103, correct the second column, last sentence of the "Summary" section to read:

"The agency addressed Ford's request for confidential treatment by letter dated March 16, 2010."

On page 30104, the first complete paragraph, line 16, correct the word "contol" to read "control."

On page 30104, the first complete paragraph, last complete sentence, correct the sentence to read:

"Ford pointed out that in addition to the programmed key, the three modules that must be matched to start the vehicle adds even an additional level of security to the IAwPB device. In both devices, if the codes do not match, the vehicle will be inoperable."

Issued on: June 11, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–14570 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Volkswagen Petition for Exemption From the Vehicle Theft Prevention Standard; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice; correction.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) published a document in the **Federal Register** of May 27, 2010, granting in full Volkswagen Group of America's (Volkswagen) petition for an exemption of a new [confidential nameplate] vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This document corrects the model year of the new Volkswagen vehicle line published in the "Summary" section. All previous information associated with the published notice remains the same.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

Correction

In the **Federal Register** of May 27, 2010, in FR Doc. 2010–12809, on page 29814, in the first column, correct the "Summary" section to read:

SUMMARY: This document grants in full the Volkswagen Group of America (Volkswagen) petition for an exemption of the new vehicle line [confidential nameplate] in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of the Theft Prevention Standard (49 CFR part 541). Volkswagen requested confidential treatment for the information it submitted in support of its petition until the market introduction of its new MY 2012 vehicle line (expected to be not later than December 2011). The agency addressed Volkswagen's request for confidential treatment by letter dated April 30, 2010.

Issued on: June 11, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–14575 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0055]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SOULMATE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0055 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0055. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.govhttp://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SOULMATE is:

INTENDED COMMERCIAL USE OF VESSEL: "I intend to offer day charters and short (up to 1 week) charters for special occasions (anniversaries, birthdays etc.) or for business entertainment. The vessel will always

be crewed and never bare boat chartered, thus providing a boost to our local economy." GEOGRAPHIC REGION: "Florida and Bahamas."

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).

By Order of the Maritime Administrator.

Dated: June 11, 2010.

Julie P. Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–14689 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0058]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PRIDE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0058 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0058. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.govhttp://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PRIDE is:

Intended Commercial Use of Vessel: "pleasure charters taking 6 passengers for hire."

Geographic Region: "ME, MA, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA, FL."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 11, 2010.

Julie P. Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–14694 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0057]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ERIC K.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0057 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0057. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov http://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except

Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ERIC K is:

Intended Commercial Use of Vessel: "Charter and teaching trawler skills."

Geographic Region: "Washington State."

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).

By Order of the Maritime Administrator.

Dated: June 11, 2010.

Julie P. Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–14692 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0056]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WALLHANGER.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0056 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0056. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.govhttp://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WALLHANGER is:

Intended Commercial Use of Vessel: "charter fishing 6 pack."

Geographic Region: "Ohio."

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).

By Order of the Maritime Administration.

Dated: June 11, 2010.

Julie P. Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–14691 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0054]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CEST LA VIE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0054 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 19, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0054. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West

Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov/smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CEST LA VIE is:

Intended Commercial Use of Vessel: "Vessel Chartering Operations."

Geographic Region: "Intended operations will be the west coast of the U.S. California, Oregon, and Washington."

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).

By Order of the Maritime Administrator.

Dated: June 11, 2010.

Julie P. Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–14688 Filed 6–16–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35371]

Nittany & Bald Eagle Railroad Company—Temporary Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR), pursuant to a written trackage rights agreement dated April 13, 2010, has agreed to grant nonexclusive overhead temporary trackage rights to Nittany & Bald Eagle Railroad Company (N&BE), between Lock Haven and Driftwood, Pa., from milepost BR 194.2 to milepost BR 139.2, a distance of approximately 55 miles.[1]

The transaction may be consummated on or after July 1, 2010, and the temporary trackage rights are scheduled to expire on December 15, 2010. The purpose of the temporary trackage rights is to allow N&BE adequate bridge train service for temporary, seasonal traffic originating on the N&BE for delivery to an off-line destination.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad and The Union Pacific Railroad Company—Abandonment—Portion Goshen Branch Between Firth and Ammon, in Bingham and Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than June 24, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35371, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, 518 N. Center Street, Suite 1, Ebensburg, PA 15931.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: June 14, 2010.

[1] A redacted, executed trackage rights agreement between NSR and N&BE was filed with the notice of exemption. The unredacted version was concurrently filed under seal along with a motion for protective order, which will be addressed in a separate decision.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–14664 Filed 6–16–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Analysis by the President's Working Group on Financial Markets on the Long-Term Availability and Affordability of Insurance for Terrorism Risk

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice; request for comments.

SUMMARY: The Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322), as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110–160, 121 Stat. 1839), requires the President's Working Group on Financial Markets to perform an on-going analysis regarding the long-term availability and affordability of insurance for terrorism risk.

The President's Working Group on Financial Markets (established by Executive Order 12631) is comprised of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission (or their designees). The Secretary of the Treasury, or his designee, is the Chairman of the President's Working Group on Financial Markets. As chair of the President's Working Group on Financial Markets, Treasury is issuing this Notice for public comment to assist the President's Working Group with its analysis.

DATES: Comments must be in writing and received by August 2, 2010.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail (if hard copy, preferably an original and two copies) to Treasury's Office of Financial Institutions Policy, Attention: President's Working Group on Financial Markets Public Comment Record, Room 1417 MT, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captioned with "President's Working Group on Financial Markets: Terrorism Risk Insurance Analysis."

Please include your name, affiliation, address, e-mail address and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary (no more than five single-spaced pages).

In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. In addition, all comments received will be available for public inspection by appointment at the Reading Room of the Treasury Library. To make appointments, please call the number below.

FOR FURTHER INFORMATION CONTACT: C. Christopher Ledoux, Acting Director, Office of Financial Institutions Policy, 202–622–2730 (not a toll free number).

SUPPLEMENTARY INFORMATION: The Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322) (hereinafter referenced as "TRIA") was enacted on November 26, 2002. TRIA's purposes are to address market disruptions, to ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections. Title I of TRIA established a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, as defined in the Act. TRIA authorized Treasury to administer and implement the Terrorism Risk Insurance Program (hereinafter referenced as the "Program"), including the issuance of regulations and procedures.

As originally enacted, the Program was to end on December 31, 2005; however, on December 22, 2005, the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–144, 119 Stat. 2660) was enacted, which extended the Program through December 31, 2007. On December 26, 2007, the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110–160, 121 Stat. 1839) was enacted, which extended the Program through December 31, 2014.

Section 108(e) of TRIA, as amended by the Terrorism Risk Insurance Extension Act of 2005, required the President's Working Group on Financial Markets to perform an analysis and report to Congress regarding the long-term availability and affordability of insurance for terrorism risk, including group life coverage and coverage for chemical, nuclear, biological, and radiological events.

In September 2006, the President's Working Group on Financial Markets submitted a report to Congress on Terrorism Risk Insurance. That report can be accessed at *http://www.treas.gov/offices/domestic-finance/financial-institution/terrorism-insurance/pdf/report.pdf.* The report found that the availability and affordability of terrorism risk insurance had improved since the terrorist attacks of September 11, 2001, including that pricing for terrorism risk insurance had fallen and take-up (purchase) rates had risen. The improvement was due to several factors including better risk measurement and management, improved modeling of terrorism risk, increased reinsurance capacity, and the financial condition of property and casualty insurers. Still, the report also found that a significant number of policyholders were not purchasing coverage at that time. The report found that group life insurance (which is not included in the Program) remained generally available, that prices had declined, and that there had been improvements in the availability of catastrophic life reinsurance. The report concluded that there appeared to be little potential for future market development of terrorism risk insurance for losses associated with chemical, nuclear, biological, and radiological attacks.

In addition to extending the Program through 2014, the Terrorism Risk Insurance Program Reauthorization Act of 2007 amended Section 108 of TRIA to require an on-going analysis by the President's Working Group on Financial Markets regarding the long-term availability and affordability of insurance for terrorism risk generally. The President's Working Group on Financial Markets is required to submit a report to Congress in 2010 (and another report again, in 2013). The President's Working Group on Financial Markets is to conduct its analysis in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policyholders. This Notice seeks comment from these and any other interested parties as a means of satisfying the consultation requirement in the most open and efficient manner.

I. General Solicitation for Comments About the Long-Term Availability and Affordability of Terrorism Risk Insurance

Please comment generally; and please include data and other information in support of such comments, where appropriate and available, regarding the long-term availability and affordability of insurance for terrorism risk. All relevant views and comments are invited.

In addition, please consider providing comments in response to the following specific questions:

II. Specific Questions

Key Factors

1. What are the key factors that determine the availability and affordability of terrorism risk insurance coverage? How are these factors being measured and projected today? What factors will determine the availability and affordability of terrorism risk insurance long-term? The President's Working Group on Financial Markets discussed various factors in its 2006 report, referenced above; how have these factors changed or developed since then?

2. What are the key factors that determine the amount of private-market insurer and reinsurer capacity made available for terrorism risk insurance coverage? How have these factors changed since 2006, when the President's Working Group on Financial Markets issued its last report? How will such factors evolve in the long-term and upon what factors will available capacity most depend?

Economic Factors

3. How, in general, has the state of the financial markets and economy, and the financial condition of commercial property and casualty insurers, affected the availability and affordability of terrorism risk insurance; and how does that compare with effects on the availability and affordability of other lines or types of commercial property and casualty insurance? Please comment on potential entry of new capital into, as well as any exits from, the terrorism insurance and reinsurance markets.

Underwriting

4. What changes and improvements have taken place in the ability of insurers to measure and manage their accumulation of terrorism risk exposures, and how (as well as to what extent) are primary insurers using

available methods? Has improved risk accumulation management led to more availability? Has there been any improvement in modeling of frequency and terrorist behavior? What has been learned from the near-9 years of experience in managing and assessing terrorism risk since September 11, 2001? Overall, how has modeling improved and/or continued to develop since 2006, when the President's Working Group on Financial Markets issued its last report? How is modeling expected to evolve further in the long-term?

5. What role do mitigation and loss prevention play in underwriting and pricing terrorism risk insurance? How has mitigation developed since 2002, what improvements have been made since 2006, to what effect has the availability of terrorism risk insurance had on mitigation and vice versa; and, how will mitigation evolve in the long-term?

6. What is the state of information sharing between and among the private and official sectors related to terrorism risk: (a) How much reliance is placed on open and private source intelligence; (b) how has it affected the availability and affordability of terrorism risk insurance; and, (c) how will such information processes further develop and affect the availability and affordability of terrorism risk insurance in the long-term?

Coverage

7. What changes and improvements have taken place with regard to the types of terrorism risk insurance coverage available in the market? What changes and improvements have taken place since 2006? Have there been improvements and changes in forms, are there special terms or conditions? What is the state of standalone, "TRIA-only" coverage? Is available coverage limited to, or broader than that required to be made available under TRIA?

8. What are the differences in availability and affordability of terrorism risk insurance coverage for foreign and domestic terrorist acts?

9. Did the Terrorism Risk Insurance Program Reauthorization Act of 2007's amendment to the definition of "act of terrorism" lead to more availability due to the requirement that such coverage be made available, or was such coverage available prior to 2007; conversely, did the amendment lead to less coverage due to the broadened scope of "act of terrorism" exclusions, or were exclusions revised to distinguish between coverage of foreign and domestic terrorist acts?

10. What are the differences in availability and affordability of terrorism risk insurance coverage for losses at U.S. locations, as compared to such coverage for losses at non-U.S. locations? What are the differences as compared between TRIA-covered locations and non-TRIA locations?

Policyholder Demand

11. How has the demand for terrorism risk insurance changed since 2006, when the President's Working Group on Financial Markets issued its last report? Please comment on take-up by policyholder sector, location, line, and other relevant characteristics. How have any changes in demand influenced the willingness of insurers to allocate capital to terrorism risk insurance? Has there been any impact on the amount of capital allocated to non-terrorism coverage or among lines of insurance?

12. To what extent have businesses used captive insurance companies to provide terrorism risk insurance, and what is the potential for the use of captive insurers to insure against such risk long-term? How have stand-alone terrorism captives developed, and how will these evolve long-term, including after the expiration of the Program in 2014?

13. Have State approaches (such as those applicable to mandatory coverage, permitted exclusions, and rate regulation) made coverage more or less available and affordable? Have there been any changes in State insurance regulation of terrorism risk insurance since the Terrorism Risk Insurance Program Reauthorization Act of 2007 was enacted? To what extent has the availability and affordability of terrorism risk insurance been influenced by State insurance regulation, and what role is State regulation expected to have long-term? Please comment on State-approved terrorism related rate loads.

14. What are the differences in availability and affordability of terrorism risk insurance between the licensed/admitted market and the non-admitted/surplus lines market, and to what degree are those differences attributable to the degree and manner in which each market is regulated?

Price of Insurance

15. What improvements have taken place in the ability of insurers to price terrorism risk insurance? How are rating organizations assisting insurers in pricing, and how have rating factors developed?

16. What have been the trends in pricing of terrorism risk insurance? Please comment on the extent to which such coverage is not priced and charged-for. How has pricing changed since 2006, when the President's Working Group on Financial Markets issued its last report? To what do you attribute any changes?

17. How has the recent "soft market" impacted the availability of and affordability of terrorism risk insurance? What would be the impact on the availability and affordability of terrorism risk insurance should the market "harden" in the near future?

18. How were primary insurers' pricing decisions affected by the Terrorism Risk Insurance Program Reauthorization Act of 2007, particularly as to the requirement to make available coverage for acts of terrorism being no longer defined as limited to those committed on behalf of any foreign person or foreign interest?

Reinsurance

19. What is the current availability and cost of reinsurance to cover terrorism risk? Please distinguish by line or type of insurance being reinsured and on what basis (treaty or facultative). How has the terrorism reinsurance market changed since 2006, when the President's Working Group on Financial Markets issued its last report? To what do you attribute any changes?

20. At what policyholder retention levels are insurance programs being structured by policyholders to cover terrorism risk (*e.g.,* deductibles, self-insurance, captives); and, with regard to insurers, how are reinsurance programs being structured and at what attachment points? Please comment on the availability and affordability of reinsurance for terrorism risk.

21. Are reinsurers allocating more capital to terrorism risk insurance, and has capacity changed since 2006, when the President's Working Group on Financial Markets issued its last report? Are insurers willing to pay the cost of terrorism risk reinsurance, and is that a factor affecting the allocation of capital to the risk; how much additional capital could be attracted long-term?

22. How have provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 affected the terrorism risk reinsurance market? More specifically, how has maintaining and not increasing the insurer deductible percentage applied against direct earned premiums (from Program lines), as well as not decreasing the Federal share of losses above the insurer deductible, affected the provision and development of private reinsurance?

23. To what extent have alternate risk transfer methods (*e.g.,* catastrophe bonds or other capital market instruments) been successfully or unsuccessfully used for terrorism risk insurance, and what is the potential for

the long-term development of these approaches?

Losses Associated With Chemical, Nuclear, Biological, and Radiological (CNBR) Acts

24. What is the current availability and affordability of coverage for CNBR events? For what perils is coverage available, subject to what limits, and under what policy terms and conditions? Is there a difference in the availability and affordability of coverage for CNBR events caused by acts of terrorism? To what extent have various States allowed insurers to exclude coverage for CNBR events (Please comment on requirements for workers' compensation and fire-following coverage.)? How have exclusions developed?

25. Is it the case that some insurers appear unwilling to provide coverage for CNBR events caused by acts of terrorism, despite TRIA limits on an insurer's maximum loss exposure? If so, why?

26. In the long-term, what are the key factors that will determine the availability and affordability of terrorism risk insurance coverage for CNBR events? The President's Working Group on Financial Markets previously reported that there appeared to be little potential for market development. Has anything changed since 2006?

Deductible and Co-Share Levels

27. Under the Program, an insurer's annual deductible is a percentage of certain direct earned premiums (as defined by TRIA and regulation). TRIA, as originally enacted, graduated the percentage applied for each year. The Terrorism Risk Insurance Program Reauthorization Act of 2007 established a set percentage of 20 percent for each Program year beginning in 2007. Please comment for each year since 2006 as to whether direct earned premiums in TRIA lines and insurer deductibles have increased or decreased? If so, in what amounts? Please provide data as available.

28. How might any increases to the insurer deductible level or decreases to the Federal share above such deductible levels, prior to the Program's expiration in 2014, affect the availability and affordability of terrorism risk insurance? Please comment on the degree, amount or increment of any recommended increase.

Expiration of the Program

29. Describe efforts undertaken by the insurance industry and/or policyholders since 2006, when the President's Working Group on Financial Markets issued its last report, to ensure the availability and affordability of terrorism risk insurance after 2014 when the Program expires, and long-term?

30. Please comment on any anticipated State approaches to ensure the continued availability and affordability of terrorism risk insurance after the Program expires in 2014 (such as those approaches taken by the States after September 11, 2001 and before TRIA was enacted on November 26, 2002).

31. Please comment on any other developments in markets that might affect the continued availability and affordability of terrorism risk insurance.

32. In the absence of the Program, in what forms, at what levels, under what terms and conditions, and at what price might terrorism risk insurance be available; and, at what duration (*i.e.,* long-term)? Please distinguish from State-mandated coverage, such as workers' compensation and fire insurance.

Michael S. Barr,

Assistant Secretary of the Treasury.

[FR Doc. 2010–14639 Filed 6–16–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Deposits

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before July 19, 2010. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at *ira.mills@ots.treas.gov*, (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Deposits.

OMB Number: 1550–0093.

Form Number: N/A.

Regulation requirement: 12 CFR Parts 557.20, 230.3, 230.4, 230.5 and 230.6.

Description: Section 557.20 requires savings associations to establish and maintain deposit documentation practices and records. These records should include adequate evidence of ownership, balances, and all transactions involving the account. In addition, part 557 relies on the disclosure regulations applicable to savings associations under Regulation DD. Regulation DD implements the Truth in Savings Act, part of the Federal Deposit Insurance Corporation Improvement Act of 1991.

The regulations assist consumers in comparing deposit accounts offered by depository institutions. Consumers receive disclosures about fees, annual percentage yield, interest rate, and other account terms whenever a consumer requests the information and before the consumer opens an account. The regulation also requires that savings associations provide fees and other information on any periodic statement the institution sends to the consumer. Regulation DD contains rules for advertisements of deposit accounts and

advance notices to account holders of adverse changes in terms.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 759.

Estimated Burden Hours per Response: 1 hour and 8 minutes.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 1,122,206 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: June 11, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–14545 Filed 6–16–10; 8:45 am]

BILLING CODE 6720–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Mark Winter, Tennessee Valley Authority, 1101 Market Street (MP–3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

Comments should be sent to the Agency Clearance Officer or to OMB Office of Information & Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority, Washington, DC, 20503, no later than *July 19, 2010.*

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Section 26a Permit Application.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, state or local governments, farms, businesses, or other for-profit Federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 4000.

Estimated Total Annual Burden Hours: 8000.

Estimated Average Burden Hours per Response: 2.0.

Need For and Use of Information: TVA Land Management activities and Section 26a of the Tennessee Valley Authority Act of 1933, as amended, require TVA to collect information relevant to projects that will impact TVA land and land rights and review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information is collected via paper forms and/or electronic submissions and is used to assess the impact of the proposed project on TVA land or land rights and statutory TVA programs to determine if the project can be approved. Rules for implementation of TVA's Section 26a responsibilities are published in 18 CFR part 1304.

James W. Sample,

Director of CyberSecurity.

[FR Doc. 2010–14560 Filed 6–16–10; 8:45 am]

BILLING CODE 8120–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—June 30, 2010, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Daniel M. Slane, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China."

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on June 30, 2010, titled "China's Information Control Practices and the Implications for the United States."

Background

This is the seventh public hearing the Commission will hold during its 2010 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The June 30 hearing will examine the adequacy and integrity of information available to U.S. investors about Chinese companies operating in the United States. The June 30 hearing will be Co-chaired by Commissioners Jeffrey Fiedler and Robin Cleveland.

Any interested party may file a written statement by June 30, 2010, by mailing to the contact below. On June 30, the hearing will be held in two sessions, one in the morning and one in the afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Transcripts of past Commission public hearings may be obtained from the USCC Web Site *http://www.uscc.gov.*

DATE AND TIME: Thursday, June 30, 2010, 9 a.m. to 4:30 p.m. Eastern Daylight Time. A detailed agenda for the hearing will be posted to the Commission's Web Site at *http://www.uscc.gov* as soon as available.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 of the Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

AUTHORITY: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: June 11, 2010.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2010–14553 Filed 6–16–10; 8:45 am]

BILLING CODE 1137–00–P

Federal Register

Thursday,
June 17, 2010

Part II

Department of the Treasury
Internal Revenue Service
26 CFR Parts 54 and 602

Department of Labor
Employee Benefits Security Administration
29 CFR Part 2590

Department of Health and Human Services
45 CFR Part 147

Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act; Interim Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 54 and 602

[TD 9489]

RIN 1545–BJ51

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB42

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OCIIO–9991–IFC]

45 CFR Part 147

RIN 0991–AB68

Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Office of Consumer Information and Insurance Oversight, Department of Health and Human Services.

ACTION: Interim final rules with request for comments.

SUMMARY: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding status as a grandfathered health plan.

DATES: *Effective date.* These interim final regulations are effective on June 14, 2010, except that the amendments to 26 CFR 54.9815–2714T, 29 CFR 2590.715–2714, and 45 CFR 147.120 are effective July 12, 2010.

Comment date. Comments are due on or before August 16, 2010.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to any Department will be shared with the other Departments. Please do not submit duplicates.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB42, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: E-OHPSCA1251.EBSA@dol.gov.*
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* RIN 1210–AB42.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Department of Health and Human Services. In commenting, please refer to file code OCIIO–9991–IFC. Because of staff and resource limitations, the Departments cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: OCIIO–9991–IFC, P.O. Box 8016, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: OCIIO–9991–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the OCIIO drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. The Departments post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To

schedule an appointment to view public comments, phone 1–800–743–3951.

Internal Revenue Service. Comments to the IRS, identified by REG–118412–10, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* CC:PA:LPD:PR (REG–118412–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–118412–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

All submissions to the IRS will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Jim Mayhew, Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, at (410) 786–1565.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*http://www.cms.hhs.gov/HealthInsReformforConsume/01_Overview.asp*) and information on health reform can be found at *http://www.healthreform.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act (the Affordable Care Act), Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act (the Reconciliation Act), Public Law 111–152, was enacted on March 30, 2010. The Affordable Care Act and the Reconciliation Act reorganize, amend, and add to the provisions in part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The term "group health plan" includes both insured and self-insured group health plans.[1] The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by this reference are sections 2701 through 2728. PHS Act sections 2701 through 2719A are substantially new, though they incorporate some provisions of prior law. PHS Act sections 2722 through 2728 are sections of prior law renumbered, with some, mostly minor, changes. Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, specifies that certain plans or coverage existing as of the date of enactment (that is, grandfathered health plans) are only subject to certain provisions.

The Affordable Care Act also adds section 715(a)(2) of ERISA, which provides that, to the extent that any provision of part 7 of ERISA conflicts with part A of title XXVII of the PHS Act with respect to group health plans or group health insurance coverage, the PHS Act provisions apply. Similarly, the Affordable Care Act adds section 9815(a)(2) of the Code, which provides that, to the extent that any provision of subchapter B of chapter 100 of the Code conflicts with part A of title XXVII of the PHS Act with respect to group health plans or group health insurance coverage, the PHS Act provisions apply. Therefore, although ERISA section 715(a)(1) and Code section 9815(a)(1) incorporate by reference new provisions, they do not affect preexisting sections of ERISA or the Code unless they cannot be read consistently with an incorporated provision of the PHS Act. For example, ERISA section 732(a) generally provides that part 7 of ERISA—and Code section 9831(a) generally provides that chapter 100 of the Code—does not apply to plans with less than two participants who are current employees (including retiree-only plans that cover less than two participants who are current employees). Prior to enactment of the Affordable Care Act, the PHS Act had a parallel provision at section 2721(a). After the Affordable Care Act amended, reorganized, and renumbered most of title XXVII of the PHS Act, that exception no longer exists. Similarly, ERISA section 732(b) and (c) generally provides that the requirements of part 7 of ERISA—and Code section 9831(b) and (c) generally provides that the requirements of chapter 100 of the Code—do not apply to excepted benefits.[2] Prior to enactment of the Affordable Care Act, the PHS Act had a parallel section 2721(c) and (d) that indicated that the provisions of subparts 1 through 3 of part A of title XXVII of the PHS Act did not apply to excepted benefits. After the Affordable Care Act amended and renumbered PHS Act section 2721(c) and (d) as section 2722(b) and (c), that exception could be read to be narrowed so that it applies only with respect to subpart 2 of part A of title XXVII of the PHS Act, thus, in effect requiring excepted benefits to comply with subparts I and II of part A.

The absence of an express provision in part A of title XXVII of the PHS Act does not create a conflict with the relevant requirements of ERISA and the Code. Accordingly, the exceptions of ERISA section 732 and Code section 9831 for very small plans and certain retiree-only health plans, and for excepted benefits, remain in effect and, thus, ERISA section 715 and Code section 9815, as added by the Affordable Care Act, do not apply to such plans or excepted benefits.

Moreover, there is no express indication in the legislative history of an intent to treat issuers of group health insurance coverage or nonfederal governmental plans (that are subject to the PHS Act) any differently in this respect from plans subject to ERISA and the Code. The Departments of Health and Human Services, Labor, and the Treasury (the Departments) operate under a Memorandum of Understanding (MOU)[3] that implements section 104 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), enacted on August 21, 1996, and subsequent amendments, and provides that requirements over which two or more Secretaries have responsibility ("shared provisions") must be administered so as to have the same effect at all times. HIPAA section 104

[1] The term "group health plan" is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term "health plan", as used in other provisions of title I of the Affordable Care Act. The term "health plan" does not include self-insured group health plans.

[2] Excepted benefits generally include dental-only and vision-only plans, most health flexible spending arrangements, Medigap policies, and accidental death and dismemberment coverage. For more information on excepted benefits, see 26 CFR 54.9831–1, 29 CFR 2590.732, 45 CFR 146.145, and 45 CFR 148.220.

[3] *See* 64 FR 70164 (December 15, 1999).

also requires the coordination of policies relating to enforcing the shared provisions in order to avoid duplication of enforcement efforts and to assign priorities in enforcement.

There is no express statement of intent that nonfederal governmental retiree-only plans should be treated differently from private sector plans or that excepted benefits offered by nonfederal governmental plans should be treated differently from excepted benefits offered by private sector plans. Because treating nonfederal governmental retiree-only plans and excepted benefits provided by nonfederal governmental plans differently would create confusion with respect to the obligations of issuers that do not distinguish whether a group health plan is subject to ERISA or the PHS Act, and in light of the MOU, the Department of Health and Human Services (HHS) does not intend to use its resources to enforce the requirements of HIPAA or the Affordable Care Act with respect to nonfederal governmental retiree-only plans or with respect to excepted benefits provided by nonfederal governmental plans.

PHS Act section 2723(a)(2) (formerly section 2722(a)(2)) gives the States primary authority to enforce the PHS Act group and individual market provisions over group and individual health insurance issuers. HHS enforces these provisions with respect to issuers only if it determines that the State has "failed to substantially enforce" one of the Federal provisions. Furthermore, the PHS Act preemption provisions allow States to impose requirements on issuers in the group and individual markets that are more protective than the Federal provisions. However, HHS is encouraging States not to apply the provisions of title XXVII of the PHS Act to issuers of retiree-only plans or of excepted benefits. HHS advises States that if they do not apply these provisions to the issuers of retiree-only plans or of excepted benefits, HHS will not cite a State for failing to substantially enforce the provisions of part A of title XXVII of the PHS Act in these situations.

Subtitles A and C of title I of the Affordable Care Act amend the requirements of title XXVII of the PHS Act (changes to which are incorporated into ERISA section 715). The preemption provisions of ERISA section 731 and PHS Act section 2724 [4] (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the requirements of part 7 of ERISA and title XXVII of PHS Act, as amended by the Affordable Care Act, are not to be "construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group or individual health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of the Affordable Care Act. Accordingly, State laws that impose on health insurance issuers requirements that are stricter than the requirements imposed by the Affordable Care Act will not be superseded by the Affordable Care Act.

The Departments are issuing regulations implementing the revised PHS Act sections 2701 through 2719A in several phases. The first publication in this series was a Request for Information relating to the medical loss ratio provisions of PHS Act section 2718, published in the **Federal Register** on April 14, 2010 (75 FR 19297). The second publication was interim final regulations implementing PHS Act section 2714 (requiring dependent coverage of children to age 26), published in the **Federal Register** on May 13, 2010 (75 FR 27122). This document contains interim final regulations implementing section 1251 of the Affordable Care Act (relating to grandfathered health plans), as well as adding a cross-reference to these interim final regulations in the regulations implementing PHS Act section 2714. The implementation of other provisions in PHS Act sections 2701 through 2719A will be addressed in future regulations.

II. Overview of the Regulations: Section 1251 of the Affordable Care Act, Preservation of Right To Maintain Existing Coverage (26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140)

A. Introduction

Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, provides that certain group health plans and health insurance coverage existing as of March 23, 2010 (the date of enactment of the Affordable Care Act), are subject only to certain provisions of the Affordable Care Act. The statute and these interim final regulations refer to these plans and health insurance coverage as grandfathered health plans.

The Affordable Care Act balances the objective of preserving the ability of individuals to maintain their existing coverage with the goals of ensuring access to affordable essential coverage and improving the quality of coverage. Section 1251 provides that nothing in the Affordable Care Act requires an individual to terminate the coverage in which the individual was enrolled on March 23, 2010. It also generally provides that, with respect to group health plans or health insurance coverage in which an individual was enrolled on March 23, 2010, various requirements of the Act shall not apply to such plan or coverage, regardless of whether the individual renews such coverage after March 23, 2010. However, to ensure access to coverage with certain particularly significant protections, Congress required grandfathered health plans to comply with a subset of the Affordable Care Act's health reform provisions. Thus, for example, grandfathered health plans must comply with the prohibition on rescissions of coverage except in the case of fraud or intentional misrepresentation and the elimination of lifetime limits (both of which apply for plan years, or in the individual market, policy years, beginning on or after September 23, 2010). On the other hand, grandfathered health plans are not required to comply with certain other requirements of the Affordable Care Act; for example, the requirement that preventive health services be covered without any cost sharing (which otherwise becomes generally applicable for plan years, or in the individual market, policy years, beginning on or after September 23, 2010).

A number of additional reforms apply for plan years (in the individual market, policy years) beginning on or after January 1, 2014. As with the requirements effective for plan years (in the individual market, policy years) beginning on or after September 23, 2010, grandfathered health plans must then comply with some, but not all of these reforms. See Table 1 in section II.D of this preamble for a list of various requirements that apply to grandfathered health plans.

In making grandfathered health plans subject to some but not all of the health reforms contained in the Affordable Care Act, the statute balances its objective of preserving the ability to maintain existing coverage with the goals of expanding access to and improving the quality of health coverage. The statute does not, however, address at what point changes to a group health plan or health insurance coverage in which an individual was

[4] Code section 9815 incorporates the preemption provisions of PHS Act section 2724. Prior to the Affordable Care Act, there were no express preemption provisions in chapter 100 of the Code.

enrolled on March 23, 2010 are significant enough to cause the plan or health insurance coverage to cease to be a grandfathered health plan, leaving that question to be addressed by regulatory guidance.

These interim final regulations are designed to ease the transition of the healthcare industry into the reforms established by the Affordable Care Act by allowing for gradual implementation of reforms through a reasonable grandfathering rule. A more detailed description of the basis for these interim final regulations and other regulatory alternatives considered is included in section IV.B later in this preamble.

B. Definition of Grandfathered Health Plan Coverage in Paragraph (a) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 of These Interim Final Regulations

Under the statute and these interim final regulations, a group health plan or group or individual health insurance coverage is a grandfathered health plan with respect to individuals enrolled on March 23, 2010. Paragraph (a)(1) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 of these interim final regulations provides that a group health plan or group health insurance coverage does not cease to be grandfathered health plan coverage merely because one or more (or even all) individuals enrolled on March 23, 2010 cease to be covered, provided that the plan or group health insurance coverage has continuously covered someone since March 23, 2010 (not necessarily the same person, but at all times at least one person). The determination under the rules of these interim final regulations is made separately with respect to each benefit package made available under a group health plan or health insurance coverage.

Moreover, these interim final regulations provide that, subject to the rules of paragraph (f) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 for collectively bargained plans, if an employer or employee organization enters into a new policy, certificate, or contract of insurance after March 23, 2010 (because, for example, any previous policy, certificate, or contract of insurance is not being renewed), then that policy, certificate, or contract of insurance is not a grandfathered health plan with respect to the individuals in the group health plan. Any policies sold in the group and individual health insurance markets to new entities or individuals after March 23, 2010 will not be grandfathered health plans even if the health insurance products sold to those subscribers were offered in the group or individual market before March 23, 2010.

To maintain status as a grandfathered health plan, a plan or health insurance coverage (1) must include a statement, in any plan materials provided to participants or beneficiaries (in the individual market, primary subscribers) describing the benefits provided under the plan or health insurance coverage, that the plan or health insurance coverage believes that it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act and (2) must provide contact information for questions and complaints.

Model language is provided in these interim final regulations that can be used to satisfy this disclosure requirement. Comments are invited on possible improvements to the model language of grandfathered health plan status. Some have suggested, for example, that each grandfathered health plan be required to list and describe the various consumer protections that do not apply to the plan or health insurance coverage because it is grandfathered, together with their effective dates. The Departments intend to consider any comments regarding possible improvements to the model language in the near term; any changes to the model language that may result from such comments could be published in additional administrative guidance other than in the form of regulations.

Similarly, under these interim final regulations, to maintain status as a grandfathered health plan, a plan or issuer must also maintain records documenting the terms of the plan or health insurance coverage that were in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. Such documents could include intervening and current plan documents, health insurance policies, certificates or contracts of insurance, summary plan descriptions, documentation of premiums or the cost of coverage, and documentation of required employee contribution rates. In addition, the plan or issuer must make such records available for examination. Accordingly, a participant, beneficiary, individual policy subscriber, or State or Federal agency official would be able to inspect such documents to verify the status of the plan or health insurance coverage as a grandfathered health plan. The plan or issuer must maintain such records and make them available for examination for as long as the plan or issuer takes the position that the plan or health insurance coverage is a grandfathered health plan.

Under the statute and these interim final regulations, if family members of an individual who is enrolled in a grandfathered health plan as of March 23, 2010 enroll in the plan after March 23, 2010, the plan or health insurance coverage is also a grandfathered health plan with respect to the family members.

C. Adding New Employees in Paragraph (b) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 of These Interim Final Regulations

These interim final regulations at 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 provide that a group health plan that provided coverage on March 23, 2010 generally is also a grandfathered health plan with respect to new employees (whether newly hired or newly enrolled) and their families who enroll in the grandfathered health plan after March 23, 2010. These interim final regulations clarify that in such cases, any health insurance coverage provided under the group health plan in which an individual was enrolled on March 23, 2010 is also a grandfathered health plan. To prevent abuse, these interim final regulations provide that if the principal purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan. The goal of this rule is to prevent grandfather status from being bought and sold as a commodity in commercial transactions. These interim final regulations also contain a second anti-abuse rule designed to prevent a plan or issuer from circumventing the limits on changes that cause a plan or health insurance coverage to cease to be a grandfathered health plan under paragraph (g) (described more fully in section II.F of this preamble). This rule in paragraph (b)(2)(ii) addresses a situation under which employees who previously were covered by a grandfathered health plan are transferred to another grandfathered health plan. This rule is intended to prevent efforts to retain grandfather status by indirectly making changes that would result in loss of that status if those changes were made directly.

D. Applicability of Part A of Title XXVII of the PHS Act to Grandfathered Health Plans Paragraphs (c), (d), and (e) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 of These Interim Final Regulations

A grandfathered health plan generally is not subject to subtitles A and C of title I of the Affordable Care Act, except as specifically provided by the statute and these interim final regulations. The statute and these interim final regulations provide that some provisions of subtitles A and C of title I of the Affordable Care Act continue to apply to all grandfathered health plans and some provisions continue to apply only to grandfathered health plans that are group health plans. These interim final regulations clarify that a grandfathered health plan must continue to comply with the requirements of the PHS Act, ERISA, and the Code that were applicable prior to the changes enacted by the Affordable Care Act, except to the extent supplanted by changes made by the Affordable Care Act. Therefore, the HIPAA portability and nondiscrimination requirements and the Genetic Information Nondiscrimination Act requirements applicable prior to the effective date of the Affordable Care Act continue to apply to grandfathered health plans. In addition, the mental health parity provisions, the Newborns' and Mothers' Health Protection Act provisions, the Women's Health and Cancer Rights Act, and Michelle's Law continue to apply to grandfathered health plans. The following table lists the new health coverage reforms in part A of title XXVII of the PHS Act (as amended by the Affordable Care Act) that apply to grandfathered health plans:

TABLE 1—LIST OF THE NEW HEALTH REFORM PROVISIONS OF PART A OF TITLE XXVII OF THE PHS ACT THAT APPLY TO GRANDFATHERED HEALTH PLANS

PHS Act statutory provisions	Application to grandfathered health plans
§ 2704 Prohibition of preexisting condition exclusion or other discrimination based on health status.	Applicable to grandfathered group health plans and group health insurance coverage. Not applicable to grandfathered individual health insurance coverage.
§ 2708 Prohibition on excessive waiting periods	Applicable.
§ 2711 No lifetime or annual limits	Lifetime limits: Applicable. Annual limits: Applicable to grandfathered group health plans and group health insurance coverage; not applicable to grandfathered individual health insurance coverage.
§ 2712 Prohibition on rescissions	Applicable.
§ 2714 Extension of dependent coverage until age 26	Applicable [5].
§ 2715 Development and utilization of uniform explanation of coverage documents and standardized definitions.	Applicable.
§ 2718 Bringing down cost of health care coverage (for insured coverage).	Applicable to insured grandfathered health plans.

[5] For a group health plan or group health insurance coverage that is a grandfathered health plan for plan years beginning before January 1, 2014, PHS Act section 2714 is applicable in the case of an adult child only if the adult child is not eligible for other employer-sponsored health plan coverage. The interim final regulations relating to PHS Act section 2714, published in 75 FR 27122 (May 13, 2010), and these interim final regulations clarify that, in the case of an adult child who is eligible for coverage under the employer-sponsored plans of both parents, neither parent's plan may exclude the adult child from coverage based on the fact that the adult child is eligible to enroll in the other parent's employer-sponsored plan.

E. Health Insurance Coverage Maintained Pursuant to a Collective Bargaining Agreement of Paragraph (f) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 of These Interim Final Regulations

In paragraph (f) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140, these interim final regulations provide that in the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements ratified before March 23, 2010, the coverage is a grandfathered health plan at least until the date on which the last agreement relating to the coverage that was in effect on March 23, 2010 terminates. Thus, before the last of the applicable collective bargaining agreement terminates, any health insurance coverage provided pursuant to the collective bargaining agreements is a grandfathered health plan, even if there is a change in issuers (or any other change described in paragraph (g)(1) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 of these interim final regulations) during the period of the agreement. The statutory language of the provision refers solely to "health insurance coverage" and does not refer to a group health plan; therefore, these interim final regulations apply this provision only to insured plans maintained pursuant to a collective bargaining agreement and not to self-insured plans. After the date on which the last of the collective bargaining agreements terminates, the determination of whether health insurance coverage maintained pursuant to a collective bargaining agreement is grandfathered health plan coverage is made under the rules of paragraph (g). This determination is made by comparing the terms of the coverage on the date of determination with the terms of the coverage that were in effect on March 23, 2010. A change in issuers during the period of the agreement, by itself, would not cause the plan to cease to be a grandfathered health plan at the termination of the agreement. However, for a change in issuers after the termination of the agreement, the rules of paragraph (a)(1)(ii) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 of these interim final regulations apply.

Similar language to section 1251(d) in related bills that were not enacted would have provided a delayed effective date for collectively bargained plans with respect to the Affordable Care Act requirements. Questions have arisen as to whether section 1251(d) as enacted in the Affordable Care Act similarly operated to delay the application of the Affordable Care Act's requirements to collectively bargained plans—specifically, whether the provision of section 1251(d) that exempts collectively bargained plans from requirements for the duration of the agreement effectively provides the plans with a delayed effective date with respect to all new PHS Act requirements (in contrast to the rules for

grandfathered health plans which provide that specified PHS Act provisions apply to all plans, including grandfathered health plans). However, the statutory language that applies only to collectively bargained plans, as signed into law as part of the Affordable Care Act, provides that insured collectively bargained plans in which individuals were enrolled on the date of enactment are included in the definition of a grandfathered health plan. Therefore, collectively bargained plans (both insured and self-insured) that are grandfathered health plans are subject to the same requirements as other grandfathered health plans, and are not provided with a delayed effective date for PHS Act provisions with which other grandfathered health plans must comply. Thus, the provisions that apply to grandfathered health plans apply to collectively bargained plans before and after termination of the last of the applicable collective bargaining agreement.

F. Maintenance of Grandfather Status of Paragraph (g) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 of These Interim Final Regulations)

Questions have arisen regarding the extent to which changes can be made to a plan or health insurance coverage and still have the plan or coverage considered the same as that in existence on March 23, 2010, so as to maintain status as a grandfathered health plan. Some have suggested that any change would cause a plan or health insurance coverage to be considered different and thus cease to be a grandfathered health plan. Others have suggested that any degree of change, no matter how large, is irrelevant provided the plan or health insurance coverage can trace some continuous legal relationship to the plan or health insurance coverage that was in existence on March 23, 2010.

In paragraph (g)(1) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 of these interim final regulations, coordinated rules are set forth for determining when changes to the terms of a plan or health insurance coverage cause the plan or coverage to cease to be a grandfathered health plan. The first of those rules (in paragraph (g)(1)(i)) constrains the extent to which the scope of benefits can be reduced. It provides that the elimination of all or substantially all benefits to diagnose or treat a particular condition causes a plan or health insurance coverage to cease to be a grandfathered health plan. If, for example, a plan eliminates all benefits for cystic fibrosis, the plan ceases to be a grandfathered health plan (even though this condition may affect relatively few individuals covered under the plan). Moreover, for purposes of paragraph (g)(1)(i), the elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition. An example in these interim final regulations illustrates that if a plan provides benefits for a particular mental health condition, the treatment for which is a combination of counseling and prescription drugs, and subsequently eliminates benefits for counseling, the plan is treated as having eliminated all or substantially all benefits for that mental health condition.

A second set of rules (in paragraphs (g)(1)(ii) through (g)(1)(iv)) limits the extent to which plans and issuers can increase the fixed-amount and the percentage cost-sharing requirements that are imposed with respect to individuals for covered items and services. Plans and issuers can choose to make larger increases to fixed-amount or percentage cost-sharing requirements than permissible under these interim final regulations, but at that point the individual's plan or health insurance coverage would cease to be grandfathered health plan coverage. A more detailed description of the basis for the cost-sharing requirements in these interim final regulations is included in section IV.B later in this preamble.

These interim final regulations provide different standards with respect to coinsurance and fixed-amount cost sharing. Coinsurance automatically rises with medical inflation. Therefore, changes to the level of coinsurance (such as moving from a requirement that the patient pay 20 percent to a requirement that the patient pay 30 percent of inpatient surgery costs) would significantly alter the level of benefits provided. On the other hand, fixed-amount cost-sharing requirements (such as copayments and deductibles) do not take into account medical inflation. Therefore, changes to fixed-amount cost-sharing requirements (for example, moving from a $35 copayment to a $40 copayment for outpatient doctor visits) may be reasonable to keep up with the rising cost of medical items and services. Accordingly, paragraph (g)(1)(ii) provides that any increase in a percentage cost-sharing requirement (such as coinsurance) causes a plan or health insurance coverage to cease to be a grandfathered health plan.

With respect to fixed-amount cost-sharing requirements, paragraph (g)(1)(iii) provides two rules: a rule for cost-sharing requirements other than copayments and a rule for copayments. Fixed-amount cost-sharing requirements include, for example, a $500 deductible, a $30 copayment, or a $2,500 out-of-pocket limit. With respect to fixed-amount cost-sharing requirements other than copayments, a plan or health insurance coverage ceases to be a grandfathered health plan if there is an increase, since March 23, 2010, in a fixed-amount cost-sharing requirement that is greater than the maximum percentage increase. The maximum percentage increase is defined as medical inflation (from March 23, 2010) plus 15 percentage points. For this purpose, medical inflation is defined in these interim final regulations by reference to the overall medical care component of the Consumer Price Index for All Urban Consumers, unadjusted (CPI), published by the Department of Labor. For fixed-amount copayments, a plan or health insurance coverage ceases to be a grandfathered health plan if there is an increase since March 23, 2010 in the copayment that exceeds the greater of (A) the maximum percentage increase or (B) five dollars increased by medical inflation. A more detailed description of the basis for these rules relating to cost-sharing requirements is included in section IV.B later in this preamble.

With respect to employer contributions, these interim final regulations include a standard for changes that would result in cessation of grandfather status. Specifically, paragraph (g)(1)(v) limits the ability of an employer or employee organization to decrease its contribution rate for coverage under a group health plan or group health insurance coverage. Two different situations are addressed. First, if the contribution rate is based on the cost of coverage, a group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate towards the cost of any tier of coverage for any class of similarly situated individuals [6] by more than 5 percentage points below the contribution rate on March 23, 2010. For this purpose, contribution rate is defined as the amount of contributions made by an employer or employee organization compared to the total cost of coverage, expressed as a percentage. These interim final regulations provide that total cost of coverage is determined in the same manner as the applicable

[6] Similarly situated individuals are described in the HIPAA nondiscrimination regulations at 26 CFR 54.9802–1(d), 29 CFR 2590.702(d), and 45 CFR 146.121(d).

premium is calculated under the COBRA continuation provisions of section 604 of ERISA, section 4980B(f)(4) of the Code, and section 2204 of the PHS Act. In the case of a self-insured plan, contributions by an employer or employee organization are calculated by subtracting the employee contributions towards the total cost of coverage from the total cost of coverage. Second, if the contribution rate is based on a formula, such as hours worked or tons of coal mined, a group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate towards the cost of any tier of coverage for any class of similarly situated individuals by more than 5 percent below the contribution rate on March 23, 2010.

Finally, paragraph (g)(1)(vi) addresses the imposition of a new or modified annual limit by a plan, or group or individual health insurance coverage.[7] Three different situations are addressed:

- A plan or health insurance coverage that, on March 23, 2010, did not impose an overall annual or lifetime limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage imposes an overall annual limit on the dollar value of benefits.
- A plan or health insurance coverage, that, on March 23, 2010, imposed an overall lifetime limit on the dollar value of all benefits but no overall annual limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage adopts an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010.
- A plan or health insurance coverage that, on March 23, 2010, imposed an overall annual limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage decreases the dollar value of the annual limit (regardless of whether the plan or health insurance coverage also imposed an overall lifetime limit on March 23, 2010 on the dollar value of all benefits).

Under these interim final regulations, changes other than the changes described in 26 CFR 54.9815–1251T(g)(1), 29 CFR 2590.715–1251(g)(1), and 45 CFR 147.140(g)(1) will not cause a plan or coverage to cease to be a grandfathered health plan. Examples include changes to premiums, changes to comply with Federal or State legal requirements, changes to voluntarily comply with provisions of the Affordable Care Act, and changing third party administrators, provided these changes are made without exceeding the standards established by paragraph (g)(1).

These interim final regulations provide transitional rules for plans and issuers that made changes after the enactment of the Affordable Care Act pursuant to a legally binding contract entered into prior to enactment, made changes to the terms of health insurance coverage pursuant to a filing before March 23, 2010 with a State insurance department, or made changes pursuant to written amendments to a plan that were adopted prior to March 23, 2010. If a plan or issuer makes changes in any of these situations, the changes are effectively considered part of the plan terms on March 23, 2010 even though they are not then effective. Therefore, such changes are not taken into account in considering whether the plan or health insurance coverage remains a grandfathered health plan.

Because status as a grandfathered health plan under section 1251 of the Affordable Care Act is determined in relation to coverage on March 23, 2010, the date of enactment of the Affordable Care Act, the Departments considered whether they should provide a good-faith compliance period from Departmental enforcement until guidance regarding the standards for maintaining grandfather status was made available to the public. Group health plans and health insurance issuers often make routine changes from year to year, and some plans and issuers may have needed to implement such changes prior to the issuance of these interim final regulations.

Accordingly, for purposes of enforcement, the Departments will take into account good-faith efforts to comply with a reasonable interpretation of the statutory requirements and may disregard changes to plan and policy terms that only modestly exceed those changes described in paragraph (g)(1) of 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 and that are adopted before June 14, 2010, the date the regulations were made publicly available.

In addition, these interim final regulations provide employers and issuers with a grace period within which to revoke or modify any changes adopted prior to June 14, 2010, where the changes might otherwise cause the plan or health insurance coverage to cease to be a grandfathered health plan. Under this rule, grandfather status is preserved if the changes are revoked, and the plan or health insurance coverage is modified, effective as of the first day of the first plan or policy year beginning on or after September 23, 2010 to bring the terms within the limits for retaining grandfather status in these interim final regulations. For this purpose, and for purposes of the reasonable good faith standard changes will be considered to have been adopted before these interim final regulations are publicly available if the changes are effective before that date, the changes are effective on or after that date pursuant to a legally binding contract entered into before that date, the changes are effective on or after that date pursuant to a filing before that date with a State insurance department, or the changes are effective on or after that date pursuant to written amendments to a plan that were adopted before that date.

While the Departments have determined that the changes identified in paragraph (g)(1) of these interim final regulations would cause a group health plan or health insurance coverage to cease to be a grandfathered health plan, the Departments invite comments from the public on whether this list of changes is appropriate and what other changes, if any, should be added to this list. Specifically, the Departments invite comments on whether the following changes should result in cessation of grandfathered health plan status for a plan or health insurance coverage: (1) Changes to plan structure (such as switching from a health reimbursement arrangement to major medical coverage or from an insured product to a self-insured product); (2) changes in a network plan's provider network, and if so, what magnitude of changes would have to be made; (3) changes to a prescription drug formulary, and if so, what magnitude of changes would have to be made; or (4) any other substantial change to the overall benefit design. In addition, the Departments invite comments on the specific standards included in these interim final regulations on benefits, cost sharing, and employer contributions. The Departments specifically invite comments on whether these standards should be drawn differently in light of the fact that changes made by the Affordable Care Act may alter plan or issuer practices in the next several

[7] Independent of these rules regarding the impact on grandfather status of newly adopted or reduced annual limits, group health plans and group or individual health insurance coverage (other than individual health insurance policies that are grandfathered health plans) are required to comply with PHS Act section 2711, which permits restricted annual limits (as defined in regulations) until 2014. The Departments expect to publish regulations regarding restricted annual limits in the very near future.

years. Any new standards published in the final regulations that are more restrictive than these interim final regulations would only apply prospectively to changes to plans or health insurance coverage after the publication of the final rules.

Moreover, the Departments may issue, as appropriate, additional administrative guidance other than in the form of regulations to clarify or interpret the rules contained in these interim final regulations for maintaining grandfathered health plan status prior to the issuance of final regulations. The ability to issue prompt, clarifying guidance is especially important given the uncertainty as to how plans or issuers will alter their plans or policies in response to these rules. This guidance can address unanticipated changes by plans and issuers to ensure that individuals benefit from the Affordable Care Act's new health care protections while preserving the ability to maintain the coverage individuals had on the date of enactment.

III. Interim Final Regulations and Request for Comments

Section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act authorize the Secretaries of the Treasury, Labor, and HHS (collectively, the Secretaries) to promulgate any interim final rules that they determine are appropriate to carry out the provisions of chapter 100 of the Code, part 7 of subtitle B of title I of ERISA, and part A of title XXVII of the PHS Act, which include PHS Act sections 2701 through 2728 and the incorporation of those sections into ERISA section 715 and Code section 9815. The rules set forth in these interim final regulations govern the applicability of the requirements in these sections and are therefore appropriate to carry them out. Therefore, the foregoing interim final rule authority applies to these interim final regulations.

In addition, under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. The provisions of the APA that ordinarily require a notice of proposed rulemaking do not apply here because of the specific authority granted by section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act. However, even if the APA were applicable, the Secretaries have determined that it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process was completed. As noted above, numerous provisions of the Affordable Care Act are applicable for plan years (in the individual market, policy years) beginning on or after September 23, 2010, six months after date of enactment. Grandfathered health plans are exempt from many of these provisions while group health plans and group and individual health insurance coverage that are not grandfathered health plans must comply with them. The determination of whether a plan or health insurance coverage is a grandfathered health plan therefore could substantially affect the design of the plan or health insurance coverage.

The six-month period between the enactment of the Affordable Care Act and the applicability of many of the provisions affected by grandfather status would not allow sufficient time for the Departments to draft and publish proposed regulations, receive and consider comments, and draft and publish final regulations. Moreover, regulations are needed well in advance of the effective date of the requirements of the Affordable Care Act. Many group health plans and health insurance coverage that are not grandfathered health plans must make significant changes in their provisions to comply with the requirements of the Affordable Care Act. Moreover, plans and issuers considering other modifications to their terms need to know whether those modifications will affect their status as grandfathered health plans. Accordingly, in order to allow plans and health insurance coverage to be designed and implemented on a timely basis, regulations must be published and available to the public well in advance of the effective date of the requirements of the Affordable Care Act. It is not possible to have a full notice and comment process and to publish final regulations in the brief time between enactment of the Affordable Care Act and the date regulations are needed.

The Secretaries further find that issuance of proposed regulations would not be sufficient because the provisions of the Affordable Care Act protect significant rights of plan participants and beneficiaries and individuals covered by individual health insurance policies and it is essential that participants, beneficiaries, insureds, plan sponsors, and issuers have certainty about their rights and responsibilities. Proposed regulations are not binding and cannot provide the necessary certainty. By contrast, the interim final regulations provide the public with an opportunity for comment, but without delaying the effective date of the regulations.

For the foregoing reasons, the Departments have determined that it is impracticable and contrary to the public interest to engage in full notice and comment rulemaking before putting these regulations into effect, and that it is in the public interest to promulgate interim final regulations.

IV. Economic Impact and Paperwork Burden

A. Overview—Department of Labor and Department of Health and Human Services

As stated earlier in this preamble, these interim final regulations implement section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act. Pursuant to section 1251, certain provisions of the Affordable Care Act do not apply to a group health plan or health insurance coverage in which an individual was enrolled on March 23, 2010 (a grandfathered health plan).[8] The statute and these interim final regulations allow family members of individuals already enrolled in a grandfathered health plan to enroll in the plan after March 23, 2010; in such cases, the plan or coverage is also a grandfathered health plan with respect to the family members. New employees (whether newly hired or newly enrolled) and their families can enroll in a grandfathered group health plan after March 23, 2010 without affecting status as a grandfathered health plan.[9]

[8] The Affordable Care Act adds section 715(a)(1) to ERISA and section 9815(a)(1) to the Code to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by this reference are sections 2701 through 2728. PHS Act sections 2701 through 2719A are substantially new, though they incorporate some provisions of prior law. PHS Act sections 2722 through 2728 are sections of prior law renumbered, with some, mostly minor, changes. Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, specifies that certain plans or coverage existing as of the date of enactment (that is, grandfathered health plans) are only subject to certain provisions.

[9] For individuals who have coverage through an insured group health plans subject to a collective bargaining agreement ratified before March 23, 2010, an individual's coverage is grandfathered at least until the date on which the last agreement relating to the coverage that was in effect on March 23, 2010, terminates. These collectively bargained plans may make any permissible changes to the benefit structure before the agreement terminates and remain grandfathered. After the termination

Continued

As addressed earlier in this preamble, and further discussed below, these interim final regulations include rules for determining whether changes to the terms of a grandfathered health plan made by issuers and plan sponsors allow the plan or health insurance coverage to remain a grandfathered health plan. These rules are the primary focus of this regulatory impact analysis.

The Departments have quantified the effects where possible and provided a qualitative discussion of the economic effects and some of the transfers and costs that may result from these interim final regulations.

B. Executive Order 12866—Department of Labor and Department of Health and Human Services

Under Executive Order 12866 (58 FR 51735), "significant" regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this regulation is economically significant within the meaning of section 3(f)(1) of the Executive Order, because it is likely to have an annual effect on the economy of $100 million in any one year. Accordingly, OMB has reviewed these rules pursuant to the Executive Order. The Departments provide an assessment of the potential costs, benefits, and transfers associated with these interim final regulations below. The Departments invite comments on this assessment and its conclusions.

1. Need for Regulatory Action

As discussed earlier in this preamble, Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, provides that grandfathered health plans are subject only to certain provisions of the Affordable Care Act. The statute, however, is silent regarding changes plan sponsors and issuers can make to plans and health insurance coverage while retaining grandfather status. These interim final regulations are necessary in order to provide rules that plan sponsors and issuers can use to determine which changes they can make to the terms of the plan or health insurance coverage while retaining their grandfather status, thus exempting them from certain provisions of the Affordable Care Act and fulfilling a goal of the legislation, which is to allow those that like their healthcare to keep it. These interim final regulations are designed to allow individuals who wish to maintain their current health insurance plan to do so, to reduce short term disruptions in the market, and to ease the transition to market reforms that phase in over time.

In drafting this rule, the Departments attempted to balance a number of competing interests. For example, the Departments sought to provide adequate flexibility to plan sponsors and issuers to ease transition and mitigate potential premium increases while avoiding excessive flexibility that would conflict with the goal of permitting individuals who like their healthcare to keep it and might lead to longer term market segmentation as the least costly plans remain grandfathered the longest. In addition, the Departments recognized that many plan sponsors and issuers make changes to the terms of plans or health insurance coverage on an annual basis: Premiums fluctuate, provider networks and drug formularies change, employer and employee contributions and cost-sharing change, and covered items and services may vary. Without some ability to make some adjustments while retaining grandfather status, the ability of individuals to maintain their current coverage would be frustrated, because most plans or health insurance coverage would quickly cease to be regarded as the same group health plan or health insurance coverage in existence on March 23, 2010. At the same time, allowing unfettered changes while retaining grandfather status would also be inconsistent with Congress's intent to preserve coverage that was in effect on March 23, 2010.

Therefore, as further discussed below, these interim final regulations are designed, among other things, to take into account reasonable changes routinely made by plan sponsors or issuers without the plan or health insurance coverage relinquishing its grandfather status so that individuals can retain the ability to remain enrolled in the coverage in which they were enrolled on March 23, 2010. Thus, for example, these interim final regulations generally permit plan sponsors and issuers to make voluntary changes to increase benefits, to conform to required legal changes, and to adopt voluntarily other consumer protections in the Affordable Care Act.

2. Regulatory Alternatives

Section 6(a)(3)(C)(iii) of Executive Order 12866 requires an economically significant regulation to include an assessment of the costs and benefits of potentially effective and reasonable alternatives to the planned regulation, and an explanation of why the planned regulatory action is preferable to the potential alternatives. The alternatives considered by the Departments fall into two general categories: Permissible changes to cost sharing and benefits. The discussion below addresses the considered alternatives in each category.

The Departments considered allowing looser cost-sharing requirements, such as 25 percent plus medical inflation. However, the data analysis led the Departments to believe that the cost-sharing windows provided in these interim final regulations permit enough flexibility to enable a smooth transition in the group market over time, and further widening this window was not necessary and could conflict with the goal of allowing those who like their healthcare to keep it.

Another alternative the Departments considered was an annual allowance for cost-sharing increases above medical inflation, as opposed to the one-time allowance of 15 percent above medical inflation. An annual margin of 15 percent above medical inflation, for example, would permit plans to increase cost sharing by medical inflation plus 15 percent every year. The Departments concluded that the effect of the one-time allowance (15 percent of the original, date-of-enactment level plus medical inflation) would diminish over time insofar as it would represent a diminishing fraction of the total level of cost sharing with the cumulative effects of medical inflation over time. Accordingly, the one-time allowance would better reflect (i) the potential need of grandfathered health plans to make adjustments in the near term to

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date, grandfather status will be determined by comparing the plan, as it existed on March 23, 2010 to the changes that the plan made before termination under the rules established by these interim final regulations.

reflect the requirement that they comply with the market reforms that apply to grandfathered health plans in the near term as well as (ii) the prospect that, for many plans and health insurance coverage, the need to recover the costs of compliance in other ways will diminish in the medium term, in part because of the changes that will become effective in 2014 and in part because of the additional time plan sponsors and issuers will have to make gradual adjustments that take into account the market reforms that are due to take effect in later years.

The Departments considered establishing an overall prohibition against changes that, in the aggregate, or cumulatively over time, render the plan or coverage substantially different than the plan or coverage that existed on March 23, 2010, or further delineating other examples of changes that could cause a plan to relinquish grandfather status. This kind of "substantially different" standard would have captured significant changes not anticipated in the interim final regulation. However, it would rely on a "facts and circumstances" analysis in defining "substantially different" or "significant changes," which would be less transparent and result in greater uncertainty about the status of a health plan. That, in turn, could hinder plan sponsor or issuer decisions as well as enrollee understanding of what protections apply to their coverage.

An actuarial equivalency standard was another considered option. Such a standard would allow a plan or health insurance coverage to retain status as a grandfathered health plan if the actuarial value of the coverage remains in approximately the same range as it was on March 23, 2010. However, under such a standard, a plan could make fundamental changes to the benefit design, potentially conflicting with the goal of allowing those who like their healthcare to keep it, and still retain grandfather status. Moreover, the complexity involved in defining and determining actuarial value for these purposes, the likelihood of varying methodologies for determining such value unless the Departments promulgated very detailed prescriptive rules, and the costs of administering and ensuring compliance with such rules led the Departments to reject that approach.

Another alternative was a requirement that employers continue to contribute the same dollar amount they were contributing for the period including March 23, 2010, plus an inflation component. However, the Departments were concerned that this approach would not provide enough flexibility to accommodate the year-to-year volatility in premiums that can result from changes in some plans' covered populations or other factors.

The Departments also considered whether a change in third party administrator by a self-insured plan should cause the plan to relinquish grandfather status. The Departments decided that such a change would not necessarily cause the plan to be so different from the plan in effect on March 23, 2010 that it should be required to relinquish grandfather status.

After careful consideration, the Departments opted against rules that would require a plan sponsor or issuer to relinquish its grandfather status if only relatively small changes are made to the plan. The Departments concluded that plan sponsors and issuers of grandfathered health plans should be permitted to take steps within the boundaries of the grandfather definition to control costs, including limited increases in cost-sharing and other plan changes not prohibited by these interim final regulations. As noted earlier, deciding to relinquish grandfather status is a one-way sorting process: after some period of time, more plans will relinquish their grandfather status. These interim final regulations will likely influence plan sponsors' decisions to relinquish grandfather status.

3. Discussion of Regulatory Provisions

As discussed earlier in this preamble, these interim final regulations provide that a group health plan or health insurance coverage no longer will be considered a grandfathered health plan if a plan sponsor or an issuer:

- Eliminates all or substantially all benefits to diagnose or treat a particular condition. The elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition;
- Increases a percentage cost-sharing requirement (such as coinsurance) above the level at which it was on March 23, 2010;
- Increases fixed-amount cost-sharing requirements other than copayments, such as a $500 deductible or a $2,500 out-of-pocket limit, by a total percentage measured from March 23, 2010 that is more than the sum of medical inflation and 15 percentage points.[10]
- Increases copayments by an amount that exceeds the greater of: a total percentage measured from March 23, 2010 that is more than the sum of medical inflation plus 15 percentage points, or $5 increased by medical inflation measured from March 23, 2010;
- For a group health plan or group health insurance coverage, an employer or employee organization decreases its contribution rate by more than five percentage points below the contribution rate on March 23, 2010; or
- With respect to annual limits (1) a group health plan, or group or individual health insurance coverage, that, on March 23, 2010, did not impose an overall annual or lifetime limit on the dollar value of all benefits imposes an overall annual limit on the dollar value of benefits; (2) a group health plan, or group or individual health insurance coverage, that, on March 23, 2010, imposed an overall lifetime limit on the dollar value of all benefits but no overall annual limit on the dollar value of all benefits adopts an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010; or (3) a group health plan, or group or individual health insurance coverage, that, on March 23, 2010, imposed an overall annual limit on the dollar value of all benefits decreases the dollar value of the annual limit (regardless of whether the plan or health insurance coverage also imposes an overall lifetime limit on the dollar value of all benefits).

Table 1, in section II.D of this preamble, lists the relevant Affordable Care Act provisions that apply to grandfathered health plans.

In accordance with OMB Circular A–4,[11] Table 2 below depicts an accounting statement showing the Departments' assessment of the benefits, costs, and transfers associated with this regulatory action. In accordance with Executive Order 12866, the Departments believe that the benefits of this regulatory action justify the costs.

[10] Medical inflation is defined in these interim regulations by reference to the overall medical care component of the CPI.

[11] Available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*.

TABLE 2—ACCOUNTING TABLE

Benefits

Qualitative: These interim final regulations provide plans with guidance about the requirements for retaining grandfather status. Non-grandfathered plans are required to offer coverage with minimum benefit standards and patient protections as required by the Affordable Care Act, while grandfathered plans are required only to comply with certain provisions. The existence of grandfathered health plans will provide individuals with the benefits of plan continuity, which may have a high value to some. In addition, grandfathering could potentially slow the rate of premium growth, depending on the extent to which their current plan does not include the benefits and protections of the new law. It could also provide incentives to employers to continue coverage, potentially reducing new Medicaid enrollment and spending and lowering the number of uninsured individuals. These interim final regulations also provide greater certainty for plans and issuers about what changes they can make without affecting their grandfather status. As compared with alternative approaches, these regulations provide significant economic and noneconomic benefits to both issuers and beneficiaries, though these benefits cannot be quantified at this time.

Costs	Low-end estimate	Mid-range estimate	High-end estimate	Year dollar	Discount rate	Period covered
Annualized	22.0	25.6	27.9	2010	7%	2011–2013
Monetized ($millions/year)	21.2	24.7	26.9	2010	3%	2011–2013

Monetized costs are due to a requirement to notify participants and beneficiaries of a plan's grandfather status and maintain plan documents to verify compliance with these interim final regulation's requirements to retain grandfather status.

Qualitative: Limitations on cost-sharing increases imposed by these interim final regulations could result in the cost of some grandfathered health plans increasing more (or decreasing less) than they otherwise would. This increased cost may encourage some sponsors and issuers to replace their grandfathered health plans with new, non-grandfathered ones. Market segmentation (adverse selection) due to the decision of higher risk plans to relinquish grandfathering could cause premiums in the exchanges to be higher than they would have been absent grandfathering.

Transfers

Qualitative: Limits on the changes to cost-sharing in grandfathered plans and the elimination of cost-sharing for some services in non-grandfathered plans, leads to transfers of wealth from premium payers overall to individuals using covered services. Once pre-existing conditions are fully prohibited and other insurance reforms take effect, the extent to which individuals are enrolled in grandfathered plans could affect adverse selection, as higher risk plans relinquish grandfather status to gain new protections while lower risk grandfathered plans retain their grandfather status. This could result in a transfer of wealth from non-grandfathered plans to grandfathered health plans.

4. Discussion of Economic Impacts of Retaining or Relinquishing Grandfather Status

The economic effects of these interim final regulations will depend on decisions by plan sponsors and issuers, as well as by those covered under these plans and health insurance coverage. The collective decisions of plan sponsors and issuers over time can be viewed as a one-way sorting process in which these parties decide whether, and when, to relinquish status as a grandfathered health plan.

Plan sponsors and issuers can decide to:

1. Continue offering the plan or coverage in effect on March 23, 2010 with limited changes, and thereby retain grandfather status;

2. Significantly change the terms of the plan or coverage and comply with Affordable Care Act provisions from which grandfathered health plans are excepted; or

3. In the case of a plan sponsor, cease to offer any plan.

For a plan sponsor or issuer, the potential economic impact of the application of the provisions in the Affordable Care Act may be one consideration in making its decisions. To determine the value of retaining the health plan's grandfather status, each plan sponsor or issuer must determine whether the rules applicable to grandfathered health plans are more or less favorable than the rules applicable to non-grandfathered health plans. This determination will depend on such factors as the respective prices of grandfathered and non-grandfathered health plans, as well as on the preferences of grandfathered health plans' covered populations and their willingness to pay for benefits and patient protections available under non-grandfathered health plans. In making its decisions about grandfather status, a plan sponsor or issuer is also likely to consider the market segment (because different rules apply to the large and small group market segments), and the utilization pattern of its covered population.

In deciding whether to change a plan's benefits or cost sharing, a plan sponsor or issuer will examine its short-run business requirements. These requirements are regularly altered by, among other things, rising costs that result from factors such as technological changes, changes in risk status of the enrolled population, and changes in utilization and provider prices. As shown below, changes in benefits and cost sharing are typical in insurance markets. Decisions about the extent of changes will determine whether a plan retains its grandfather status. Ultimately, these decisions will involve a comparison by the plan sponsor or issuer of the long run value of grandfather status to the short-run need of that plan sponsor or issuer to adjust plan structure in order to control premium costs or achieve other business objectives.

Decisions by plan sponsors and issuers may be significantly affected by the preferences and behavior of the enrollees, especially a tendency among many towards inertia and resistance to change. There is limited research that has directly examined what drives this tendency—whether individuals remain with health plans because of simple inertia and procrastination, a lack of relevant information, or because they want to avoid risk associated with switching to new plans. One study that examined the extent to which premium changes influenced plan switching determined that younger low-risk employees were the most price-sensitive to premium changes; older, high-risk employees were the least price-sensitive. This finding suggests that, in particular, individuals with substantial health needs may be more apt to remain with a plan because of inertia as such or uncertainties associated with plan

switching rather than quality per se—a phenomenon some behavioral economists have called "status quo bias," [12] which can be found when people stick with the status quo even though a change would have higher expected value.

Even when an enrollee could reap an economic or other advantage from changing plans, that enrollee may not make the change because of inertia, a lack of relevant information, or because of the cost and effort involved in examining new options and uncertainty about the alternatives. Consistent with well-known findings in behavioral economics, studies of private insurance demonstrate the substantial effect of inertia in the behavior of the insured. One survey found that approximately 83 percent of privately insured individuals stuck with their plans in the year prior to the survey.[13] Among those who did change plans, well over half sought the same type of plan they had before. Those who switched plans also tended to do so for reasons other than preferring their new plans. For example, many switched because they changed jobs or their employer changed insurance offerings, compelling them to switch.

Medicare beneficiaries display similar plan loyalties. On average, only seven percent of the 17 million seniors on Medicare drug plans switch plans each year, according to the Centers for Medicare and Medicaid Services.[14] Researchers have found this comparatively low rate of switching is maintained whether or not those insured have higher quality information about plan choices, and that switching has little effect on the satisfaction of the insured with their health plans.[15]

The incentives to change are different for people insured in the individual market than they are for those covered by group health plans or group health insurance coverage. The median length of coverage for people entering the individual market is eight months.[16] In part, this "churn" stems from the individual market's function as a stopping place for people between jobs with employer-sponsored or other types of health insurance, but in part, the churn is due to the behavior of issuers. Evidence suggests that issuers often make policy changes such as raising deductibles as a means of attracting new, healthy enrollees who have few medical costs and so are little-concerned about such deductibles. There is also evidence that issuers use such changes to sort out high-cost enrollees from low-cost ones.[17]

Decisions about the value of retaining or relinquishing status as a grandfathered health plan are complex, and the wide array of factors affecting issuers, plan sponsors, and enrollees poses difficult challenges for the Departments as they try to estimate how large the presence of grandfathered health plans will be in the future and what the economic effects of their presence will be. As one example, these interim final regulations limit the extent to which plan sponsors and issuers can increase cost sharing and still remain grandfathered. The increases that are allowed provide plans and issuers with substantial flexibility in attempting to control expenditure increases. However, there are likely to be some plans and issuers that would, in the absence of these regulations, choose to make even larger increases in cost sharing than are specified here. Such plans will need to decide whether the benefits of maintaining grandfather status outweigh those expected from increasing cost sharing above the levels permitted in the interim final regulations.

A similar analysis applies to the provision that an employer's or employee organization's share of the total premium of a group health plan cannot be reduced by more than 5 percentage points from the share it was paying on March 23, 2010 without that plan or health insurance coverage relinquishing its grandfather status. Employers and employee organizations sponsoring group health plans or health insurance coverage may be faced with economic circumstances that would lead them to reduce their premium contributions. But reductions of greater than 5 percentage points would cause them to relinquish the grandfather status of their plans. These plan sponsors must decide whether the benefit of such premium reductions outweigh those of retaining grandfather status.

Market dynamics affecting these decisions change in 2014, when the Affordable Care Act limits variation in premium rates for individual and small group policies. Small groups for this purpose include employers with up to 100 employees (States may limit this threshold to 50 employees until 2016). The Affordable Care Act rating rules will not apply to grandfathered health plans, but such plans will remain subject to State rating rules, which vary widely and typically apply to employers with up to 50 employees. Based on the current State rating rules, it is likely that, in many States, no rating rules will apply to group health insurance policies that are grandfathered health plans covering employers with 51 to 100 employees.[18]

The interaction of the Affordable Care Act and State rating rules implies that, beginning in 2014, premiums can vary more widely for grandfathered plans than for non-grandfathered plans for employers with up to 100 employees in many States. This could encourage both plan sponsors and issuers to continue grandfathered health plans that cover lower-risk groups, because these groups will be isolated from the larger, higher-risk, non-grandfathered risk pool. On the other hand, this scenario likely will encourage plan sponsors and issuers that cover higher-risk groups to end grandfathered health plans, because the group would be folded into the larger, lower-risk non-grandfathered pool. Depending on the size of the grandfathered health plan market, such adverse selection by grandfathered health plans against non-grandfathered plans could cause premiums in the exchanges to be higher than they would have been absent grandfathering. To accommodate these changes in market dynamics in 2014, the Departments have structured a cost-sharing rule whose parameters enable greater flexibility in early years and less over time. It is likely that few plans will delay for many years before making changes that exceed medical inflation. This is because the cumulative increase in copayments from March 23, 2010 is compared to a maximum percentage increase that includes a fixed amount—15 percentage points—that does not increase annually with any type of inflator. This should help mitigate adverse selection and require plans and issuers that seek to maintain grandfather status to find ways other than increased

[12] *http://www.nber.org/reporter/summer06/buchmueller.html.* "Consumer Demand for Health Insurance" The National Bureau of Economic Research (Buchmueller, 2006).

[13] *http://content.healthaffairs.org/cgi/reprint/19/3/158.pdf.* "Health Plan Switching: Choice Or Circumstance?" (Cunnigham and Kohn, 2000).

[14] *http://www.kaiserhealthnews.org/Stories/2009/December/01/Medicare-Drug-Plan.aspx.* "Seniors Often Reluctant To Switch Medicare Drug Plans" (2009, Kaiser Health News/Washington Post).

[15] *http://www.ncbi.nlm.nih.gov/pubmed/16704882.* "The effect of quality information on consumer health plan switching: evidence from the Buyers Health Care Action Group." (Abraham, Feldman, Carlin, and Christianson, 2006).

[16] Erika C. Ziller, Andrew F. Coburn, Timothy D. McBride, and Courtney Andrews. Patterns of Individual Health Insurance Coverage, 1996–2000. *Health Affairs* Nov/Dec 2004: 210–221.

[17] Melinda Beeuwkes Bustin, M. Susan Marquis, and Jill M. Yegian. The Role of the Individual Health Insurance Market and Prospects for Change. *Health Affairs* 2004; 23(6): 79–90.

[18] Kaiser Family Foundation State Health Facts (2010), *http://www.statehealthfacts.org/comparetable.jsp?ind=351&cat=7.*

copayments to limit cost growth. As discussed in the preamble, the Departments are also soliciting comments to make any adjustments needed for the final rule prior to 2014. Therefore it is premature to estimate the economic effects described above in 2014 and beyond. In the following section, the Departments provide a range of estimates of how issuers and sponsors might respond to these interim final regulations, with the caveat that there is substantial uncertainty about actual outcomes, especially considering that available data are historical and so do not account for behavioral changes in plans and the insured as a result of enactment of the Affordable Care Act.

5. Estimates of Number of Plans and Employees Affected

The Affordable Care Act applies to group health plans and health insurance issuers in the group and individual markets. The large and small group markets will be discussed first, followed by a discussion of impacts on the individual market. The Departments have defined a large group health plan as a plan at an employer with 100 or more workers and a small group plan as a plan at an employer with less than 100 workers. Using data from the 2008 Medical Expenditure Survey—Insurance Component, the Departments estimated that there are approximately 72,000 large ERISA-covered health plans and 2.8 million small group health plans with an estimated 97.0 million participants and beneficiaries [19] in large group plans and 40.9 million participants and beneficiaries in small group plans. The Departments estimate that there are 126,000 governmental plans [20] with 36.1 million participants in large plans and 2.3 million participants in small plans. The Departments estimate there are 16.7 million individuals under age 65 covered by individually purchased policies.

a. Methodology for Analyzing Plan Changes Over Time in the Group Market

For the large and small group markets, the Departments analyzed three years of Kaiser-HRET data to assess the changes that plans made between plan years 2007 to 2008 and 2008 to 2009. Specifically, the Departments examined changes made to deductibles, out-of-pocket maximums, copayments, coinsurance, and the employer's share of the premium or cost of coverage. The Departments also estimated the number of fully-insured plans that changed issuers.[21] The distribution of changes made within the two time periods were nearly identical and ultimately the 2008–2009 changes were used as a basis for the analyses.

As discussed previously, plans will need to make decisions that balance the value they (and their enrollees) place on maintaining grandfather status with the need to meet short run objectives by changing plan features including the various cost sharing requirements that are the subject of this rule. The 2008–2009 data reflect changes in plan benefit design that were made under very different market conditions and expectations than will exist in 2011 and beyond. Therefore, there is a significant degree of uncertainty associated with using the 2008–2009 data to project the number of plans whose grandfather status may be affected in the next few years. Because the level of uncertainty becomes substantially greater when trying to use this data to predict outcomes once the full range of reforms takes effect in 2014 and the exchanges begin operating, substantially changing market dynamics the Departments restrict our estimates to the 2011–2013 period and use the existing data and a range of assumptions to estimate possible outcomes based on a range of assumptions concerning how plans' behavior regarding cost sharing changes may change relative to what is reflected in the 2008–2009 data.

Deriving projections of the number of plans that could retain grandfather status under the requirements of these interim final regulations required several steps:

- Using Kaiser/HRET data for 2008–2009, estimates were generated of the number of plans in the large and small group markets that made changes in employer premium share or any of the cost-sharing parameters that were larger than permitted for a plan to retain grandfather status under these interim final regulations;
- In order to account for a range of uncertainty with regard to changes in plan behavior toward cost sharing changes, the Departments assumed that many plans will want to maintain grandfather status and will look for ways to achieve short run cost control and still maintain that status. One plausible assumption is that plans would look to a broader range of cost sharing strategies in order to achieve cost containment and other objectives than they had in the past. In order to examine this possibility, the Departments carefully analyzed those plans that would have relinquished grandfather status based on a change they made from 2008–2009. The Departments then estimated the proportion of these plans that could have achieved similar cost control by using one or more other cost-sharing changes in addition to the one they made in a manner that would not have exceeded the limits set by these interim final regulations for qualifying as a grandfathered health plan. For example, if a plan was estimated to relinquish grandfather status because it increased its deductible by more than the allowed 15 percentage points plus medical inflation, the Departments analyze whether the plan could have achieved the same cost control objectives with a smaller change in deductible, but larger changes (within the limits set forth in these interim final regulations) in copayments, out-of-pocket maximums, and employer contributions to the premium or cost of coverage.
- Finally, the Departments examined the impact of alternative assumptions about sponsor behavior. For example, it is possible that some sponsors who made changes from 2008–2009 in plan parameters that were so large that they would have relinquished their grandfather status would not make similar changes in 2011–2013. It is also possible that even though a sponsor could make an equivalent change that conforms to the rules established in these interim final regulations to maintain grandfather status, it would decide not to.

The estimates in this example rely on several other assumptions. Among them: (1) The annual proportion of plans relinquishing grandfather status is the same throughout the period; (2) all group health plans existing at the beginning of 2010 qualify for grandfather status; (3) all changes during 2010 occur after March 23, 2010; (4) annual medical inflation is 4 percent (based on the average annual change in the medical CPI between 2000 and 2009); and (5) firms for which the Kaiser-HRET survey has data for both 2008 and 2009 are representative of all firms.[22] The assumption used for

[19] All participant counts and the estimates of individual policies are from the 2009 Current Population Survey (CPS).

[20] Estimate is from the 2007 Census of Government.

[21] Under the Affordable Care Act and these interim final regulations, if a plan that is not a collectively bargained plan changes issuers after March 23, 2010, it is no longer a grandfathered health plan.

[22] The analysis is limited to firms that responded to the Kaiser/HRET survey in both 2008 and 2009. Large firms are overrepresented in the analytic sample. New firms and firms that went out of business in 2008 or 2009 are underrepresented. The Departments present results separately for large firms and small firms, and weight the results to the number of employees in each firm-size category. Results are presented for PPO plans. The Kaiser/

estimating the effects of the limits on copayment increases does not take into account the greater flexibility in the near term than in the long term; the estimated increase in firms losing their grandfather status over time reflects cumulative effects of a constant policy. To the extent that the data reflect plans that are more likely to make frequent changes in cost sharing, the assumption that a constant share of plans relinquishing grandfather status throughout the period may underestimate the number of plans that will retain grandfather status through 2013. In addition, data on substantial benefit changes were not available and thus not included in the analysis. The survey data is limited, in that it covers only one year of changes in healthcare plans. The Departments' analysis employed data only on PPO plans, the predominant type of plan. In addition, the difficulties of forecasting behavior in response to this rule create uncertainties for quantitative evaluation. However, the analysis presented here is illustrative of the rule's goal of balancing flexibility with maintaining current coverage.

b. Impacts on the Group Market Resulting From Changes From 2008 to 2009

The Departments first estimated the percentage of plans that had a percent change in the dollar value of deductibles, copayments, or out-of-pocket maximums that exceeded 19 percent (the sum of medical inflation (assumed in these analyses to be four percent) plus 15 percentage points measured from March 23, 2010. Plans making copayment changes of five dollars or less were considered to have satisfied the copayment limit, even if that change exceeded 19 percent.[23] The Departments also estimated the number of plans for whom the percentage of total premium paid by the employer declined by more than 5 percentage points. For fully-insured plans only, estimates were made of the proportion that switched to a different issuer.[24] This estimate does not take into account collectively bargained plans, which can change issuers during the period of the collective bargaining agreement without a loss of grandfather status, because the Departments could not quantify this category of plans. Accordingly, this estimate represents an upper bound.

Using the Kaiser/HRET data, the Departments estimated that 55 percent of small employers and 36 percent of large employers made at least one change in cost-sharing parameters above the thresholds provided in these interim final regulations. Similarly, 33 percent of small employers and 21 percent of large employers decreased the employer's share of premium by more than five percentage points. In total, approximately 66 percent of small employers and 48 percent of large employers made a change in either cost sharing or premium contribution during 2009 that would require them to relinquish grandfather status if the same change were made in 2011.[25]

The changes made by employers from 2008 to 2009 were possibly made in anticipation of the recession. As discussed previously, analysis of changes from 2007 to 2008 suggests that the 2007–08 changes were not much different from the 2008–09 changes. Nevertheless, as a result of improvements in economic conditions, it makes sense to think that the pressure on employers to reduce their contributions to health insurance will be smaller in 2011 than they were in 2009, and that the Department's analysis of changes in 2009 may overestimate the changes that should be expected in 2011.[26]

As discussed previously, it is highly unlikely that plans would continue to exhibit the same behavior in 2011 to 2013 as in 2008 to 2009. In order to guide the choice of behavioral assumptions, the Departments conducted further analyses of the 2008–2009 data. Many employers who made changes between 2008 and 2009 that would have caused them to relinquish grandfather status did so based on exceeding one of the cost-sharing limits. Assuming that the sponsor's major objective in implementing these changes was to restrain employer costs or overall premiums, the Departments examined whether the sponsor could have achieved the same net effect on employer cost or premiums by spreading cost sharing over two or more changes without exceeding the limits on any of these changes. For example, an employer that increased its deductible by 30 percent would have relinquished grandfather status. However, it is possible that the employer could have achieved the same cost control objectives by limiting the deductible increase to 19 percent, and, also increasing the out-of-pocket maximum or copayments, or decreasing the employer share of the premium.

The Departments estimate that approximately two-thirds of the employers that made changes in 2009 that would have exceeded the threshold implemented by this rule could have achieved the same cost-control objective and remained grandfathered by making changes in other cost-sharing parameters or in the employer share of the premium. Only 24 percent of small employers and 16 percent of large employers could not have reconfigured the cost-sharing parameters or employer contributions in such a manner that would have allowed them to stay grandfathered. If benefit changes that are allowed within the grandfathered health plan definition were also taken into account (not possible with available data), these percentages would be even lower.

For fully insured group health plans, another change that would require a plan to relinquish grandfather status is a change in issuer. Between 2008 and 2009, 15 percent of small employers and four percent of large employers changed insurance carriers.[27] However, it is likely that the incentive to stay grandfathered would lead some of these employers to continue with the same issuer, making the actual share of firms relinquishing grandfather status as a result of an issuer change lower than the percentage that switched in 2009. There appears to be no empirical evidence to

HRET survey gathers information about the PPO with the most enrollment in each year. If enrollment at a given employer shifted from one PPO to a different PPO between 2008 and 2009, then the PPO with the most enrollment in 2009 may be different than the PPO with the most enrollment in 2008. To the extent this occurred, the estimates presented here may overestimate the fraction of plans that will relinquish grandfather status. However, given the behavioral assumptions of the analysis and the need to present a range of results, the Departments believe that such overestimation will not have a noticeable effect on estimates presented here.

[23] The regulation allows plans to increase fixed-amount copayments by an amount that does not exceed $5 increased by medical inflation. In this analysis, the Departments used a threshold of $5, rather than the threshold of approximately $5.20 that would be allowed by these interim final regulations. There would have been no difference in the results if the Departments had used $5.20 rather than $5 as the threshold.

[24] In contrast, for self-insured plans, a change in third party administrator in and of itself does not cause a group health plan to cease to be a grandfathered health plan, provided changes do not exceed the limits of paragraph (g)(1) of these interim final regulations.

[25] Some employers made changes which exceeded at least one cost-sharing threshold and decreased the employer's share of contribution by more than five percent.

[26] Employers who offer plans on a calendar year basis generally make decisions about health plan offerings during the preceding summer. Thus, decisions for calendar 2009 were generally made during the summer of 2008. At that time, the depth of the coming recession was not yet clear to most observers.

[27] Among the 76 percent of small employers and 84 percent of large employers who could have accommodated the cost-sharing changes they desired to make within the parameters of these interim final regulations, 13 percent of the small employers and three percent of the large employers changed issuers.

provide guidance on the proportion of employers that would choose to remain with their issuer rather than relinquish grandfather status. That being so, an assumption was made that 50 percent of employers that changed issuers in 2009 would not have made a similar change in 2011 in order to retain grandfather status. It is likely that fewer employers will elect to change carriers than in recent years given that some will prefer to retain grandfather status. But it is also likely that many employers will prefer to switch carriers given a change in the issuer's network or other factors. Because there is little empirical evidence regarding the fraction of firms that would elect to switch in response to the change in regulations, we take the midpoint of the plausible range of no switching carriers at one extreme and all switching carriers at the other extreme. We therefore assume that 50 percent of employers that changed issuers in 2009 would not make a similar change in 2011 to retain grandfather status.

Combining the estimates of the percentage of employers that would relinquish grandfather status because they chose to make cost-sharing, benefit or employer contribution changes beyond the permitted parameters with the estimates of the percentage that would relinquish grandfather status because they change issuers, the Departments estimate that approximately 31 percent of small employers and 18 percent of large employers would make changes that would require them to relinquish grandfather status in 2011. The Departments use these estimates as our mid-range scenario.

c. Sensitivity Analysis: Assuming That Employers Will Be Willing To Absorb a Premium Increase in Order To Remain Grandfathered

To the extent that a large number of plans placed a high value on remaining grandfathered, it is reasonable to assume that some would consider other measures to maintain that status. In addition to the adjustments that employers could relatively easily make by simply adjusting the full set of cost-sharing parameters rather than focusing changes on a single parameter, the Departments expect that further behavioral changes in response to the incentives created by the Affordable Care Act and these interim final regulations is possible. For instance, plans could alter other benefits or could decide to accept a slight increase in plan premium or in premium contribution. All of these options would further lower the percentage of firms that would relinquish grandfather status. There is substantial uncertainty, however, about how many firms would utilize these other avenues.

To examine the impact of this type of behavior on the estimates on the number of plans that would not maintain grandfather status, the Departments examined the magnitude of additional premium increases plans would need to implement if they were to modify their cost-sharing changes to stay within the allowable limits. Among the 24 percent of small firms that would have relinquished grandfather status based on the changes they made in 2009, 31 percent would have needed to increase premiums by 3 percent or less in order to maintain grandfather status. The analogous statistic for the 16 percent of large firms that would have relinquished grandfather status is 41 percent. It is reasonable to think that employers that are facing only a relatively small premium increase might choose to remain grandfathered.

Using these estimates, if employers value grandfathering enough that they are willing to allow premiums to increase by three percent more than their otherwise intended level (or can make changes to benefits other than cost-sharing that achieve a similar result), then 14 percent of small employers and 11 percent of large employers would relinquish grandfather status if they made the same changes in 2011 as they had in 2009. Adding in the employers who would relinquish grandfather status because they change issuers, the Departments' lower bound estimate is that approximately 21 percent of small employers and 13 percent of large employers will relinquish grandfather status in 2011.

d. Sensitivity Analysis: Incomplete Flexibility To Substitute One Cost-Sharing Mechanism for Another

Although economic conditions may cause more plans to remain grandfathered in 2011 than might be expected from analysis of the 2009 data, there are other factors that may cause the Departments' estimates of the fraction of plans retaining grandfather status to be overestimates of the fraction that will retain grandfather status. The estimates are based on the assumption that all plans that could accommodate the 2009 change they made in a single cost-sharing parameter by spreading out those changes over multiple parameters would actually do so. However, some plans and sponsors may be concerned about the labor relations consequences of reducing the employer contribution to premium. For example, if a plan increases its out-of-pocket maximum from $3,000 to $5,000 in 2009, it could choose to remain grandfathered by limiting the out-of-pocket maximum to $3,570, reducing the employer contribution and increasing the employee contribution to premium. It is not clear, however, that all plan sponsors would do so—some may see the costs in negative employee relations as larger than the benefits from remaining grandfathered. Moreover, because some plans may already nearly comply with all provisions of the Affordable Care Act, or because enrollees are of average to less favorable health status, some employers may place less value on retaining grandfather status.

With this in mind, the Departments replicated the analysis, but assumed that one-half of the employers who made a change in cost-sharing parameter that could not be accommodated without reducing the employer contribution will be unwilling to reduce the employer contribution as a share of premium. Under this assumption, the 24 percent and 16 percent estimates of the proportion of employers relinquishing grandfather status increases to approximately 37 percent and 28 percent among small and large employers, respectively. Adding in the number of employers that it is estimated will change issuers, the Departments' high-end estimate for the proportion that will relinquish grandfather status in 2011 is approximately 42 percent for small employers and 29 percent for large employers.

e. Estimates for 2011–2013

Estimates are provided above for the percentage of employers that will retain grandfather status in 2011. These estimates are extended through 2013 by assuming that the identical percentage of plan sponsors will relinquish grandfathering in each year. Again, to the extent that the 2008–2009 data reflect plans that are more likely to make frequent changes in cost sharing, this assumption will overestimate the number of plans relinquishing grandfather status in 2012 and 2013.

Under this assumption, the Departments' mid-range estimate is that 66 percent of small employer plans and 45 percent of large employer plans will relinquish their grandfather status by the end of 2013. The low-end estimates are for 49 percent and 34 percent of small and large employer plans, respectively, to have relinquished grandfather status, and the high-end estimates are 80 percent and 64 percent, respectively.

TABLE 3—ESTIMATES OF THE CUMULATIVE PERCENTAGE OF EMPLOYER PLANS RELINQUISHING THEIR GRANDFATHERED STATUS, 2011–2013

	2011	2012	2013
Low-end Estimate			
Small Employer Plans	20%	36%	49%
Large Employer Plans	13%	24%	34%
All Employer Plans	15%	28%	39%
Mid-range Estimate			
Small Employer Plans	30%	51%	66%
Large Employer Plans	18%	33%	45%
All Employer Plans	22%	38%	51%
High-end Estimate			
Small Employer Plans	42%	66%	80%
Large Employer Plans	29%	50%	64%
All Employer Plans	33%	55%	69%

Notes: Represents full-time employees. Small Employers=3 to 99 employees; Large Employers=100+ employees. All three scenarios assume that two percent of all large employer plans and six percent of small employer plans would relinquish grandfathered status due to a change in issuer. Estimates are based on enrollment in PPOs.

Source: Kaiser/RHET Employer Survey, 2008–2009

f. Impacts on the Individual Market

The market for individual insurance is significantly different than that for group coverage. This affects estimates of the proportion of plans that will remain grandfathered until 2014. As mentioned previously, the individual market is a residual market for those who need insurance but do not have group coverage available and do not qualify for public coverage. For many, the market is transitional, providing a bridge between other types of coverage. One study found a high percentage of individual insurance policies began and ended with employer-sponsored coverage.[28] More importantly, coverage on particular policies tends to be for short periods of time. Reliable data are scant, but a variety of studies indicate that between 40 percent and 67 percent of policies are in effect for less than one year.[29] Although data on changes in benefit packages comparable to that for the group market is not readily available, the high turnover rates described here would dominate benefit changes as the chief source of changes in grandfather status.

While a substantial fraction of individual policies are in force for less than one year, a small group of individuals maintain their policies over longer time periods. One study found that 17 percent of individuals maintained their policies for more than two years,[30] while another found that nearly 30 percent maintained policies for more than three years.[31]

Using these turnover estimates, a reasonable range for the percentage of individual policies that would terminate, and therefore relinquish their grandfather status, is 40 percent to 67 percent. These estimates assume that the policies that terminate are replaced by new individual policies, and that these new policies are not, by definition, grandfathered. In addition, the coverage that some individuals maintain for long periods might lose its grandfather status because the cost-sharing parameters in policies change by more than the limits specified in these interim final regulations. The frequency of this outcome cannot be gauged due to lack of data, but as a result of it, the Departments estimate that the percentage of individual market policies losing grandfather status in a given year exceeds the 40 percent to 67 percent range that is estimated based on the fraction of individual policies that turn over from one year to the next.

g. Application to Extension of Dependent Coverage to Age 26

One way to assess the impact of these interim final regulations is to assess how they interact with other Affordable Care Act provisions. One such provision is the requirement that, in plan years on or after September 23, 2010, but prior to January 1, 2014, grandfathered group health plans are required to offer dependent coverage to a child under the age of 26 who is not eligible for employer-sponsored insurance. In the Regulatory Impact Assessment (RIA) for the regulation that was issued on May 13, 2010 (75 FR 27122), the Departments estimated that there were 5.3 million young adults age 19–25 who were covered by employer-sponsored coverage (ESI) and whose parents were covered by employer-sponsored insurance, and an additional 480,000 young adults who were uninsured, were offered ESI, and whose parents were covered by ESI. In that impact assessment, the Departments assumed that all parents with employer-sponsored insurance would be in grandfathered health plans, and that none of their 19–25 year old dependents with their own offer of employer-sponsored insurance would gain coverage as a result of that regulation.

As estimated here, approximately 80 percent of the parents with ESI are likely to be in grandfathered health plans in 2011, leaving approximately 20 percent of these parents in non-grandfathered health plans. Young adults under 26 with employer-sponsored insurance or with an offer of such coverage whose parents are in non-grandfathered plans potentially could enroll in their parents' coverage. The Departments assume that a large percentage of the young adults who are uninsured will enroll in their parents' coverage when given the opportunity. It is more difficult to model the choices of young adults with an offer of employer-sponsored insurance whose parents also have group coverage. One assumes these young adults will compare the amount that they must pay for their own employer's coverage with the amount that they (or their parents) would pay if they were covered under their parents' policies. Such a decision will incorporate the type of plan that the parent has, since if the parent already has a family plan whose premium does not vary by number of dependents, the

[28] Adele M. Kirk. The Individual Insurance Market: A Building Block for Health Care Reform? *Health Care Financing Organization Research Synthesis.* May 2008.

[29] Ibid.

[30] *http://content.healthaffairs.org/cgi/content/full/23/6/210#R14.* "Patterns of Individual Health Insurance Coverage" *Health Affairs* (Ziller et al, 2004).

[31] *http://content.healthaffairs.org/cgi/content/full/hlthaff.25.w226v1/DC1.* "Consumer Decision Making in the Individual Health Insurance Market" *Health Affairs* (Marquis *et al.,* 2006).

adult child could switch at no additional cost to the parents. A very rough estimate therefore is that approximately 25 percent of young adults with ESI will switch to their parents' coverage when their parents' coverage is not grandfathered. The Departments assume that 15 percent of young adults who are offered ESI but are uninsured and whose parents have non-grandfathered health plans will switch to their parents' plan. This latter estimate roughly corresponds to the assumption made in the low-take up rate scenario in the RIA for dependent coverage for young adults who are uninsured.

These assumptions imply that an additional approximately 414,000 young adults whose parents have non-grandfathered ESI will be covered by their parents' health coverage in 2011, of whom 14,000 would have been uninsured, compared with the dependent coverage regulation impact analysis that assumed that all existing plans would have remained grandfathered and none of these adult children would have been eligible for coverage under their parents' plans. By 2013, an estimated 698,000 additional young adults with ESI or an offer of ESI will be covered by their parent's non-grandfathered health policy, of which 36,000 would have been uninsured.

6. Grandfathered Health Plan Document Retention and Disclosure Requirements

To maintain grandfathered health plan status under these interim final regulations, a plan or issuer must maintain records that document the plan or policy terms in connection with the coverage in effect on March 23, 2010, and any other documents necessary to verify, explain or clarify is status as a grandfathered health plan. The records must be made available for examination by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

Plans or health insurance coverage that intend to be a grandfathered health plan, also must include a statement, in any plan materials provided to participants or beneficiaries (in the individual market, primary subscriber) describing the benefits provided under the plan or health insurance coverage, and that the plan or coverage is intended to be a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act. In these interim final regulations, the Departments provide a model statement plans and issuers may use to satisfy the disclosure requirement. The Department's estimate that the one time cost to plans and insurance issuers of preparing and distributing the grandfathered health plan disclosure is $39.6 million in 2011. The one time cost to plans and insurance issuers for the record retention requirement is estimated to be $32.2 million in 2011. For a discussion of the grandfathered health plan document retention and disclosure requirements, see the Paperwork Reduction Act section later in this preamble.

C. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the APA (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Under Section 553(b) of the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. These interim final regulations are exempt from the APA, because the Departments made a good cause finding that a general notice of proposed rulemaking is not necessary earlier in this preamble. Therefore, the RFA does not apply and the Departments are not required to either certify that the regulations would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Nevertheless, the Departments carefully considered the likely impact of the regulations on small entities in connection with their assessment under Executive Order 12866. Consistent with the policy of the RFA, the Departments encourage the public to submit comments that suggest alternative rules that accomplish the stated purpose of section 1251 of the Affordable Care Act and minimize the impact on small entities.

D. Special Analyses—Department of the Treasury

Notwithstanding the determinations of the Department of Labor and Department of Health and Human Services, for purposes of the Department of the Treasury, it has been determined that this Treasury decision is not a significant regulatory action for purposes of Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the RFA, refer to the Special Analyses section in the preamble to the cross-referencing notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

E. Paperwork Reduction Act

1. Department of Labor and Department of Treasury: Affordable Care Act Grandfathered Plan Disclosure and Record Retention Requirements

As part of their continuing efforts to reduce paperwork and respondent burden, the Departments conduct a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection requirements on respondents can be properly assessed.

As discussed earlier in this preamble, if a plan or health insurance coverage intends to be a grandfathered health plan, it must include a statement in any plan materials provided to participants or beneficiaries (in the individual market, primary subscriber) describing the benefits provided under the plan or health insurance coverage, and that the plan or coverage is intended to be grandfathered health plan within the meaning of section 1251 of the Affordable Care Act ("grandfathered health plan disclosure"). Model language has been provided in these interim final regulations, the use of which will satisfy this disclosure requirement

To maintain status as a grandfathered health plan under these interim final regulations, a plan or issuer must maintain records documenting the plan or policy terms in connection with the coverage in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan ("recordkeeping requirement"). In addition, the plan or issuer must make such records available for examination. Accordingly, a participant, beneficiary, individual policy subscriber, or State or Federal agency official would be able to

inspect such documents to verify the status of the plan or health insurance coverage as a grandfathered health plan.

As discussed earlier in this preamble, grandfathered health plans are not required to comply with certain Affordable Care Act provisions. These interim regulations define for plans and issuers the scope of changes that they can make to their grandfathered health plans and policies under the Affordable Care Act while retaining their grandfathered health plan status.

The Affordable Care Act grandfathered health plan disclosure and recordkeeping requirements are information collection requests (ICR) subject to the PRA. Currently, the Departments are soliciting public comments for 60 days concerning these disclosures. The Departments have submitted a copy of these interim final regulations to OMB in accordance with 44 U.S.C. 3507(d) for review of the information collections. The Departments and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Employee Benefits Security Administration either by fax to (202) 395–7285 or by e-mail to *oira_submission@omb.eop.gov.* A copy of the ICR may be obtained by contacting the PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–2745. These are not toll-free numbers. E-mail: *ebsa.opr@dol.gov.* ICRs submitted to OMB also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

a. Grandfathered Health Plan Disclosure

In order to satisfy the interim final regulations' grandfathered health plan disclosure requirement, the Departments estimate that 2.2 million ERISA-covered plans will need to notify an estimated 56.3 million policy holders of their plans' grandfathered health plan status.[32] The following estimates, except where noted, are based on the mid-range estimates of the percent of plans retaining grandfather status. Because the interim final regulations provide model language for this purpose, the Departments estimate that five minutes of clerical time (with a labor rate of $26.14/hour) will be required to incorporate the required language into the plan document and ten minutes of an human resource professional's time (with a labor rate of $89.12/hour) will be required to review the modified language.[33] After plans first satisfy the grandfathered health plan disclosure requirement in 2011, any additional burden should be de minimis if a plan wants to maintain its grandfather status in future years. The Departments also expect the cost of removing the notice from plan documents as plans relinquish their grandfather status to be de minimis and therefore is not estimated. Therefore, the Departments estimate that plans will incur a one-time hour burden of 538,000 hours with an equivalent cost of $36.6 million to meet the disclosure requirement.

The Departments assume that only printing and material costs are associated with the disclosure requirement, because the interim final regulations provide model language that can be incorporated into existing plan documents, such as a summary plan description (SPD). The Departments estimate that the notice will require one-half of a page, five cents per page printing and material cost will be incurred, and 38 percent of the notices will be delivered electronically. This results in a cost burden of $873,000 ($0.05 per page*½ pages per notice * 34.9 million notices*0.62).

[32] The Departments' estimate of the number of ERISA-covered health plans was obtained from the 2008 Medical Expenditure Panel Survey's Insurance component. The estimate of the number of policy holders was obtained from the 2009 Current Population Survey. The methodology used to estimate the percentage of plans that will retain their grandfathered plans was discussed above.

[33] EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index June 2009, Bureau of Labor Statistics).

b. Record-Keeping Requirement

The Departments assume that most of the documents required to be retained to satisfy recordkeeping requirement of these interim final regulations already are retained by plans for tax purposes, to satisfy ERISA's record retention and statute of limitations requirements, and for other business reasons. Therefore, the Departments estimate that the recordkeeping burden imposed by this ICR will require five minutes of a legal professional's time (with a rate of $119.03/hour) to determine the relevant plan documents that must be retained and ten minutes of clerical staff time (with a labor rate of $26.14/hour) to organize and file the required documents to ensure that they are accessible to participants, beneficiaries, and Federal and State governmental agency officials.

With an estimated 2.2 million grandfathered plans in 2011, the Departments estimate an hour burden of approximately 538,000 hours with equivalent costs of $30.7 million. The Departments have estimated this as a one-time cost incurred in 2011, because after the first year, the Departments anticipate that any future costs will be *de minimis.*

Overall, for both the grandfathering notice and the recordkeeping requirement, the Departments expect there to be a total hour burden of 1.1 million hours and a cost burden of $291,000.

The Departments note that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.

These paperwork burden estimates are summarized as follows:

Type of Review: New Collection.

Agencies: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, U.S. Department of Treasury.

Title: Disclosure and Recordkeeping Requirements for Grandfathered Health Plans under the Affordable Care Act.

OMB Number: 1210–0140; 1545–2178.

Affected Public: Business or other for-profit; not-for-profit institutions.

Total Respondents: 2,151,000.

Total Responses: 56,347,000.

Frequency of Response: One time.

Estimated Total Annual Burden Hours: 538,000 (Employee Benefits Security Administration); 538,000 (Internal Revenue Service).

Estimated Total Annual Burden Cost: $437,000 (Employee Benefits Security Administration); $437,000 (Internal Revenue Service).

2. Department of Health and Human Services: Affordable Care Act Grandfathered Plan Disclosure and Record Retention Requirements

As discussed above in the Department of Labor and Department of the Treasury PRA section, these interim final regulations contain a record retention and disclosure requirement for grandfathered health plans. These requirements are information collection requirements under the PRA.

a. Grandfathered Health Plan Disclosure

In order to satisfy the interim final regulations' grandfathered health plan disclosure requirement, the Department estimates that 98,000 state and local governmental plans will need to notify approximately 16.2 million policy holders of their plans' status as a grandfathered health plan. The following estimates except where noted are based on the mid-range estimates of the percent of plans retaining grandfather status. An estimated 490 insurers providing coverage in the individual market will need to notify an estimated 4.3 million policy holders of their policies' status as a grandfathered health plan.[34]

Because the interim final regulations provide model language for this purpose, the Department estimates that five minute of clerical time (with a labor rate of $26.14/hour) will be required to incorporate the required language into the plan document and ten minutes of a human resource professional's time (with a labor rate of $89.12/hour) will be required to review the modified language.[35] After plans first satisfy the grandfathered health plan disclosure requirement in 2011, any additional burden should be *de minimis* if a plan wants to maintain its grandfather status in future years. The Department also expects the cost of removing the notice from plan documents as plans relinquish their grandfather status to be de minimis and therefore is not estimated. Therefore, the Department estimates that plans and insurers will incur a one-time hour burden of 26,000 hours with an equivalent cost of $1.8 million to meet the disclosure requirement.

The Department assumes that only printing and material costs are associated with the disclosure requirement, because the interim final regulations provide model language that can be incorporated into existing plan documents, such as an SPD. The Department estimates that the notice will require one-half of a page, five cents per page printing and material cost will be incurred, and 38 percent of the notices will be delivered electronically. This results in a cost burden of $318,000 ($0.05 per page*½ pages per notice * 12.7 million notices*0.62).

b. Record-Keeping Requirement

The Department assumes that most of the documents required to be retained to satisfy the Affordable Care Act's recordkeeping requirement already are retained by plans for tax purposes, to satisfy ERISA's record retention and statute of limitations requirements, and for other business reasons. Therefore, the Department estimates that the recordkeeping burden imposed by this ICR will require five minutes of a legal professional's time (with a rate of $119.03/hour) to determine the relevant plan documents that must be retained and ten minutes of clerical staff time (with a labor rate of $26.14/hour) to organize and file the required documents to ensure that they are accessible to participants, beneficiaries, and Federal and State governmental agency officials.

With an estimated 98,000 grandfathered plans and 7,400 grandfathered individual insurance products [36] in 2011, the Department estimates an hour burden of approximately 26,000 hours with equivalent costs of $1.5 million. The Department's have estimated this as a one-time cost incurred in 2011, because after the first year, the Department assumes any future costs will be *de minimis.*

Overall, for both the grandfathering notice and the recordkeeping requirement, the Department expects there to be a total hour burden of 53,000 hours and a cost burden of $318,000.

The Department notes that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Department of Health and Human Services.

Title: Disclosure and Recordkeeping Requirements for Grandfathered Health Plans under the Affordable Care Act.

OMB Number: 0938–1093.

Affected Public: Business; State, Local, or Tribal Governments.

Respondents: 105,000.

Responses: 20,508,000.

Frequency of Response: One-time.

Estimated Total Annual Burden Hours: 53,000 hours.

Estimated Total Annual Burden Cost: $318,000.

If you comment on this information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: OCIIO Desk Officer, OCIIO–9991–IFC.

Fax: (202) 395–6974; or

E-mail: *OIRA_submission@omb.eop.gov.*

F. Congressional Review Act

These interim final regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare several analytic statements before proposing any rules that may result in annual expenditures of $100 million (as adjusted for inflation) by State, local and tribal governments or the private sector. These interim final regulations are not subject to the Unfunded Mandates Reform Act, because they are being issued as an interim final regulation. However, consistent with the policy embodied in the Unfunded Mandates Reform Act, these interim final regulations have been designed to be the least burdensome alternative for State, local and tribal governments, and the private sector, while achieving the objectives of the Affordable Care Act.

[34] The Department's estimate of the number of state and local governmental health plans was obtained from the 2007 Census of Governments. The estimate of the number of policy holders in the individual market were obtained from the 2009 Current Population Survey. The methodology used to estimate the percentage of state and local governmental plans and individual market policies that will retain their grandfathered health plan status was discussed above.

[35] EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index June 2009, Bureau of Labor Statistics).

[36] The Department is not certain on the number of products offered in the individual market and requests comments. After reviewing the number of products offered by various insurers in the individual market the Department used an estimate of 15 which it believes is a high estimate.

H. Federalism Statement—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments' view, this regulation has federalism implications, because it has direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. However, in the Departments' view, the federalism implications of the regulation is substantially mitigated because, with respect to health insurance issuers, the Departments expect that the majority of States will enact laws or take other appropriate action resulting in their meeting or exceeding the Federal standard.

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of ERISA section 731 and PHS Act section 2724 (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the HIPAA requirements (including those of the Affordable Care Act) are not to be "construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of a Federal standard. The conference report accompanying HIPAA indicates that this is intended to be the "narrowest" preemption of State laws. (See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018.) States may continue to apply State law requirements except to the extent that such requirements prevent the application of the Affordable Care Act requirements that are the subject of this rulemaking. State insurance laws that are more stringent than the federal requirements are unlikely to "prevent the application of" the Affordable Care Act, and be preempted. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the Federal law.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments have engaged in efforts to consult with and work cooperatively with affected State and local officials, including attending conferences of the National Association of Insurance Commissioners and consulting with State insurance officials on an individual basis. It is expected that the Departments will act in a similar fashion in enforcing the Affordable Care Act requirements. Throughout the process of developing these regulations, to the extent feasible within the specific preemption provisions of HIPAA as it applies to the Affordable Care Act, the Departments have attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to these regulations, the Departments certify that the Employee Benefits Security Administration and the Office of Consumer Information and Insurance Oversight have complied with the requirements of Executive Order 13132 for the attached regulation in a meaningful and timely manner.

V. Statutory Authority

The Department of the Treasury temporary regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor interim final regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; section 101(g), Public Law 104–191, 110 Stat. 1936; section 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); section 512(d), Public Law 110–343, 122 Stat. 3881; section 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

The Department of Health and Human Services interim final regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: June 10, 2010.

Michael F. Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

Signed this 4th day of June, 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Approved: June 8, 2010.

Jay Angoff,

Director, Office of Consumer Information and Insurance Oversight.

Approved: June 9, 2010.

Kathleen Sebelius,

Secretary.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Chapter I

■ Accordingly, 26 CFR parts 54 and 602 are amended as follows:

PART 54—PENSION EXCISE TAXES

■ 1. The authority citation for part 54 is amended by adding entries for §§ 54.9815–1251T and 54.9815–2714T in numerical order to read in part as follows:

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

Section 54.9815–1251T also issued under 26 U.S.C. 9833.

Section 54.9815–2714T also issued under 26 U.S.C. 9833. * * *

■ 2. Section 54.9815–1251T is added to read as follows:

§ 54.9815–1251T Preservation of right to maintain existing coverage (temporary).

(a) *Definition of grandfathered health plan coverage*—(1) *In general*—(i) *Grandfathered health plan coverage* means coverage provided by a group health plan, or a health insurance issuer, in which an individual was enrolled on March 23, 2010 (for as long as it maintains that status under the rules of this section). A group health plan or group health insurance coverage does not cease to be grandfathered health plan coverage merely because one or more (or even all) individuals enrolled on March 23, 2010 cease to be covered, provided that the plan or group health insurance coverage has continuously covered someone since March 23, 2010 (not necessarily the same person, but at all times at least one person). For purposes of this section, a plan or health insurance coverage that provides grandfathered health plan coverage is referred to as a grandfathered health plan. The rules of this section apply separately to each benefit package made available under a group health plan or health insurance coverage.

(ii) Subject to the rules of paragraph (f) of this section for collectively bargained plans, if an employer or employee organization enters into a new policy, certificate, or contract of insurance after March 23, 2010 (because, for example, any previous policy, certificate, or contract of insurance is not being renewed), then that policy, certificate, or contract of insurance is not a grandfathered health plan with respect to the individuals in the group health plan.

(2) *Disclosure of grandfather status*—(i) To maintain status as a grandfathered health plan, a plan or health insurance coverage must include a statement, in any plan materials provided to a participant or beneficiary describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Patient Protection and Affordable Care Act and must provide contact information for questions and complaints.

(ii) The following model language can be used to satisfy this disclosure requirement:

This [group health plan or health insurance issuer] believes this [plan or coverage] is a "grandfathered health plan" under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that your [plan or policy] may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any cost sharing. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits.

Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the plan administrator at [insert contact information]. [For ERISA plans, insert: You may also contact the Employee Benefits Security Administration, U.S. Department of Labor at 1–866–444–3272 or *www.dol.gov/ebsa/healthreform.* This website has a table summarizing which protections do and do not apply to grandfathered health plans.] [For individual market policies and nonfederal governmental plans, insert: You may also contact the U.S. Department of Health and Human Services at *www.healthreform.gov.*]

(3) *Documentation of plan or policy terms on March 23, 2010.* To maintain status as a grandfathered health plan, a group health plan, or group health insurance coverage, must, for as long as the plan or health insurance coverage takes the position that it is a grandfathered health plan—

(i) Maintain records documenting the terms of the plan or health insurance coverage in connection with the coverage in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan; and

(ii) Make such records available for examination upon request.

(4) *Family members enrolling after March 23, 2010.* With respect to an individual who is enrolled in a group health plan or health insurance coverage on March 23, 2010, grandfathered health plan coverage includes coverage of family members of the individual who enroll after March 23, 2010 in the grandfathered health plan coverage of the individual.

(5) *Examples.* The rules of this paragraph (a) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan not maintained pursuant to a collective bargaining agreement provides coverage through a group health insurance policy from Issuer X on March 23, 2010. For the plan year beginning January 1, 2012, the plan enters into a new policy with Issuer Z.

(ii) *Conclusion.* In this *Example 1,* for the plan year beginning January 1, 2012, the group health insurance coverage issued by Z is not a grandfathered health plan under the rules of paragraph (a)(1)(ii) of this section because the policy issued by Z did not provide coverage on March 23, 2010.

Example 2. (i) *Facts.* A group health plan not maintained pursuant to a collective bargaining agreement offers three benefit packages on March 23, 2010. Option F is a self-insured option. Options G and H are insured options. Beginning July 1, 2013, the plan replaces the issuer for Option H with a new issuer.

(ii) *Conclusion.* In this *Example 2,* the coverage under Option H is not grandfathered health plan coverage as of July 1, 2013, consistent with the rule in paragraph (a)(1)(ii) of this section. Whether the coverage under Options F and G is grandfathered health plan coverage is determined under the rules of this section, including paragraph (g) of this section. If the plan enters into a new policy, certificate, or contract of insurance for Option G, Option G's status as a grandfathered health plan would cease under paragraph (a)(1)(ii) of this section.

(b) *Allowance for new employees to join current plan*—(1) *In general.* Subject to paragraph (b)(2) of this section, a group health plan (including health insurance coverage provided in connection with the group health plan) that provided coverage on March 23, 2010 and has retained its status as a grandfathered health plan (consistent with the rules of this section, including paragraph (g) of this section) is grandfathered health plan coverage for new employees (whether newly hired or newly enrolled) and their families enrolling in the plan after March 23, 2010.

(2) *Anti-abuse rules*—(i) *Mergers and acquisitions.* If the principal purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan.

(ii) *Change in plan eligibility.* A group health plan or health insurance coverage (including a benefit package under a group health plan) ceases to be a grandfathered health plan if—

(A) Employees are transferred into the plan or health insurance coverage (the transferee plan) from a plan or health insurance coverage under which the employees were covered on March 23, 2010 (the transferor plan);

(B) Comparing the terms of the transferee plan with those of the transferor plan (as in effect on March 23, 2010) and treating the transferee plan as if it were an amendment of the transferor plan would cause a loss of grandfather status under the provisions of paragraph (g)(1) of this section; and

(C) There was no bona fide employment-based reason to transfer the employees into the transferee plan. For this purpose, changing the terms or cost of coverage is not a bona fide employment-based reason.

(3) *Examples.* The rules of this paragraph (b) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan offers two benefit packages on March 23, 2010, Options F and G. During a subsequent open enrollment period, some of the employees enrolled in Option F on March 23, 2010 switch to Option G.

(ii) *Conclusion.* In this *Example 1,* the group health coverage provided under Option G remains a grandfathered health plan under the rules of paragraph (b)(1) of this section because employees previously enrolled in Option F are allowed to enroll in Option G as new employees.

Example 2. (i) *Facts.* Same facts as *Example 1,* except that the plan sponsor eliminates Option F because of its high cost and transfers employees covered under Option F to Option G. If instead of transferring employees from Option F to Option G, Option F was amended to match the terms of Option G, then Option F would cease to be a grandfathered health plan.

(ii) *Conclusion.* In this *Example 2,* the plan did not have a bona fide employment-based reason to transfer employees from Option F to Option G. Therefore, Option G ceases to be a grandfathered health plan with respect to all employees. (However, any other benefit package maintained by the plan sponsor is analyzed separately under the rules of this section.)

Example 3. (i) *Facts.* A group health plan offers two benefit packages on March 23, 2010, Options H and I. On March 23, 2010, Option H provides coverage only for employees in one manufacturing plant. Subsequently, the plant is closed, and some employees in the closed plant are moved to another plant. The employer eliminates Option H and the employees that are moved are transferred to Option I. If instead of transferring employees from Option H to Option I, Option H was amended to match the terms of Option I, then Option H would cease to be a grandfathered health plan.

(ii) *Conclusion.* In this *Example 3,* the plan has a bona fide employment-based reason to transfer employees from Option H to Option I. Therefore, Option I does not cease to be a grandfathered health plan.

(c) *General grandfathering rule*—(1) Except as provided in paragraphs (d) and (e) of this section, subtitles A and C of title I of the Patient Protection and Affordable Care Act (and the amendments made by those subtitles, and the incorporation of those amendments into section 9815 and ERISA section 715) do not apply to grandfathered health plan coverage. Accordingly, the provisions of PHS Act sections 2701, 2702, 2703, 2705, 2706, 2707, 2709 (relating to coverage for individuals participating in approved clinical trials, as added by section 10103 of the Patient Protection and Affordable Care Act), 2713, 2715A, 2716, 2717, 2719, and 2719A, as added or amended by the Patient Protection and Affordable Care Act, do not apply to grandfathered health plans. (In addition, *see* 45 CFR 147.140(c), which provides that the provisions of PHS Act section 2704, and PHS Act section 2711 insofar as it relates to annual limits, do not apply to grandfathered health plans that are individual health insurance coverage.)

(2) To the extent not inconsistent with the rules applicable to a grandfathered health plan, a grandfathered health plan must comply with the requirements of the Code, the PHS Act, and ERISA applicable prior to the changes enacted by the Patient Protection and Affordable Care Act.

(d) *Provisions applicable to all grandfathered health plans.* The provisions of PHS Act section 2711 insofar as it relates to lifetime limits, and the provisions of PHS Act sections 2712, 2714, 2715, and 2718, apply to grandfathered health plans for plan years beginning on or after September 23, 2010. The provisions of PHS Act section 2708 apply to grandfathered health plans for plan years beginning on or after January 1, 2014.

(e) *Applicability of PHS Act sections 2704, 2711, and 2714 to grandfathered group health plans and group health insurance coverage*—(1) The provisions of PHS Act section 2704 as it applies with respect to enrollees who are under 19 years of age, and the provisions of PHS Act section 2711 insofar as it relates to annual limits, apply to grandfathered health plans that are group health plans (including group health insurance coverage) for plan years beginning on or after September 23, 2010. The provisions of PHS Act section 2704 apply generally to grandfathered health plans that are group health plans (including group health insurance coverage) for plan years beginning on or after January 1, 2014.

(2) For plan years beginning before January 1, 2014, the provisions of PHS Act section 2714 apply in the case of an adult child with respect to a grandfathered health plan that is a group health plan only if the adult child is not eligible to enroll in an eligible employer-sponsored health plan (as defined in section 5000A(f)(2)) other than a grandfathered health plan of a parent. For plan years beginning on or after January 1, 2014, the provisions of PHS Act section 2714 apply with respect to a grandfathered health plan that is a group health plan without regard to whether an adult child is eligible to enroll in any other coverage.

(f) *Effect on collectively bargained plans*—(1) *In general.* In the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that was ratified before March 23, 2010, the coverage is grandfathered health plan coverage at least until the date on which the last of the collective bargaining agreements relating to the coverage that was in effect on March 23, 2010 terminates. Any coverage amendment made pursuant to a collective bargaining agreement relating to the coverage that amends the coverage solely to conform to any requirement added by subtitles A and C of title I of the Patient Protection and Affordable Care Act (and the amendments made by those subtitles, and the incorporation of those amendments into section 9815 and ERISA section 715) is not treated as a termination of the collective bargaining agreement. After the date on which the last of the collective bargaining agreements relating to the coverage that was in effect on March 23, 2010 terminates, the determination of whether health insurance coverage maintained pursuant to a collective bargaining agreement is grandfathered health plan coverage is made under the rules of this section other than this paragraph (f) (comparing the terms of the health insurance coverage after the date the last collective bargaining agreement terminates with the terms of the health insurance coverage that were in effect on March 23, 2010) and, for any changes in insurance coverage after the termination of the collective bargaining agreement, under the rules of paragraph (a)(1)(ii) of this section.

(2) *Examples.* The rules of this paragraph (f) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan maintained pursuant to a collective bargaining agreement provides coverage through a group health insurance policy from Issuer W on March 23, 2010. The collective bargaining agreement has not been amended and will not expire before December 31, 2011. The group health plan enters into a new group health insurance policy with Issuer Y for the plan year starting on January 1, 2011.

(ii) *Conclusion.* In this *Example 1,* the group health plan, and the group health

insurance policy provided by Y, remains a grandfathered health plan with respect to existing employees and new employees and their families because the coverage is maintained pursuant to a collective bargaining agreement ratified prior to March 23, 2010 that has not terminated.

Example 2. (i) *Facts.* Same facts as *Example 1,* except the coverage with Y is renewed under a new collective bargaining agreement effective January 1, 2012, with the only changes since March 23, 2010 being changes that do not cause the plan to cease to be a grandfathered health plan under the rules of this section, including paragraph (g) of this section.

(ii) *Conclusion.* In this *Example 2,* the group health plan remains a grandfathered health plan pursuant to the rules of this section. Moreover, the group health insurance policy provided by Y remains a grandfathered health plan under the rules of this section, including paragraph (g) of this section.

(g) *Maintenance of grandfather status*—(1) *Changes causing cessation of grandfather status.* Subject to paragraph (g)(2) of this section, the rules of this paragraph (g)(1) describe situations in which a group health plan or health insurance coverage ceases to be a grandfathered health plan.

(i) *Elimination of benefits.* The elimination of all or substantially all benefits to diagnose or treat a particular condition causes a group health plan or health insurance coverage to cease to be a grandfathered health plan. For this purpose, the elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition.

(ii) *Increase in percentage cost-sharing requirement.* Any increase, measured from March 23, 2010, in a percentage cost-sharing requirement (such as an individual's coinsurance requirement) causes a group health plan or health insurance coverage to cease to be a grandfathered health plan.

(iii) *Increase in a fixed-amount cost-sharing requirement other than a copayment.* Any increase in a fixed-amount cost-sharing requirement other than a copayment (for example, deductible or out-of-pocket limit), determined as of the effective date of the increase, causes a group health plan or health insurance coverage to cease to be a grandfathered health plan, if the total percentage increase in the cost-sharing requirement measured from March 23, 2010 exceeds the maximum percentage increase (as defined in paragraph (g)(3)(ii) of this section).

(iv) *Increase in a fixed-amount copayment.* Any increase in a fixed-amount copayment, determined as of the effective date of the increase, causes a group health plan or health insurance coverage to cease to be a grandfathered health plan, if the total increase in the copayment measured from March 23, 2010 exceeds the greater of:

(A) An amount equal to $5 increased by medical inflation, as defined in paragraph (g)(3)(i) of this section (that is, $5 times medical inflation, plus $5), or

(B) The maximum percentage increase (as defined in paragraph (g)(3)(ii) of this section), determined by expressing the total increase in the copayment as a percentage.

(v) *Decrease in contribution rate by employers and employee organizations*—(A) *Contribution rate based on cost of coverage.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on cost of coverage (as defined in paragraph (g)(3)(iii)(A) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in § 54.9802–1(d)) by more than 5 percentage points below the contribution rate for the coverage period that includes March 23, 2010.

(B) *Contribution rate based on a formula.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on a formula (as defined in paragraph (g)(3)(iii)(B) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in § 54.9802–1(d)) by more than 5 percent below the contribution rate for the coverage period that includes March 23, 2010.

(vi) *Changes in annual limits*—(A) *Addition of an annual limit.* A group health plan, or group health insurance coverage, that, on March 23, 2010, did not impose an overall annual or lifetime limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage imposes an overall annual limit on the dollar value of benefits.

(B) *Decrease in limit for a plan or coverage with only a lifetime limit.* A group health plan, or group health insurance coverage, that, on March 23, 2010, imposed an overall lifetime limit on the dollar value of all benefits but no overall annual limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage adopts an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010.

(C) *Decrease in limit for a plan or coverage with an annual limit.* A group health plan, or group health insurance coverage, that, on March 23, 2010, imposed an overall annual limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage decreases the dollar value of the annual limit (regardless of whether the plan or health insurance coverage also imposed an overall lifetime limit on March 23, 2010 on the dollar value of all benefits).

(2) *Transitional rules*—(i) *Changes made prior to March 23, 2010.* If a group health plan or health insurance issuer makes the following changes to the terms of the plan or health insurance coverage, the changes are considered part of the terms of the plan or health insurance coverage on March 23, 2010 even though they were not effective at that time and such changes do not cause a plan or health insurance coverage to cease to be a grandfathered health plan:

(A) Changes effective after March 23, 2010 pursuant to a legally binding contract entered into on or before March 23, 2010;

(B) Changes effective after March 23, 2010 pursuant to a filing on or before March 23, 2010 with a State insurance department; or

(C) Changes effective after March 23, 2010 pursuant to written amendments to a plan that were adopted on or before March 23, 2010.

(ii) *Changes made after March 23, 2010 and adopted prior to issuance of regulations.* If, after March 23, 2010, a group health plan or health insurance issuer makes changes to the terms of the plan or health insurance coverage and the changes are adopted prior to June 14, 2010, the changes will not cause the plan or health insurance coverage to cease to be a grandfathered health plan if the changes are revoked or modified effective as of the first day of the first plan year (in the individual market, policy year) beginning on or after September 23, 2010, and the terms of the plan or health insurance coverage on that date, as modified, would not cause the plan or coverage to cease to be a grandfathered health plan under the rules of this section, including paragraph (g)(1) of this section. For this purpose, changes will be considered to have been adopted prior to June 14, 2010 if:

(A) The changes are effective before that date;

(B) The changes are effective on or after that date pursuant to a legally binding contract entered into before that date;

(C) The changes are effective on or after that date pursuant to a filing before

that date with a State insurance department; or

(D) The changes are effective on or after that date pursuant to written amendments to a plan that were adopted before that date.

(3) *Definitions*—(i) *Medical inflation defined.* For purposes of this paragraph (g), the term *medical inflation* means the increase since March 2010 in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI–U) (unadjusted) published by the Department of Labor using the 1982–1984 base of 100. For this purpose, the increase in the overall medical care component is computed by subtracting 387.142 (the overall medical care component of the CPI–U (unadjusted) published by the Department of Labor for March 2010, using the 1982–1984 base of 100) from the index amount for any month in the 12 months before the new change is to take effect and then dividing that amount by 387.142.

(ii) *Maximum percentage increase defined.* For purposes of this paragraph (g), the term *maximum percentage increase* means medical inflation (as defined in paragraph (g)(3)(i) of this section), expressed as a percentage, plus 15 percentage points.

(iii) *Contribution rate defined.* For purposes of paragraph (g)(1)(v) of this section:

(A) *Contribution rate based on cost of coverage.* The term *contribution rate based on cost of coverage* means the amount of contributions made by an employer or employee organization compared to the total cost of coverage, expressed as a percentage. The total cost of coverage is determined in the same manner as the applicable premium is calculated under the COBRA continuation provisions of section 4980B(f)(4), section 604 of ERISA, and section 2204 of the PHS Act. In the case of a self-insured plan, contributions by an employer or employee organization are equal to the total cost of coverage minus the employee contributions towards the total cost of coverage.

(B) *Contribution rate based on a formula.* The term *contribution rate based on a formula* means, for plans that, on March 23, 2010, made contributions based on a formula (such as hours worked or tons of coal mined), the formula.

(4) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

Example 1. (i) *Facts.* On March 23, 2010, a grandfathered health plan has a coinsurance requirement of 20% for inpatient surgery. The plan is subsequently amended to increase the coinsurance requirement to 25%.

(ii) *Conclusion.* In this *Example 1,* the increase in the coinsurance requirement from 20% to 25% causes the plan to cease to be a grandfathered health plan.

Example 2. (i) *Facts.* Before March 23, 2010, the terms of a group health plan provide benefits for a particular mental health condition, the treatment for which is a combination of counseling and prescription drugs. Subsequently, the plan eliminates benefits for counseling.

(ii) *Conclusion.* In this *Example 2,* the plan ceases to be a grandfathered health plan because counseling is an element that is necessary to treat the condition. Thus the plan is considered to have eliminated substantially all benefits for the treatment of the condition.

Example 3. (i) *Facts.* On March 23, 2010, a grandfathered health plan has a copayment requirement of $30 per office visit for specialists. The plan is subsequently amended to increase the copayment requirement to $40. Within the 12-month period before the $40 copayment takes effect, the greatest value of the overall medical care component of the CPI–U (unadjusted) is 475.

(ii) *Conclusion.* In this *Example 3,* the increase in the copayment from $30 to $40, expressed as a percentage, is 33.33% (40 − 30 = 10; 10 ÷ 30 = 0.3333; 0.3333 = 33.33%). Medical inflation (as defined in paragraph (g)(3)(i) of this section) from March 2010 is 0.2269 (475 − 387.142 = 87.858; 87.858 ÷ 387.142 = 0.2269). The maximum percentage increase permitted is 37.69% (0.2269 = 22.69%; 22.69% + 15% = 37.69%). Because 33.33% does not exceed 37.69%, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Example 4. (i) *Facts.* Same facts as *Example 3,* except the grandfathered health plan subsequently increases the $40 copayment requirement to $45 for a later plan year. Within the 12-month period before the $45 copayment takes effect, the greatest value of the overall medical care component of the CPI–U (unadjusted) is 485.

(ii) *Conclusion.* In this *Example 4,* the increase in the copayment from $30 (the copayment that was in effect on March 23, 2010) to $45, expressed as a percentage, is 50% (45 − 30 = 15; 15 ÷ 30 = 0.5; 0.5 = 50%). Medical inflation (as defined in paragraph (g)(3)(i) of this section) from March 2010 is 0.2527 (485 − 387.142 = 97.858; 97.858 ÷ 387.142 = 0.2527). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 40.27% (0.2527 = 25.27%; 25.27% + 15% = 40.27%), or $6.26 ($5 × 0.2527 = $1.26; $1.26 + $5 = $6.26). Because 50% exceeds 40.27% and $15 exceeds $6.26, the change in the copayment requirement at that time causes the plan to cease to be a grandfathered health plan.

Example 5. (i) *Facts.* On March 23, 2010, a grandfathered health plan has a copayment of $10 per office visit for primary care providers. The plan is subsequently amended to increase the copayment requirement to $15. Within the 12-month period before the $15 copayment takes effect, the greatest value of the overall medical care component of the CPI–U (unadjusted) is 415.

(ii) *Conclusion.* In this *Example 5,* the increase in the copayment, expressed as a percentage, is 50% (15 − 10 = 5; 5 ÷ 10 = 0.5; 0.5 = 50%). Medical inflation (as defined in paragraph (g)(3) of this section) from March 2010 is 0.0720 (415.0 − 387.142 = 27.858; 27.858 ÷ 387.142 = 0.0720). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 22.20% (0.0720 = 7.20%; 7.20% + 15% = 22.20), or $5.36 ($5 × 0.0720 = $0.36; $0.36 + $5 = $5.36). The $5 increase in copayment in this *Example 5* would not cause the plan to cease to be a grandfathered health plan pursuant to paragraph (g)(1)(iv) of this section, which would permit an increase in the copayment of up to $5.36.

Example 6. (i) *Facts.* The same facts as *Example 5,* except on March 23, 2010, the grandfathered health plan has no copayment ($0) for office visits for primary care providers. The plan is subsequently amended to increase the copayment requirement to $5.

(ii) *Conclusion.* In this *Example 6,* medical inflation (as defined in paragraph (g)(3)(i) of this section) from March 2010 is 0.0720 (415.0 − 387.142 = 27.858; 27.858 ÷ 387.142 = 0.0720). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv)(A) of this section is $5.36 ($5 × 0.0720 = $0.36; $0.36 + $5 = $5.36). The $5 increase in copayment in this *Example 6* is less than the amount calculated pursuant to paragraph (g)(1)(iv)(A) of this section of $5.36. Thus, the $5 increase in copayment does not cause the plan to cease to be a grandfathered health plan.

Example 7. (i) *Facts.* On March 23, 2010, a self-insured group health plan provides two tiers of coverage—self-only and family. The employer contributes 80% of the total cost of coverage for self-only and 60% of the total cost of coverage for family. Subsequently, the employer reduces the contribution to 50% for family coverage, but keeps the same contribution rate for self-only coverage.

(ii) *Conclusion.* In this *Example 7,* the decrease of 10 percentage points for family coverage in the contribution rate based on cost of coverage causes the plan to cease to be a grandfathered health plan. The fact that the contribution rate for self-only coverage remains the same does not change the result.

Example 8. (i) *Facts.* On March 23, 2010, a self-insured grandfathered health plan has a COBRA premium for the 2010 plan year of $5000 for self-only coverage and $12,000 for family coverage. The required employee contribution for the coverage is $1000 for self-only coverage and $4000 for family coverage. Thus, the contribution rate based on cost of coverage for 2010 is 80% ((5000 − 1000)/5000) for self-only coverage and 67% ((12,000 − 4000)/12,000) for family coverage. For a subsequent plan year, the COBRA premium is $6000 for self-only coverage and $15,000 for family coverage. The employee contributions for that plan year are $1200 for self-only coverage and $5000 for family coverage. Thus, the contribution rate based on cost of coverage is

80% ((6000 − 1200)/6000) for self-only coverage and 67% ((15,000 − 5000)/15,000) for family coverage.

(ii) *Conclusion.* In this *Example 8,* because there is no change in the contribution rate based on cost of coverage, the plan retains its status as a grandfathered health plan. The result would be the same if all or part of the employee contribution was made pre-tax through a cafeteria plan under section 125 of the Internal Revenue Code.

Example 9. (i) *Facts.* Before March 23, 2010, Employer W and Individual B enter into a legally binding employment contract that promises B lifetime health coverage upon termination. Prior to termination, B is covered by W's self-insured grandfathered group health plan. B is terminated after March 23, 2010 and W purchases a new health insurance policy providing coverage to B, consistent with the terms of the employment contract.

(ii) *Conclusion.* In this *Example 9,* because no individual is enrolled in the health insurance policy on March 23, 2010, it is not a grandfathered health plan.

(h) *Expiration date.* This section expires on or before June 14, 2013.

■ 3. Section 54.9815–2714T is amended by revising paragraphs (h) and (i) to read as follows:

* * * * *

(h) *Applicability date.* The provisions of this section apply for plan years beginning on or after September 23, 2010. *See* § 54.9815–1251T for determining the application of this section to grandfathered health plans.

(i) *Expiration date.* This section expires on or before May 10, 2013.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ 4. The authority citation for part 602 continues to read in part as follows:

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

■ 5. Section 602.101(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 identified and described	Current OMB control No.
* * * * *	
54.9815–1251T	1545–2178
* * * * *	

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

■ 29 CFR part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

■ 2. Section 2590.715–1251 is added to subpart C to read as follows:

§ 2590.715–1251 Preservation of right to maintain existing coverage.

(a) *Definition of grandfathered health plan coverage*—(1) *In general*—(i) *Grandfathered health plan coverage* means coverage provided by a group health plan, or a health insurance issuer, in which an individual was enrolled on March 23, 2010 (for as long as it maintains that status under the rules of this section). A group health plan or group health insurance coverage does not cease to be grandfathered health plan coverage merely because one or more (or even all) individuals enrolled on March 23, 2010 cease to be covered, provided that the plan or group health insurance coverage has continuously covered someone since March 23, 2010 (not necessarily the same person, but at all times at least one person). For purposes of this section, a plan or health insurance coverage that provides grandfathered health plan coverage is referred to as a grandfathered health plan. The rules of this section apply separately to each benefit package made available under a group health plan or health insurance coverage.

(ii) Subject to the rules of paragraph (f) of this section for collectively bargained plans, if an employer or employee organization enters into a new policy, certificate, or contract of insurance after March 23, 2010 (because, for example, any previous policy, certificate, or contract of insurance is not being renewed), then that policy, certificate, or contract of insurance is not a grandfathered health plan with respect to the individuals in the group health plan.

(2) *Disclosure of grandfather status*—(i) To maintain status as a grandfathered health plan, a plan or health insurance coverage must include a statement, in any plan materials provided to a participant or beneficiary describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Patient Protection and Affordable Care Act and must provide contact information for questions and complaints.

(ii) The following model language can be used to satisfy this disclosure requirement:

This [group health plan or health insurance issuer] believes this [plan or coverage] is a "grandfathered health plan" under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that your [plan or policy] may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any cost sharing. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits.

Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the plan administrator at [insert contact information]. [For ERISA plans, insert: You may also contact the Employee Benefits Security Administration, U.S. Department of Labor at 1–866–444–3272 or *www.dol.gov/ebsa/healthreform.* This Web site has a table summarizing which protections do and do not apply to grandfathered health plans.] [For individual market policies and nonfederal governmental plans, insert: You may also contact the U.S. Department of Health and Human Services at *www.healthreform.gov.*]

(3) *Documentation of plan or policy terms on March 23, 2010.* To maintain status as a grandfathered health plan, a group health plan, or group health insurance coverage, must, for as long as the plan or health insurance coverage takes the position that it is a grandfathered health plan—

(i) Maintain records documenting the terms of the plan or health insurance coverage in connection with the coverage in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan; and

(ii) Make such records available for examination upon request.

(4) *Family members enrolling after March 23, 2010.* With respect to an individual who is enrolled in a group health plan or health insurance coverage on March 23, 2010, grandfathered health plan coverage includes coverage of family members of the individual who

enroll after March 23, 2010 in the grandfathered health plan coverage of the individual.

(5) *Examples.* The rules of this paragraph (a) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan not maintained pursuant to a collective bargaining agreement provides coverage through a group health insurance policy from Issuer *X* on March 23, 2010. For the plan year beginning January 1, 2012, the plan enters into a new policy with Issuer *Z.*

(ii) *Conclusion.* In this *Example 1,* for the plan year beginning January 1, 2012, the group health insurance coverage issued by *Z* is not a grandfathered health plan under the rules of paragraph (a)(1)(ii) of this section because the policy issued by *Z* did not provide coverage on March 23, 2010.

Example 2. (i) *Facts.* A group health plan not maintained pursuant to a collective bargaining agreement offers three benefit packages on March 23, 2010. Option *F* is a self-insured option. Options *G* and *H* are insured options. Beginning July 1, 2013, the plan replaces the issuer for Option *H* with a new issuer.

(ii) *Conclusion.* In this *Example 2,* the coverage under Option *H* is not grandfathered health plan coverage as of July 1, 2013, consistent with the rule in paragraph (a)(1)(ii) of this section. Whether the coverage under Options *F* and *G* is grandfathered health plan coverage is determined under the rules of this section, including paragraph (g) of this section. If the plan enters into a new policy, certificate, or contract of insurance for Option *G,* Option *G*'s status as a grandfathered health plan would cease under paragraph (a)(1)(ii) of this section.

(b) *Allowance for new employees to join current plan*—(1) *In general.* Subject to paragraph (b)(2) of this section, a group health plan (including health insurance coverage provided in connection with the group health plan) that provided coverage on March 23, 2010 and has retained its status as a grandfathered health plan (consistent with the rules of this section, including paragraph (g) of this section) is grandfathered health plan coverage for new employees (whether newly hired or newly enrolled) and their families enrolling in the plan after March 23, 2010.

(2) *Anti-abuse rules*—(i) *Mergers and acquisitions.* If the principal purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan.

(ii) *Change in plan eligibility.* A group health plan or health insurance coverage (including a benefit package under a group health plan) ceases to be a grandfathered health plan if—

(A) Employees are transferred into the plan or health insurance coverage (the transferee plan) from a plan or health insurance coverage under which the employees were covered on March 23, 2010 (the transferor plan);

(B) Comparing the terms of the transferee plan with those of the transferor plan (as in effect on March 23, 2010) and treating the transferee plan as if it were an amendment of the transferor plan would cause a loss of grandfather status under the provisions of paragraph (g)(1) of this section; and

(C) There was no bona fide employment-based reason to transfer the employees into the transferee plan. For this purpose, changing the terms or cost of coverage is not a bona fide employment-based reason.

(3) *Examples.* The rules of this paragraph (b) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan offers two benefit packages on March 23, 2010, Options *F* and *G.* During a subsequent open enrollment period, some of the employees enrolled in Option *F* on March 23, 2010 switch to Option *G.*

(ii) *Conclusion.* In this *Example 1,* the group health coverage provided under Option *G* remains a grandfathered health plan under the rules of paragraph (b)(1) of this section because employees previously enrolled in Option *F* are allowed to enroll in Option *G* as new employees.

Example 2. (i) *Facts.* Same facts as *Example 1,* except that the plan sponsor eliminates Option *F* because of its high cost and transfers employees covered under Option *F* to Option *G.* If instead of transferring employees from Option *F* to Option *G,* Option *F* was amended to match the terms of Option *G,* then Option *F* would cease to be a grandfathered health plan.

(ii) *Conclusion.* In this *Example 2,* the plan did not have a bona fide employment-based reason to transfer employees from Option *F* to Option *G.* Therefore, Option *G* ceases to be a grandfathered health plan with respect to all employees. (However, any other benefit package maintained by the plan sponsor is analyzed separately under the rules of this section.)

Example 3. (i) *Facts.* A group health plan offers two benefit packages on March 23, 2010, Options *H* and *I.* On March 23, 2010, Option *H* provides coverage only for employees in one manufacturing plant. Subsequently, the plant is closed, and some employees in the closed plant are moved to another plant. The employer eliminates Option *H* and the employees that are moved are transferred to Option *I.* If instead of transferring employees from Option *H* to Option *I,* Option *H* was amended to match the terms of Option *I,* then Option *H* would cease to be a grandfathered health plan.

(ii) *Conclusion.* In this *Example 3,* the plan has a bona fide employment-based reason to transfer employees from Option *H* to Option *I.* Therefore, Option *I* does not cease to be a grandfathered health plan.

(c) *General grandfathering rule*—(1) Except as provided in paragraphs (d) and (e) of this section, subtitles A and C of title I of the Patient Protection and Affordable Care Act (and the amendments made by those subtitles, and the incorporation of those amendments into ERISA section 715 and Internal Revenue Code section 9815) do not apply to grandfathered health plan coverage. Accordingly, the provisions of PHS Act sections 2701, 2702, 2703, 2705, 2706, 2707, 2709 (relating to coverage for individuals participating in approved clinical trials, as added by section 10103 of the Patient Protection and Affordable Care Act), 2713, 2715A, 2716, 2717, 2719, and 2719A, as added or amended by the Patient Protection and Affordable Care Act, do not apply to grandfathered health plans. (In addition, *see* 45 CFR 147.140(c), which provides that the provisions of PHS Act section 2704, and PHS Act section 2711 insofar as it relates to annual limits, do not apply to grandfathered health plans that are individual health insurance coverage.)

(2) To the extent not inconsistent with the rules applicable to a grandfathered health plan, a grandfathered health plan must comply with the requirements of the PHS Act, ERISA, and the Internal Revenue Code applicable prior to the changes enacted by the Patient Protection and Affordable Care Act.

(d) *Provisions applicable to all grandfathered health plans.* The provisions of PHS Act section 2711 insofar as it relates to lifetime limits, and the provisions of PHS Act sections 2712, 2714, 2715, and 2718, apply to grandfathered health plans for plan years beginning on or after September 23, 2010. The provisions of PHS Act section 2708 apply to grandfathered health plans for plan years beginning on or after January 1, 2014.

(e) *Applicability of PHS Act sections 2704, 2711, and 2714 to grandfathered group health plans and group health insurance coverage*—(1) The provisions of PHS Act section 2704 as it applies with respect to enrollees who are under 19 years of age, and the provisions of PHS Act section 2711 insofar as it relates to annual limits, apply to grandfathered health plans that are group health plans (including group health insurance coverage) for plan years beginning on or after September 23, 2010. The provisions of PHS Act section 2704 apply generally to grandfathered health plans that are group health plans (including group health insurance coverage) for plan years beginning on or after January 1, 2014.

(2) For plan years beginning before January 1, 2014, the provisions of PHS Act section 2714 apply in the case of an

adult child with respect to a grandfathered health plan that is a group health plan only if the adult child is not eligible to enroll in an eligible employer-sponsored health plan (as defined in section 5000A(f)(2) of the Internal Revenue Code) other than a grandfathered health plan of a parent. For plan years beginning on or after January 1, 2014, the provisions of PHS Act section 2714 apply with respect to a grandfathered health plan that is a group health plan without regard to whether an adult child is eligible to enroll in any other coverage.

(f) *Effect on collectively bargained plans*—(1) *In general.* In the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that was ratified before March 23, 2010, the coverage is grandfathered health plan coverage at least until the date on which the last of the collective bargaining agreements relating to the coverage that was in effect on March 23, 2010 terminates. Any coverage amendment made pursuant to a collective bargaining agreement relating to the coverage that amends the coverage solely to conform to any requirement added by subtitles A and C of title I of the Patient Protection and Affordable Care Act (and the amendments made by those subtitles, and the incorporation of those amendments into ERISA section 715 and Internal Revenue Code section 9815) is not treated as a termination of the collective bargaining agreement. After the date on which the last of the collective bargaining agreements relating to the coverage that was in effect on March 23, 2010 terminates, the determination of whether health insurance coverage maintained pursuant to a collective bargaining agreement is grandfathered health plan coverage is made under the rules of this section other than this paragraph (f) (comparing the terms of the health insurance coverage after the date the last collective bargaining agreement terminates with the terms of the health insurance coverage that were in effect on March 23, 2010) and, for any changes in insurance coverage after the termination of the collective bargaining agreement, under the rules of paragraph (a)(1)(ii) of this section.

(2) *Examples.* The rules of this paragraph (f) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan maintained pursuant to a collective bargaining agreement provides coverage through a group health insurance policy from Issuer *W* on March 23, 2010. The collective bargaining agreement has not been amended and will not expire before December 31, 2011. The group health plan enters into a new group health insurance policy with Issuer *Y* for the plan year starting on January 1, 2011.

(ii) *Conclusion.* In this *Example 1,* the group health plan, and the group health insurance policy provided by *Y,* remains a grandfathered health plan with respect to existing employees and new employees and their families because the coverage is maintained pursuant to a collective bargaining agreement ratified prior to March 23, 2010 that has not terminated.

Example 2. (i) *Facts.* Same facts as *Example 1,* except the coverage with *Y* is renewed under a new collective bargaining agreement effective January 1, 2012, with the only changes since March 23, 2010 being changes that do not cause the plan to cease to be a grandfathered health plan under the rules of this section, including paragraph (g) of this section.

(ii) *Conclusion.* In this *Example 2,* the group health plan remains a grandfathered health plan pursuant to the rules of this section. Moreover, the group health insurance policy provided by *Y* remains a grandfathered health plan under the rules of this section, including paragraph (g) of this section.

(g) *Maintenance of grandfather status*—(1) *Changes causing cessation of grandfather status.* Subject to paragraph (g)(2) of this section, the rules of this paragraph (g)(1) describe situations in which a group health plan or health insurance coverage ceases to be a grandfathered health plan.

(i) *Elimination of benefits.* The elimination of all or substantially all benefits to diagnose or treat a particular condition causes a group health plan or health insurance coverage to cease to be a grandfathered health plan. For this purpose, the elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition.

(ii) *Increase in percentage cost-sharing requirement.* Any increase, measured from March 23, 2010, in a percentage cost-sharing requirement (such as an individual's coinsurance requirement) causes a group health plan or health insurance coverage to cease to be a grandfathered health plan.

(iii) *Increase in a fixed-amount cost-sharing requirement other than a copayment.* Any increase in a fixed-amount cost-sharing requirement other than a copayment (for example, deductible or out-of-pocket limit), determined as of the effective date of the increase, causes a group health plan or health insurance coverage to cease to be a grandfathered health plan, if the total percentage increase in the cost-sharing requirement measured from March 23, 2010 exceeds the maximum percentage increase (as defined in paragraph (g)(3)(ii) of this section).

(iv) *Increase in a fixed-amount copayment.* Any increase in a fixed-amount copayment, determined as of the effective date of the increase, causes a group health plan or health insurance coverage to cease to be a grandfathered health plan, if the total increase in the copayment measured from March 23, 2010 exceeds the greater of:

(A) An amount equal to $5 increased by medical inflation, as defined in paragraph (g)(3)(i) of this section (that is, $5 times medical inflation, plus $5), or

(B) The maximum percentage increase (as defined in paragraph (g)(3)(ii) of this section), determined by expressing the total increase in the copayment as a percentage.

(v) *Decrease in contribution rate by employers and employee organizations*—(A) *Contribution rate based on cost of coverage.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on cost of coverage (as defined in paragraph (g)(3)(iii)(A) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in § 2590.702(d) of this part) by more than 5 percentage points below the contribution rate for the coverage period that includes March 23, 2010.

(B) *Contribution rate based on a formula.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on a formula (as defined in paragraph (g)(3)(iii)(B) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in section 2590.702(d) of this part) by more than 5 percent below the contribution rate for the coverage period that includes March 23, 2010.

(vi) *Changes in annual limits*—(A) *Addition of an annual limit.* A group health plan, or group health insurance coverage, that, on March 23, 2010, did not impose an overall annual or lifetime limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage imposes an overall annual limit on the dollar value of benefits.

(B) *Decrease in limit for a plan or coverage with only a lifetime limit.* A group health plan, or group health insurance coverage, that, on March 23, 2010, imposed an overall lifetime limit

on the dollar value of all benefits but no overall annual limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage adopts an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010.

(C) *Decrease in limit for a plan or coverage with an annual limit.* A group health plan, or group health insurance coverage, that, on March 23, 2010, imposed an overall annual limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage decreases the dollar value of the annual limit (regardless of whether the plan or health insurance coverage also imposed an overall lifetime limit on March 23, 2010 on the dollar value of all benefits).

(2) *Transitional rules*—(i) *Changes made prior to March 23, 2010.* If a group health plan or health insurance issuer makes the following changes to the terms of the plan or health insurance coverage, the changes are considered part of the terms of the plan or health insurance coverage on March 23, 2010 even though they were not effective at that time and such changes do not cause a plan or health insurance coverage to cease to be a grandfathered health plan:

(A) Changes effective after March 23, 2010 pursuant to a legally binding contract entered into on or before March 23, 2010;

(B) Changes effective after March 23, 2010 pursuant to a filing on or before March 23, 2010 with a State insurance department; or

(C) Changes effective after March 23, 2010 pursuant to written amendments to a plan that were adopted on or before March 23, 2010.

(ii) *Changes made after March 23, 2010 and adopted prior to issuance of regulations.* If, after March 23, 2010, a group health plan or health insurance issuer makes changes to the terms of the plan or health insurance coverage and the changes are adopted prior to June 14, 2010, the changes will not cause the plan or health insurance coverage to cease to be a grandfathered health plan if the changes are revoked or modified effective as of the first day of the first plan year (in the individual market, policy year) beginning on or after September 23, 2010, and the terms of the plan or health insurance coverage on that date, as modified, would not cause the plan or coverage to cease to be a grandfathered health plan under the rules of this section, including paragraph (g)(1) of this section. For this purpose, changes will be considered to have been adopted prior to June 14, 2010 if:

(A) The changes are effective before that date;

(B) The changes are effective on or after that date pursuant to a legally binding contract entered into before that date;

(C) The changes are effective on or after that date pursuant to a filing before that date with a State insurance department; or

(D) The changes are effective on or after that date pursuant to written amendments to a plan that were adopted before that date.

(3) *Definitions*—(i) *Medical inflation defined.* For purposes of this paragraph (g), the term *medical inflation* means the increase since March 2010 in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI–U) (unadjusted) published by the Department of Labor using the 1982–1984 base of 100. For this purpose, the increase in the overall medical care component is computed by subtracting 387.142 (the overall medical care component of the CPI–U (unadjusted) published by the Department of Labor for March 2010, using the 1982–1984 base of 100) from the index amount for any month in the 12 months before the new change is to take effect and then dividing that amount by 387.142.

(ii) *Maximum percentage increase defined.* For purposes of this paragraph (g), the term *maximum percentage increase* means medical inflation (as defined in paragraph (g)(3)(i) of this section), expressed as a percentage, plus 15 percentage points.

(iii) *Contribution rate defined.* For purposes of paragraph (g)(1)(v) of this section:

(A) *Contribution rate based on cost of coverage.* The term *contribution rate based on cost of coverage* means the amount of contributions made by an employer or employee organization compared to the total cost of coverage, expressed as a percentage. The total cost of coverage is determined in the same manner as the applicable premium is calculated under the COBRA continuation provisions of section 604 of ERISA, section 4980B(f)(4) of the Internal Revenue Code, and section 2204 of the PHS Act. In the case of a self-insured plan, contributions by an employer or employee organization are equal to the total cost of coverage minus the employee contributions towards the total cost of coverage.

(B) *Contribution rate based on a formula.* The term *contribution rate based on a formula* means, for plans that, on March 23, 2010, made contributions based on a formula (such as hours worked or tons of coal mined), the formula.

(4) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

Example 1. (i) *Facts.* On March 23, 2010, a grandfathered health plan has a coinsurance requirement of 20% for inpatient surgery. The plan is subsequently amended to increase the coinsurance requirement to 25%.

(ii) *Conclusion.* In this *Example 1,* the increase in the coinsurance requirement from 20% to 25% causes the plan to cease to be a grandfathered health plan.

Example 2. (i) *Facts.* Before March 23, 2010, the terms of a group health plan provide benefits for a particular mental health condition, the treatment for which is a combination of counseling and prescription drugs. Subsequently, the plan eliminates benefits for counseling.

(ii) *Conclusion.* In this *Example 2,* the plan ceases to be a grandfathered health plan because counseling is an element that is necessary to treat the condition. Thus the plan is considered to have eliminated substantially all benefits for the treatment of the condition.

Example 3. (i) *Facts.* On March 23, 2010, a grandfathered health plan has a copayment requirement of $30 per office visit for specialists. The plan is subsequently amended to increase the copayment requirement to $40. Within the 12-month period before the $40 copayment takes effect, the greatest value of the overall medical care component of the CPI–U (unadjusted) is 475.

(ii) *Conclusion.* In this *Example 3,* the increase in the copayment from $30 to $40, expressed as a percentage, is 33.33% (40 − 30 = 10; 10 ÷ 30 = 0.3333; 0.3333 = 33.33%). Medical inflation (as defined in paragraph (g)(3)(i) of this section) from March 2010 is 0.2269 (475 − 387.142 = 87.858; 87.858 ÷ 387.142 = 0.2269). The maximum percentage increase permitted is 37.69% (0.2269 = 22.69%; 22.69% + 15% = 37.69%). Because 33.33% does not exceed 37.69%, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Example 4. (i) *Facts.* Same facts as *Example 3,* except the grandfathered health plan subsequently increases the $40 copayment requirement to $45 for a later plan year. Within the 12-month period before the $45 copayment takes effect, the greatest value of the overall medical care component of the CPI–U (unadjusted) is 485.

(ii) *Conclusion.* In this *Example 4,* the increase in the copayment from $30 (the copayment that was in effect on March 23, 2010) to $45, expressed as a percentage, is 50% (45 − 30 = 15; 15 ÷ 30 = 0.5; 0.5 = 50%). Medical inflation (as defined in paragraph (g)(3)(i) of this section) from March 2010 is 0.2527 (485 − 387.142 = 97.858; 97.858 ÷ 387.142 = 0.2527). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 40.27% (0.2527 = 25.27%; 25.27% + 15% = 40.27%), or $6.26 ($5 x 0.2527 = $1.26; $1.26 + $5 = $6.26).

Because 50% exceeds 40.27% and $15 exceeds $6.26, the change in the copayment requirement at that time causes the plan to cease to be a grandfathered health plan.

Example 5. (i) *Facts.* On March 23, 2010, a grandfathered health plan has a copayment of $10 per office visit for primary care providers. The plan is subsequently amended to increase the copayment requirement to $15. Within the 12-month period before the $15 copayment takes effect, the greatest value of the overall medical care component of the CPI–U (unadjusted) is 415.

(ii) *Conclusion.* In this *Example 5,* the increase in the copayment, expressed as a percentage, is 50% (15 − 10 = 5; 5 ÷ 10 = 0.5; 0.5 = 50%). Medical inflation (as defined in paragraph (g)(3) of this section) from March 2010 is 0.0720 (415.0 − 387.142 = 27.858; 27.858 ÷ 387.142 = 0.0720). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 22.20% (0.0720 = 7.20%; 7.20% + 15% = 22.20), or $5.36 ($5 x 0.0720 = $0.36; $0.36 + $5 = $5.36). The $5 increase in copayment in this *Example 5* would not cause the plan to cease to be a grandfathered health plan pursuant to paragraph (g)(1)(iv) of this section, which would permit an increase in the copayment of up to $5.36.

Example 6. (i) *Facts.* The same facts as *Example 5,* except on March 23, 2010, the grandfathered health plan has no copayment ($0) for office visits for primary care providers. The plan is subsequently amended to increase the copayment requirement to $5.

(ii) *Conclusion.* In this *Example 6,* medical inflation (as defined in paragraph (g)(3)(i) of this section) from March 2010 is 0.0720 (415.0 − 387.142 = 27.858; 27.858 ÷ 387.142 = 0.0720). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv)(A) of this section is $5.36 ($5 x 0.0720 = $0.36; $0.36 + $5 = $5.36). The $5 increase in copayment in this *Example 6* is less than the amount calculated pursuant to paragraph (g)(1)(iv)(A) of this section of $5.36. Thus, the $5 increase in copayment does not cause the plan to cease to be a grandfathered health plan.

Example 7. (i) *Facts.* On March 23, 2010, a self-insured group health plan provides two tiers of coverage—self-only and family. The employer contributes 80% of the total cost of coverage for self-only and 60% of the total cost of coverage for family. Subsequently, the employer reduces the contribution to 50% for family coverage, but keeps the same contribution rate for self-only coverage.

(ii) *Conclusion.* In this *Example 7,* the decrease of 10 percentage points for family coverage in the contribution rate based on cost of coverage causes the plan to cease to be a grandfathered health plan. The fact that the contribution rate for self-only coverage remains the same does not change the result.

Example 8. (i) *Facts.* On March 23, 2010, a self-insured grandfathered health plan has a COBRA premium for the 2010 plan year of $5000 for self-only coverage and $12,000 for family coverage. The required employee contribution for the coverage is $1000 for self-only coverage and $4000 for family coverage. Thus, the contribution rate based on cost of coverage for 2010 is 80% ((5000—1000)/5000) for self-only coverage and 67% ((12,000–4000)/12,000) for family coverage. For a subsequent plan year, the COBRA premium is $6000 for self-only coverage and $15,000 for family coverage. The employee contributions for that plan year are $1200 for self-only coverage and $5000 for family coverage. Thus, the contribution rate based on cost of coverage is 80% ((6000–1200)/6000) for self-only coverage and 67% ((15,000–5000)/15,000) for family coverage.

(ii) *Conclusion.* In this *Example 8,* because there is no change in the contribution rate based on cost of coverage, the plan retains its status as a grandfathered health plan. The result would be the same if all or part of the employee contribution was made pre-tax through a cafeteria plan under section 125 of the Internal Revenue Code.

Example 9. (i) *Facts.* Before March 23, 2010, Employer *W* and Individual *B* enter into a legally binding employment contract that promises *B* lifetime health coverage upon termination. Prior to termination, *B* is covered by *W*'s self-insured grandfathered group health plan. *B* is terminated after March 23, 2010 and *W* purchases a new health insurance policy providing coverage to *B,* consistent with the terms of the employment contract.

(ii) *Conclusion.* In this *Example 9,* because no individual is enrolled in the health insurance policy on March 23, 2010, it is not a grandfathered health plan.

■ 3. Section 2590.715–2714 is amended by revising paragraph (h) to read as follows:

§ 2590.715–2714 Eligibility of children until at least age 26.

* * * * *

(h) *Applicability date.* The provisions of this section apply for plan years beginning on or after September 23, 2010. *See* § 2590.715–1251 of this Part for determining the application of this section to grandfathered health plans.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Chapter I

■ For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 147 as follows:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 USC 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 2. Section 147.120 is amended by revising paragraph (h) to read as follows:

(h) *Applicability date.* The provisions of this section apply for plan years (in the individual market, policy years) beginning on or after September 23, 2010. *See* § 147.140 of this part for determining the application of this section to grandfathered health plans.

■ 3. Section 147.140 is added to read as follows:

§ 147.140 Preservation of right to maintain existing coverage.

(a) *Definition of grandfathered health plan coverage*—(1) *In general*—(i) *Grandfathered health plan coverage* means coverage provided by a group health plan, or a group or individual health insurance issuer, in which an individual was enrolled on March 23, 2010 (for as long as it maintains that status under the rules of this section). A group health plan or group health insurance coverage does not cease to be grandfathered health plan coverage merely because one or more (or even all) individuals enrolled on March 23, 2010 cease to be covered, provided that the plan or group health insurance coverage has continuously covered someone since March 23, 2010 (not necessarily the same person, but at all times at least one person). For purposes of this section, a plan or health insurance coverage that provides grandfathered health plan coverage is referred to as a grandfathered health plan. The rules of this section apply separately to each benefit package made available under a group health plan or health insurance coverage.

(ii) Subject to the rules of paragraph (f) of this section for collectively bargained plans, if an employer or employee organization enters into a new policy, certificate, or contract of insurance after March 23, 2010 (because, for example, any previous policy, certificate, or contract of insurance is not being renewed), then that policy, certificate, or contract of insurance is not a grandfathered health plan with respect to the individuals in the group health plan.

(2) *Disclosure of grandfather status*—(i) To maintain status as a grandfathered health plan, a plan or health insurance coverage must include a statement, in any plan materials provided to a participant or beneficiary (in the individual market, primary subscriber) describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Patient Protection and Affordable Care Act and must provide contact information for questions and complaints.

(ii) The following model language can be used to satisfy this disclosure requirement:

This [group health plan or health insurance issuer] believes this [plan or coverage] is a "grandfathered health plan" under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that your [plan or policy] may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any cost sharing. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits.

Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the plan administrator at [insert contact information]. [For ERISA plans, insert: You may also contact the Employee Benefits Security Administration, U.S. Department of Labor at 1–866–444–3272 or *www.dol.gov/ebsa/healthreform.* This Web site has a table summarizing which protections do and do not apply to grandfathered health plans.] [For individual market policies and nonfederal governmental plans, insert: You may also contact the U.S. Department of Health and Human Services at *www.healthreform.gov.*]

(3) *Documentation of plan or policy terms on March 23, 2010.* To maintain status as a grandfathered health plan, a group health plan, or group or individual health insurance coverage, must, for as long as the plan or health insurance coverage takes the position that it is a grandfathered health plan—

(i) Maintain records documenting the terms of the plan or health insurance coverage in connection with the coverage in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan; and

(ii) Make such records available for examination upon request.

(4) *Family members enrolling after March 23, 2010.* With respect to an individual who is enrolled in a group health plan or health insurance coverage on March 23, 2010, grandfathered health plan coverage includes coverage of family members of the individual who enroll after March 23, 2010 in the grandfathered health plan coverage of the individual.

(5) *Examples.* The rules of this paragraph (a) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan not maintained pursuant to a collective bargaining agreement provides coverage through a group health insurance policy from Issuer *X* on March 23, 2010. For the plan year beginning January 1, 2012, the plan enters into a new policy with Issuer *Z.*

(ii) *Conclusion.* In this *Example 1,* for the plan year beginning January 1, 2012, the group health insurance coverage issued by *Z* is not a grandfathered health plan under the rules of paragraph (a)(1)(ii) of this section because the policy issued by *Z* did not provide coverage on March 23, 2010.

Example 2. (i) *Facts.* A group health plan not maintained pursuant to a collective bargaining agreement offers three benefit packages on March 23, 2010. Option *F* is a self-insured option. Options *G* and *H* are insured options. Beginning July 1, 2013, the plan replaces the issuer for Option *H* with a new issuer.

(ii) *Conclusion.* In this *Example 2,* the coverage under Option *H* is not grandfathered health plan coverage as of July 1, 2013, consistent with the rule in paragraph (a)(1)(ii) of this section. Whether the coverage under Options *F* and *G* is grandfathered health plan coverage is determined under the rules of this section, including paragraph (g) of this section. If the plan enters into a new policy, certificate, or contract of insurance for Option *G,* Option *G*'s status as a grandfathered health plan would cease under paragraph (a)(1)(ii) of this section.

(b) *Allowance for new employees to join current plan*—(1) *In general.* Subject to paragraph (b)(2) of this section, a group health plan (including health insurance coverage provided in connection with the group health plan) that provided coverage on March 23, 2010 and has retained its status as a grandfathered health plan (consistent with the rules of this section, including paragraph (g) of this section) is grandfathered health plan coverage for new employees (whether newly hired or newly enrolled) and their families enrolling in the plan after March 23, 2010.

(2) *Anti-abuse rules*—(i) *Mergers and acquisitions.* If the principal purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan.

(ii) *Change in plan eligibility.* A group health plan or health insurance coverage (including a benefit package under a group health plan) ceases to be a grandfathered health plan if—

(A) Employees are transferred into the plan or health insurance coverage (the transferee plan) from a plan or health insurance coverage under which the employees were covered on March 23, 2010 (the transferor plan);

(B) Comparing the terms of the transferee plan with those of the transferor plan (as in effect on March 23, 2010) and treating the transferee plan as if it were an amendment of the transferor plan would cause a loss of grandfather status under the provisions of paragraph (g)(1) of this section; and

(C) There was no bona fide employment-based reason to transfer the employees into the transferee plan. For this purpose, changing the terms or cost of coverage is not a bona fide employment-based reason.

(3) *Examples.* The rules of this paragraph (b) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan offers two benefit packages on March 23, 2010, Options *F* and *G.* During a subsequent open enrollment period, some of the employees enrolled in Option *F* on March 23, 2010 switch to Option *G.*

(ii) *Conclusion.* In this *Example 1,* the group health coverage provided under Option *G* remains a grandfathered health plan under the rules of paragraph (b)(1) of this section because employees previously enrolled in Option *F* are allowed to enroll in Option *G* as new employees.

Example 2. (i) *Facts.* Same facts as *Example 1,* except that the plan sponsor eliminates Option *F* because of its high cost and transfers employees covered under Option *F* to Option *G.* If instead of transferring employees from Option *F* to Option *G,* Option *F* was amended to match the terms of Option *G,* then Option *F* would cease to be a grandfathered health plan.

(ii) *Conclusion.* In this *Example 2,* the plan did not have a bona fide employment-based reason to transfer employees from Option *F* to Option *G.* Therefore, Option *G* ceases to be a grandfathered health plan with respect to all employees. (However, any other benefit package maintained by the plan sponsor is analyzed separately under the rules of this section.)

Example 3. (i) *Facts.* A group health plan offers two benefit packages on March 23, 2010, Options *H* and *I.* On March 23, 2010, Option *H* provides coverage only for employees in one manufacturing plant. Subsequently, the plant is closed, and some employees in the closed plant are moved to another plant. The employer eliminates Option *H* and the employees that are moved are transferred to Option *I.* If instead of transferring employees from Option *H* to Option *I,* Option *H* was amended to match the terms of Option *I,* then Option *H* would cease to be a grandfathered health plan.

(ii) *Conclusion.* In this *Example 3,* the plan has a bona fide employment-based reason to transfer employees from Option *H* to Option *I.* Therefore, Option *I* does not cease to be a grandfathered health plan.

(c) *General grandfathering rule*—(1) Except as provided in paragraphs (d) and (e) of this section, subtitles A and C of title I of the Patient Protection and Affordable Care Act (and the amendments made by those subtitles, and the incorporation of those amendments into ERISA section 715 and Internal Revenue Code section 9815) do not apply to grandfathered health plan coverage. Accordingly, the

provisions of PHS Act sections 2701, 2702, 2703, 2705, 2706, 2707, 2709 (relating to coverage for individuals participating in approved clinical trials, as added by section 10103 of the Patient Protection and Affordable Care Act), 2713, 2715A, 2716, 2717, 2719, and 2719A, as added or amended by the Patient Protection and Affordable Care Act, do not apply to grandfathered health plans. In addition, the provisions of PHS Act section 2704, and PHS Act section 2711 insofar as it relates to annual limits, do not apply to grandfathered health plans that are individual health insurance coverage.

(2) To the extent not inconsistent with the rules applicable to a grandfathered health plan, a grandfathered health plan must comply with the requirements of the PHS Act, ERISA, and the Internal Revenue Code applicable prior to the changes enacted by the Patient Protection and Affordable Care Act.

(d) *Provisions applicable to all grandfathered health plans.* The provisions of PHS Act section 2711 insofar as it relates to lifetime limits, and the provisions of PHS Act sections 2712, 2714, 2715, and 2718, apply to grandfathered health plans for plan years (in the individual market, policy years) beginning on or after September 23, 2010. The provisions of PHS Act section 2708 apply to grandfathered health plans for plan years (in the individual market, policy years) beginning on or after January 1, 2014.

(e) *Applicability of PHS Act sections 2704, 2711, and 2714 to grandfathered group health plans and group health insurance coverage*—(1) The provisions of PHS Act section 2704 as it applies with respect to enrollees who are under 19 years of age, and the provisions of PHS Act section 2711 insofar as it relates to annual limits, apply to grandfathered health plans that are group health plans (including group health insurance coverage) for plan years beginning on or after September 23, 2010. The provisions of PHS Act section 2704 apply generally to grandfathered health plans that are group health plans (including group health insurance coverage) for plan years beginning on or after January 1, 2014.

(2) For plan years beginning before January 1, 2014, the provisions of PHS Act section 2714 apply in the case of an adult child with respect to a grandfathered health plan that is a group health plan only if the adult child is not eligible to enroll in an eligible employer-sponsored health plan (as defined in section 5000A(f)(2) of the Internal Revenue Code) other than a grandfathered health plan of a parent. For plan years beginning on or after January 1, 2014, the provisions of PHS Act section 2714 apply with respect to a grandfathered health plan that is a group health plan without regard to whether an adult child is eligible to enroll in any other coverage.

(f) *Effect on collectively bargained plans*—(1) *In general.* In the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that was ratified before March 23, 2010, the coverage is grandfathered health plan coverage at least until the date on which the last of the collective bargaining agreements relating to the coverage that was in effect on March 23, 2010 terminates. Any coverage amendment made pursuant to a collective bargaining agreement relating to the coverage that amends the coverage solely to conform to any requirement added by subtitles A and C of title I of the Patient Protection and Affordable Care Act (and the amendments made by those subtitles, and the incorporation of those amendments into ERISA section 715 and Internal Revenue Code section 9815) is not treated as a termination of the collective bargaining agreement. After the date on which the last of the collective bargaining agreements relating to the coverage that was in effect on March 23, 2010 terminates, the determination of whether health insurance coverage maintained pursuant to a collective bargaining agreement is grandfathered health plan coverage is made under the rules of this section other than this paragraph (f) (comparing the terms of the health insurance coverage after the date the last collective bargaining agreement terminates with the terms of the health insurance coverage that were in effect on March 23, 2010) and, for any changes in insurance coverage after the termination of the collective bargaining agreement, under the rules of paragraph (a)(1)(ii) of this section.

(2) *Examples.* The rules of this paragraph (f) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan maintained pursuant to a collective bargaining agreement provides coverage through a group health insurance policy from Issuer *W* on March 23, 2010. The collective bargaining agreement has not been amended and will not expire before December 31, 2011. The group health plan enters into a new group health insurance policy with Issuer *Y* for the plan year starting on January 1, 2011.

(ii) *Conclusion.* In this *Example 1,* the group health plan, and the group health insurance policy provided by *Y,* remains a grandfathered health plan with respect to existing employees and new employees and their families because the coverage is maintained pursuant to a collective bargaining agreement ratified prior to March 23, 2010 that has not terminated.

Example 2. (i) *Facts.* Same facts as *Example 1,* except the coverage with *Y* is renewed under a new collective bargaining agreement effective January 1, 2012, with the only changes since March 23, 2010 being changes that do not cause the plan to cease to be a grandfathered health plan under the rules of this section, including paragraph (g) of this section.

(ii) *Conclusion.* In this *Example 2,* the group health plan remains a grandfathered health plan pursuant to the rules of this section. Moreover, the group health insurance policy provided by *Y* remains a grandfathered health plan under the rules of this section, including paragraph (g) of this section.

(g) *Maintenance of grandfather status*—(1) *Changes causing cessation of grandfather status.* Subject to paragraph (g)(2) of this section, the rules of this paragraph (g)(1) describe situations in which a group health plan or health insurance coverage ceases to be a grandfathered health plan.

(i) *Elimination of benefits.* The elimination of all or substantially all benefits to diagnose or treat a particular condition causes a group health plan or health insurance coverage to cease to be a grandfathered health plan. For this purpose, the elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition.

(ii) *Increase in percentage cost-sharing requirement.* Any increase, measured from March 23, 2010, in a percentage cost-sharing requirement (such as an individual's coinsurance requirement) causes a group health plan or health insurance coverage to cease to be a grandfathered health plan.

(iii) *Increase in a fixed-amount cost-sharing requirement other than a copayment.* Any increase in a fixed-amount cost-sharing requirement other than a copayment (for example, deductible or out-of-pocket limit), determined as of the effective date of the increase, causes a group health plan or health insurance coverage to cease to be a grandfathered health plan, if the total percentage increase in the cost-sharing requirement measured from March 23, 2010 exceeds the maximum percentage increase (as defined in paragraph (g)(3)(ii) of this section).

(iv) *Increase in a fixed-amount copayment.* Any increase in a fixed-amount copayment, determined as of the effective date of the increase, causes a group health plan or health insurance

coverage to cease to be a grandfathered health plan, if the total increase in the copayment measured from March 23, 2010 exceeds the greater of:

(A) An amount equal to $5 increased by medical inflation, as defined in paragraph (g)(3)(i) of this section (that is, $5 times medical inflation, plus $5), or

(B) The maximum percentage increase (as defined in paragraph (g)(3)(ii) of this section), determined by expressing the total increase in the copayment as a percentage.

(v) *Decrease in contribution rate by employers and employee organizations*—(A) *Contribution rate based on cost of coverage.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on cost of coverage (as defined in paragraph (g)(3)(iii)(A) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in section 146.121(d) of this subchapter) by more than 5 percentage points below the contribution rate for the coverage period that includes March 23, 2010.

(B) *Contribution rate based on a formula.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on a formula (as defined in paragraph (g)(3)(iii)(B) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in section 146.121(d) of this subchapter) by more than 5 percent below the contribution rate for the coverage period that includes March 23, 2010.

(vi) *Changes in annual limits*—(A) *Addition of an annual limit.* A group health plan, or group or individual health insurance coverage, that, on March 23, 2010, did not impose an overall annual or lifetime limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage imposes an overall annual limit on the dollar value of benefits.

(B) *Decrease in limit for a plan or coverage with only a lifetime limit.* A group health plan, or group or individual health insurance coverage, that, on March 23, 2010, imposed an overall lifetime limit on the dollar value of all benefits but no overall annual limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage adopts an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010.

(C) *Decrease in limit for a plan or coverage with an annual limit.* A group health plan, or group or individual health insurance coverage, that, on March 23, 2010, imposed an overall annual limit on the dollar value of all benefits ceases to be a grandfathered health plan if the plan or health insurance coverage decreases the dollar value of the annual limit (regardless of whether the plan or health insurance coverage also imposed an overall lifetime limit on March 23, 2010 on the dollar value of all benefits).

(2) *Transitional rules*—(i) *Changes made prior to March 23, 2010.* If a group health plan or health insurance issuer makes the following changes to the terms of the plan or health insurance coverage, the changes are considered part of the terms of the plan or health insurance coverage on March 23, 2010 even though they were not effective at that time and such changes do not cause a plan or health insurance coverage to cease to be a grandfathered health plan:

(A) Changes effective after March 23, 2010 pursuant to a legally binding contract entered into on or before March 23, 2010;

(B) Changes effective after March 23, 2010 pursuant to a filing on or before March 23, 2010 with a State insurance department; or

(C) Changes effective after March 23, 2010 pursuant to written amendments to a plan that were adopted on or before March 23, 2010.

(ii) *Changes made after March 23, 2010 and adopted prior to issuance of regulations.* If, after March 23, 2010, a group health plan or health insurance issuer makes changes to the terms of the plan or health insurance coverage and the changes are adopted prior to June 14, 2010, the changes will not cause the plan or health insurance coverage to cease to be a grandfathered health plan if the changes are revoked or modified effective as of the first day of the first plan year (in the individual market, policy year) beginning on or after September 23, 2010, and the terms of the plan or health insurance coverage on that date, as modified, would not cause the plan or coverage to cease to be a grandfathered health plan under the rules of this section, including paragraph (g)(1) of this section. For this purpose, changes will be considered to have been adopted prior to June 14, 2010 if:

(A) The changes are effective before that date;

(B) The changes are effective on or after that date pursuant to a legally binding contract entered into before that date;

(C) The changes are effective on or after that date pursuant to a filing before that date with a State insurance department; or

(D) The changes are effective on or after that date pursuant to written amendments to a plan that were adopted before that date.

(3) *Definitions*—(i) *Medical inflation defined.* For purposes of this paragraph (g), the term *medical inflation* means the increase since March 2010 in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI–U) (unadjusted) published by the Department of Labor using the 1982–1984 base of 100. For this purpose, the increase in the overall medical care component is computed by subtracting 387.142 (the overall medical care component of the CPI–U (unadjusted) published by the Department of Labor for March 2010, using the 1982–1984 base of 100) from the index amount for any month in the 12 months before the new change is to take effect and then dividing that amount by 387.142.

(ii) *Maximum percentage increase defined.* For purposes of this paragraph (g), the term *maximum percentage increase* means medical inflation (as defined in paragraph (g)(3)(i) of this section), expressed as a percentage, plus 15 percentage points.

(iii) *Contribution rate defined.* For purposes of paragraph (g)(1)(v) of this section:

(A) *Contribution rate based on cost of coverage.* The term *contribution rate based on cost of coverage* means the amount of contributions made by an employer or employee organization compared to the total cost of coverage, expressed as a percentage. The total cost of coverage is determined in the same manner as the applicable premium is calculated under the COBRA continuation provisions of section 604 of ERISA, section 4980B(f)(4) of the Internal Revenue Code, and section 2204 of the PHS Act. In the case of a self-insured plan, contributions by an employer or employee organization are equal to the total cost of coverage minus the employee contributions towards the total cost of coverage.

(B) *Contribution rate based on a formula.* The term *contribution rate based on a formula* means, for plans that, on March 23, 2010, made contributions based on a formula (such as hours worked or tons of coal mined), the formula.

(4) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

Example 1. (i) *Facts.* On March 23, 2010, a grandfathered health plan has a coinsurance requirement of 20% for inpatient surgery. The plan is subsequently amended to increase the coinsurance requirement to 25%.

(ii) *Conclusion.* In this *Example 1,* the increase in the coinsurance requirement from 20% to 25% causes the plan to cease to be a grandfathered health plan.

Example 2. (i) *Facts.* Before March 23, 2010, the terms of a group health plan provide benefits for a particular mental health condition, the treatment for which is a combination of counseling and prescription drugs. Subsequently, the plan eliminates benefits for counseling.

(ii) *Conclusion.* In this *Example 2,* the plan ceases to be a grandfathered health plan because counseling is an element that is necessary to treat the condition. Thus the plan is considered to have eliminated substantially all benefits for the treatment of the condition.

Example 3. (i) *Facts.* On March 23, 2010, a grandfathered health plan has a copayment requirement of $30 per office visit for specialists. The plan is subsequently amended to increase the copayment requirement to $40. Within the 12-month period before the $40 copayment takes effect, the greatest value of the overall medical care component of the CPI–U (unadjusted) is 475.

(ii) *Conclusion.* In this *Example 3,* the increase in the copayment from $30 to $40, expressed as a percentage, is 33.33% (40 − 30 = 10; 10 ÷ 30 = 0.3333; 0.3333 = 33.33%). Medical inflation (as defined in paragraph (g)(3)(i) of this section) from March 2010 is 0.2269 (475 − 387.142 = 87.858; 87.858 ÷ 387.142 = 0.2269). The maximum percentage increase permitted is 37.69% (0.2269 = 22.69%; 22.69% + 15% = 37.69%). Because 33.33% does not exceed 37.69%, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Example 4. (i) *Facts.* Same facts as *Example 3,* except the grandfathered health plan subsequently increases the $40 copayment requirement to $45 for a later plan year. Within the 12-month period before the $45 copayment takes effect, the greatest value of the overall medical care component of the CPI–U (unadjusted) is 485.

(ii) *Conclusion.* In this *Example 4,* the increase in the copayment from $30 (the copayment that was in effect on March 23, 2010) to $45, expressed as a percentage, is 50% (45 − 30 = 15; 15 ÷ 30 = 0.5; 0.5 = 50%). Medical inflation (as defined in paragraph (g)(3)(i) of this section) from March 2010 is 0.2527 (485 − 387.142 = 97.858; 97.858 ÷ 387.142 = 0.2527). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 40.27% (0.2527 = 25.27%; 25.27% + 15% = 40.27%), or $6.26 ($5 × 0.2527 = $1.26; $1.26 + $5 = $6.26). Because 50% exceeds 40.27% and $15 exceeds $6.26, the change in the copayment requirement at that time causes the plan to cease to be a grandfathered health plan.

Example 5. (i) *Facts.* On March 23, 2010, a grandfathered health plan has a copayment of $10 per office visit for primary care providers. The plan is subsequently amended to increase the copayment requirement to $15. Within the 12-month period before the $15 copayment takes effect, the greatest value of the overall medical care component of the CPI–U (unadjusted) is 415.

(ii) *Conclusion.* In this *Example 5,* the increase in the copayment, expressed as a percentage, is 50% (15 − 10 = 5; 5 ÷ 10 = 0.5; 0.5 = 50%). Medical inflation (as defined in paragraph (g)(3) of this section) from March 2010 is 0.0720 (415.0 − 387.142 = 27.858; 27.858 ÷ 387.142 = 0.0720). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 22.20% (0.0720 = 7.20%; 7.20% + 15% = 22.20), or $5.36 ($5 × 0.0720 = $0.36; $0.36 + $5 = $5.36). The $5 increase in copayment in this *Example 5* would not cause the plan to cease to be a grandfathered health plan pursuant to paragraph (g)(1)(iv) this section, which would permit an increase in the copayment of up to $5.36.

Example 6. (i) *Facts.* The same facts as *Example 5,* except on March 23, 2010, the grandfathered health plan has no copayment ($0) for office visits for primary care providers. The plan is subsequently amended to increase the copayment requirement to $5.

(ii) *Conclusion.* In this *Example 6,* medical inflation (as defined in paragraph (g)(3)(i) of this section) from March 2010 is 0.0720 (415.0 − 387.142 = 27.858; 27.858 ÷ 387.142 = 0.0720). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv)(A) of this section is $5.36 ($5 × 0.0720 = $0.36; $0.36 + $5 = $5.36). The $5 increase in copayment in this *Example 6* is less than the amount calculated pursuant to paragraph (g)(1)(iv)(A) of this section of $5.36. Thus, the $5 increase in copayment does not cause the plan to cease to be a grandfathered health plan.

Example 7. (i) *Facts.* On March 23, 2010, a self-insured group health plan provides two tiers of coverage—self-only and family. The employer contributes 80% of the total cost of coverage for self-only and 60% of the total cost of coverage for family. Subsequently, the employer reduces the contribution to 50% for family coverage, but keeps the same contribution rate for self-only coverage.

(ii) *Conclusion.* In this *Example 7,* the decrease of 10 percentage points for family coverage in the contribution rate based on cost of coverage causes the plan to cease to be a grandfathered health plan. The fact that the contribution rate for self-only coverage remains the same does not change the result.

Example 8. (i) *Facts.* On March 23, 2010, a self-insured grandfathered health plan has a COBRA premium for the 2010 plan year of $5000 for self-only coverage and $12,000 for family coverage. The required employee contribution for the coverage is $1000 for self-only coverage and $4000 for family coverage. Thus, the contribution rate based on cost of coverage for 2010 is 80% ((5000 − 1000)/5000) for self-only coverage and 67% ((12,000 − 4000)/12,000) for family coverage. For a subsequent plan year, the COBRA premium is $6000 for self-only coverage and $15,000 for family coverage. The employee contributions for that plan year are $1200 for self-only coverage and $5000 for family coverage. Thus, the contribution rate based on cost of coverage is 80% ((6000 − 1200)/6000) for self-only coverage and 67% ((15,000 − 5000)/15,000) for family coverage.

(ii) *Conclusion.* In this *Example 8,* because there is no change in the contribution rate based on cost of coverage, the plan retains its status as a grandfathered health plan. The result would be the same if all or part of the employee contribution was made pre-tax through a cafeteria plan under section 125 of the Internal Revenue Code.

Example 9. (i) *Facts.* Before March 23, 2010, Employer *W* and Individual *B* enter into a legally binding employment contract that promises *B* lifetime health coverage upon termination. Prior to termination, *B* is covered by *W*'s self-insured grandfathered group health plan. *B* is terminated after March 23, 2010 and *W* purchases a new health insurance policy providing coverage to *B,* consistent with the terms of the employment contract.

(ii) *Conclusion.* In this *Example 9,* because no individual is enrolled in the health insurance policy on March 23, 2010, it is not a grandfathered health plan.

[FR Doc. 2010–14488 Filed 6–14–10; 11:15 am]

BILLING CODE 4830–01–P, 4510–29–P, 4120–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–118412–10]

RIN 1545–BJ50

Group Health Plans and Health Insurance Coverage Rules Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the IRS is issuing temporary regulations under the provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act) dealing with rules relating to status as a grandfathered health plan. The IRS is issuing the temporary regulations at the same time that the Employee Benefits Security Administration of the U.S. Department of Labor and the Office of Consumer Information and Insurance Oversight of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations with respect to group health plans and health insurance coverage offered in connection with a group health plan under the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers, group health plans, and health insurance issuers providing group health insurance coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 15, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–118412–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG–118412–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–118412–10).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karen Levin at 202–622–6080; concerning submissions of comments or to request a 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 submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 16, 2010. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the proposed collection of information (*see* the preamble to the temporary regulations published elsewhere in this issue of the **Federal Register**);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information are in § 54.9815–1251T(a)(2) and (a)(3) (*see* the temporary regulations published elsewhere in this issue of the **Federal Register**). The temporary regulations require any group health plan or group health insurance coverage intended to be a grandfathered health plan to include in any description of plan benefits provided to participants or beneficiaries a statement that the plan or issuer believes the plan or health insurance coverage is a grandfathered health plan under section 1251 of the Affordable Care Act. The temporary regulations provide model language for this purpose. The temporary regulations also require any such plan or issuer to maintain records documenting the terms of the plan or health insurance coverage on March 23, 2010 and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. The likely respondents to the collections of information requirements are business or other for-profit institutions, and nonprofit institutions. Responses to this collection of information are mandatory if a plan or health insurance coverage is intended to be a grandfathered health plan under the Affordable Care Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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

Background

The temporary regulations published elsewhere in this issue of the **Federal Register** add § 54.9815–1251T to the Miscellaneous Excise Tax Regulations. The proposed and temporary regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation. It is hereby certified that the collections of information contained in this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The temporary regulations require any group health plan or group health insurance coverage intended to be a grandfathered health plan to include in

any description of plan benefits provided to participants or beneficiaries a statement that the plan or issuer believes the plan or health insurance coverage is a grandfathered health plan under section 1251 of the Affordable Care Act. The temporary regulations provide model language for this purpose. This disclosure requirement applies only when the plan or issuer is otherwise distributing a description of plan benefits. For group health plans maintained by small entities, it is anticipated that the health insurance issuer will prepare the description of plan benefits in almost all cases. Thus, there will almost always be no burden of statement preparation imposed on small business entities. Because the distribution is not required other than when a description of plan benefits is otherwise provided, the distribution requirement will not add any burden to plans maintained by small business entities. For this reason, the information collection requirement of providing a statement, in descriptions of plan benefits, that the plan is intended to be a grandfathered health plan will not impose a significant impact on a substantial number of small entities.

The temporary regulations also require any plan or issuer intending the group health plan or health insurance coverage to be a grandfathered health plan to maintain records documenting the terms of the plan or health insurance coverage on March 23, 2010 and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. Under the temporary regulations, if a sponsor of a group health plan switches to an insurance policy under which none of its employees was covered on March 23, 2010, the plan ceases to be a grandfathered health plan. Thus, an insured plan can maintain its status as a grandfathered health plan only by renewing its contract with the same health insurance issuer. Almost all plans maintained by small business entities are insured plans, and the issuer is also required to satisfy this recordkeeping requirement for the health insurance coverage to remain a grandfathered health plan. It is anticipated that the issuer will satisfy this recordkeeping obligation for almost all small businesses. For this reason, this information collection requirement will not impose a significant impact on a substantial number of small entities.

For further information and for analyses relating to the joint rulemaking, see the preamble to the joint rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Karen Levin, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and the U.S. Department of Health and Human Services.

List of Subjects in 26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding an entry in numerical order to read as follows:

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

Section 54.9815–1251 also issued under 26 U.S.C. 9833. * * *

Par. 2. Section 54.9815–1251 is added to read as follows:

§ 54.9815–1251 Preservation of right to maintain existing coverage.

[The text of proposed § 54.9815–1251 is the same as the text of § 54.9815–1251T published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–14487 Filed 6–14–10; 11:15 am]

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Federal Register

Thursday,
June 17, 2010

Part III

Department of Homeland Security

Coast Guard

46 CFR Parts 97 and 148

Bulk Solid Hazardous Materials: Harmonization With the International Maritime Solid Bulk Cargoes (IMSBC) Code; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 97 and 148

[Docket No. USCG–2009–0091]

RIN 1625–AB47

Bulk Solid Hazardous Materials: Harmonization With the International Maritime Solid Bulk Cargoes (IMSBC) Code

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to harmonize its regulations with International Maritime Organization (IMO) amendments to Chapter VI and Chapter VII to the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS) that make the International Maritime Solid Bulk Cargoes (IMSBC) Code mandatory. The amendments require that all vessels subject to SOLAS and carrying bulk solid cargoes other than grain must comply with the IMSBC Code. The Coast Guard proposes to amend its regulations governing the carriage of solid hazardous materials in bulk to allow use of the IMSBC Code as an equivalent form of compliance for all domestic and foreign vessels operating in U.S. navigable waters. Proposed changes to the Coast Guard regulations will also expand the list of solid hazardous materials authorized for bulk transportation by vessel and include special handling procedures based on the IMSBC Code and existing special permits. These proposed changes would reduce the need for the current special permits for the carriage of certain solid hazardous materials in bulk.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before July 19, 2010 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 19, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0091 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *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.
- *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.

Collection of information comments: If you have comments on the collection of information discussed in section VII.D. of this NPRM, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to *oira_submission@omb.eop.gov* (include the docket number and "Attention: Desk Officer for Coast Guard, DHS" in the subject line of the email) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at room 1214, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1401. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Richard Bornhorst, Office of Operating and Environmental Standards, Hazardous Materials Standards Division (CG–5223), Coast Guard, telephone 202–372–1426, e-mail *Richard.C.Bornhorst@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:

Table of Contents for Preamble

I. 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.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0091), 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. We recommend that you include your name and a mailing address, an e-mail address, or a phone 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–2009–0091" 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 materials received during the comment period and may change this proposed rule based on your comments.

B. 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–2009–0091" and click "Search." Click on "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting 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 Document Management Facility.

C. Privacy Act

You may search the electronic form of comments received into any of our dockets by the name of the individual submitting the comments (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).

D. Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a public meeting to the docket using one of the methods specified under **ADDRESSES.** In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold a public meeting at a time and place announced by a later notice in the **Federal Register.**

II. Abbreviations

ACGIH American Conference of Governmental Industrial Hygienists
ANPRM Advance Notice of Proposed Rulemaking
BC Code Code of Safe Practice for Solid Bulk Cargoes
BCSN Bulk Cargo Shipping Name
CDC Certain Dangerous Cargoes
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
CFR Code of Federal Regulations
COTP Captain of the Port
CTAC Chemical Transportation Advisory Committee
DCM Dangerous Cargo Manifest
DHS Department of Homeland Security
DRI Direct Reduced Iron
EPA Environmental Protection Agency
FR **Federal Register**
HMR Hazardous Materials Regulations, 49 CFR Parts 171–180
IAEA International Atomic Energy Agency
IMDG Code International Maritime Dangerous Goods Code
IMO International Maritime Organization
IMSBC Code International Maritime Solid Bulk Cargoes Code
LFL lower flammability limit
LSA Low Specific Activity
MARPOL 73/78 International Convention for the Prevention of Pollution from Ships
MISLE Marine Information for Safety and Law Enforcement
MHB Materials Hazardous only in Bulk
MSDS Material Safety Data Sheet
NCB National Cargo Bureau
NEPA National Environmental Policy Act of 1969
N.O.S. Not Otherwise Specified
NPRM notice of proposed rulemaking
NTTAA National Technology Transfer and Advancement Act
NVIC Navigation and Vessel Inspection Circular
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
ORM Other Regulated Material
OSHA Occupational Safety and Health Administration
PDM potentially dangerous material
PHMSA Pipeline and Hazardous Materials Safety Administration (U.S. Department of Transportation)
RQ Reportable Quantity
SCBA Self-contained breathing apparatus
SCO–I Surface Contaminated Object (group I)
SOLAS International Convention for the Safety of Life at Sea, 1974, as amended
TLV threshold limit value
TML Transportable Moisture Limit
UN United Nations
U.S.C. United States Code

III. Background

A. Summary of Existing Regulations

The Coast Guard regulations governing the carriage of solid hazardous materials in bulk are found in 46 CFR parts 97 and 148. Part 148 prescribes regulations for the transport of solid hazardous materials in bulk by vessel on U.S. navigable waters. Subpart 148.01 includes information on applicability, special permits, and certification. This subpart also includes a list of permitted solid cargoes that may be transported without special permit from the Coast Guard; the list was last revised in 1984 (49 FR 16794). The list does not cover 30 additional solid cargoes that are now shipped in bulk by vessel and that require special handling procedures to ensure safety in transportation. The Coast Guard issues special permits specifying conditions under which it allows transport of these bulk solid cargoes by vessel.

Subpart 148.02 includes vessel requirements for shipping papers, dangerous cargo manifests (DCMs), and reporting of incidents. Subparts 148.03 and 148.04 include minimum transportation requirements for all bulk solid cargoes subject to Part 148, and special additional requirements for certain material. The special additional requirements are applied to solid cargoes permitted to be carried in bulk by vessel in accordance with Subpart 148.01.

B. Regulatory History

This rulemaking is based on a previous rulemaking (CGD 87–069), which the Coast Guard closed in 1995. On April 28, 1989, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) titled "Marine Transport of Bulk Solid Hazardous Materials" in the **Federal Register** (54 FR 18308). During the 60-day comment period, the Coast Guard received 16 comment letters on the ANPRM, which we considered in developing a notice of proposed rulemaking (NPRM). The comments did not request a public meeting, and we did not hold one.

On April 12, 1994, the Coast Guard published an NPRM titled "Carriage of Bulk Solid Materials Requiring Special Handling" in the **Federal Register** (59 FR 17418) with a 90-day comment period. On August 5, 1994, we extended the comment period for 30 days (59 FR 40004). The 1994 NPRM addressed comments received on the ANPRM. The NPRM also included a provision regarding the carriage of coal (proposed in the 1994 NPRM as § 148.240), which was based on a report by the Chemical Transportation Advisory Committee (CTAC) Subcommittee on Coal Transportation. That CTAC report is discussed in the 1994 NPRM at 59 FR 17420. In response to the 1994 NPRM, the Coast Guard received 65 letters and communications containing more than 200 comments. No public meeting was requested, and we did not hold one.

On April 13, 1995, the Coast Guard published a notice of termination in the **Federal Register** (60 FR 18793). At that time, we closed the rulemaking to focus resources on other matters. We resolved those matters and we are now proceeding with the rulemaking. A copy of the 1994 NPRM and the 1995 Termination Notice have been placed in the public docket for reference.

In 2008 and 2009, the CTAC Subcommittee on Solid Bulk Cargoes held several meetings regarding the IMSBC Code and specific requirements for the carriage of all bulk solid cargoes by vessel. Industry provided extensive recommendations during these public meetings, which the Coast Guard considered and incorporated when developing this proposed rule. The meetings occurred on April 23, 2008 (73 FR 17369), September 9 and 10, 2008 (73 FR 47202), April 21 and 22, 2009, and August 12, 2009 (74 FR 39090). The rulemaking docket (USCG–2009–0091) contains minutes of these public meetings as well as the subcommittee's final report. The Coast Guard used CTAC's report in preparing this NPRM.

At the time the Coast Guard published the 1994 NPRM, the international standard for the marine transport of solid materials in bulk was the Code of Safe Practice for Solid Bulk Cargoes (BC Code). Since the 1994 NPRM, the IMO has updated the BC Code periodically and renamed it the IMSBC Code. Therefore, this proposed rule is similar, but not identical, to that proposed in the 1994 NPRM. The Coast Guard encourages members of the public to comment on this NPRM, even if they may have submitted a similar comment in the 1994 rulemaking.

The period for comment on this NPRM is 30 days. We believe that a 30-day comment period is adequate in light of the long history of this rulemaking and the multiple opportunities for comment. As described in detail above, the public has commented on an ANPRM as well as an NPRM very similar to the rule proposed in this document, and at four public meetings in the last 2 years. In addition, the Coast Guard participated in the development of the IMSBC Code, and held public meetings prior to each meeting with the IMO to give shipping and cargo interests the opportunity to comment on IMO activities (*see, e.g.,* 74 FR 40632, 73 FR 51876, and 72 FR 44213). For these reasons, we believe that a comment period of 30 days is appropriate.

C. Changes to International Regulations That Led to This Rulemaking

The carriage of hazardous materials in international maritime commerce is now governed by Chapter VII of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS). In 1990 and 1991, the IMO amended Chapter VI of SOLAS, which formerly applied only to grain cargoes, to include all bulk solid cargoes. The amended Chapter VI of SOLAS requires that the master receive written cargo information, that the vessel carry oxygen analysis and gas detection equipment on board when the cargoes to be carried are likely to emit toxic or flammable gases, and that the master possess information regarding the ship's stability and the distribution of cargo after loading.

On January 1, 1994, these amendments became binding for all nations signatory to SOLAS, including the United States. In December, 2008, IMO further amended SOLAS Chapter VI and Chapter VII, to require compliance with the relevant provisions of the IMSBC Code for the carriage of bulk solid cargoes other than grain. This amendment will become binding for all nations signatory to the SOLAS Convention on January 1, 2011.

The IMSBC Code, formerly known as the BC Code, is the international standard for the marine transport of solid materials in bulk. The IMO first issued it in 1965 and has amended it several times since, most recently in 2008. The IMSBC Code provides standards for shippers, vessel operators, and masters to ensure the safe handling and carriage of bulk solid cargoes. Implementation of the IMSBC Code will not become mandatory until January 1, 2011, but several countries have already adopted the Code, in whole or in part, as national regulation. Countries that are party to SOLAS will require compliance with the IMSBC Code for all bulk solid shipments occurring in their jurisdiction. Several bulk solid cargoes covered by the IMSBC Code are also regulated by the Coast Guard under 46 CFR part 148, under either the list of permitted cargoes or the terms of a special permit.

The Secretary of Homeland Security delegated to the Coast Guard the authority necessary to conduct this rulemaking, including the authority to carry out the functions and exercise the authorities in 46 U.S.C. 3306 and 5111, and to carry out the functions of 46 U.S.C. 3306(a)(5) and 49 U.S.C. 5101 *et seq*. relating to the regulation of bulk transportation of hazardous materials loaded or carried on board a vessel without benefit of containers or labels. Under these and other authorities, the Coast Guard proposes in this NPRM regulations that would allow the use of the IMSBC Code as an equivalent form of compliance with 46 CFR part 148 for international shipments originating or concluding in the United States, subject to conditions and limitations.

IV. Discussion of Comments on the 1994 Notice of Proposed Rulemaking

In response to the April 1994 NPRM, the Coast Guard received 65 letters and communications containing more than 200 comments. Those commenting included shippers, carriers, terminal operators, marine surveyors, trade associations, private individuals, and the Canadian Coast Guard. No public meeting was requested, and we did not hold one.

In this section, we discuss the comments received on the 1994 NPRM, including, where appropriate, instances in which comments led to changes between the 1994 NPRM and this NPRM. In many cases, we no longer have the original comment letters submitted in 1994; instead, we based our discussion of those comments on summaries created in 1994, which we have made available in the docket. Following the discussion of the public comments, we summarize additional changes made to this proposed rule as the result of actions by the Coast Guard, the IMO, and the Pipeline and Hazardous Materials Safety Administration (PHMSA) since publication of the 1994 NPRM.

A. General Comments

Two comments objected to the rulemaking in general, stating that the regulations are burdensome and unnecessary.

We have regulated shipment of bulk solid hazardous materials for more than 30 years. All of the materials previously regulated and those to be regulated under this rulemaking have been determined through experience and/or scientific investigation to have characteristics that could endanger human life or harm the marine environment. Before participating in any action by IMO to develop the IMSBC Code, the Coast Guard sought advice from the affected segments of American industry. The coal industry is a particularly good example. A special working group from American coal and marine transportation interests participated in the development of the international requirements. The adoption of amendments to Chapter VI and Chapter VII of SOLAS require that all vessels subject to SOLAS and carrying bulk solid cargoes other than grain must comply with the IMSBC Code. It is necessary for the United States to update its regulations to harmonize with SOLAS requirements. Allowing for the use of the IMSBC Code as an equivalent form of compliance with 46 CFR part 148, and reducing the number of special permits requested and issued, will reduce some burden on both the Coast Guard and the shipper. The United States has been, and expects to continue being, a leader in international maritime safety.

One comment noted that the Coast Guard was regulating in an area where each circumstance is different and calls for different measures. This comment recommended that the Coast Guard require companies conducting potentially risky operations to conduct a systems analysis similar to the process hazards analysis now required by both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA).

We determined that the comment's recommendation transcends the scope of the present rulemaking. None of the materials regulated under the former rules or proposed for regulating by this NPRM have a history of catastrophic events that would put an entire community at risk. Only a few are environmentally hazardous substances of significance. The issue of systems analysis as proposed by the comment would be better addressed under a comprehensive review of the Coast Guard's port safety regulations.

Ten comments proposed that the rules in Part 148 should not apply to unmanned barges in domestic rivers or coastwise service. We agree in part. We revised proposed § 148.1 to exclude unmanned barges transporting potentially dangerous materials (PDM), such as coal and wood chips, from this part except when such a barge is on an international voyage. PDM materials have characteristics of self-heating, flammable/toxic gas emission, or oxygen depletion. These materials pose little danger when transported in open hopper barges. This part would continue to apply to all unmanned barges transporting bulk materials meeting the hazardous class definitions in 49 CFR Chapter I, Subchapter C; for example, ammonium nitrate fertilizer and ferrosilicon. The term PDM is functionally equivalent to term "material hazardous only in bulk" (MHB), which is used in the IMSBC Code.

B. Comments Relating to Specific Provisions

1. *Section 97.12–1.* Four comments found the applicability statement confusing and the applicability of Subpart 97.12 to foreign flag vessels and barges unclear.

This section has been deleted from the proposed rule. The vessel applicability rules from Part 90 apply.

2. *Section 97.12–3.* One comment remarked that not all vessels subject to the rules would have masters.

We determined that no change is necessary. Unmanned barges are exempt from Subpart 97.12 and all other vessels have masters.

3. *Section 148.3.*

a. *Adjacent space.* Two comments questioned the definition of "adjacent space." One asked whether an adjacent space included penetrations, such as cable runs and pipes, in a bulkhead separating a space from a cargo hold, if those penetrations were gas-tight. The other stated that spaces having a high rate of air exchange that negates the potential for the accumulation of toxic or flammable gases should not be considered adjacent spaces.

To the first comment, the Coast Guard explains that if a cable or pipe passes through the common bulkhead or deck in a stuffing tube or packing gland, the space is considered an adjacent space. If a pipe is welded where it passes through the common bulkhead or deck, it is not a penetration for the purposes of this definition.

To the second comment, we point out that the definition of adjacent space relates only to the location of a space in relation to a cargo hold containing bulk solid materials requiring special handling. The atmospheric conditions in the space are not addressed in the definition. Ventilation of adjacent spaces is addressed for specified cargoes.

b. *Hot-molded briquettes.* One comment pointed out that the definition of "hot-molded briquettes" is not consistent with the BC Code (now replaced by the IMSBC Code).

The IMSBC Code defines hot molded direct reduced iron (DRI) as briquettes molded at a temperature of 650 °C or higher that have a density of 5.0 g/cm^3 or greater. The 1994 NPRM had stated that DRI briquettes were either molded at a temperature of 650 °C or higher or had a density of 5.0 g/cm^3 or greater. In this proposed rule, we have revised the proposed definition to match the IMSBC Code.

c. *Surface ventilation.* One comment asked if the definition of "surface ventilation" included both active (fan-induced) and passive (hatch cover vents) ventilation.

The answer is yes. In this proposed rule, we have expanded the definition accordingly.

4. *Section 148.5.* One comment supported acceptance of alternative procedures set out in § 148.5.

5. *Section 148.8.* One comment proposed that Section 4 of the BC Code (now IMSBC Code) be incorporated by reference. The section deals with assessing the acceptability of consignments for safe shipment.

Section 4 of the IMSBC Code contains provisions for information to be given to the master prior to loading, and retained on board during carriage. This section of the IMSBC Code is incorporated by reference for international shipments under § 148.55 of the proposed rule. For domestic shipments, equivalent measures are contained in §§ 148.60 and 148.70.

6. *Section 148.10.*

a. One comment found the proposed rules "grossly inadequate" in how they protect merchant mariners from exposure to hazardous substances. Commenting on footnotes 7, 8, 10, 12, and 15 of proposed Table 148.10, this comment recommended that the Coast Guard either adopt OSHA standards for personal protective equipment or develop its own equivalent standards.

We recognize that this regulation does not contain all the requirements necessary for a comprehensive health and safety program. In our Navigation and Vessel Inspection Circular (NVIC) 3–92 of February 24, 1992, however, we provide the marine industry with guidance for such a program.

In this proposed rule, we have retained requirements for the most important health and safety issues related to the transportation of materials regulated in Part 148. These include general requirements to treat all cargo holds as confined spaces, and specific requirements that are deemed necessary due to unique hazards of certain bulk solid materials. In this proposed rule, a new section, § 148.86, containing requirements for confined space entry has replaced the "special requirements" proposed in §§ 148.425 and 148.430 in the 1994 NPRM § 1. Also, we have added a definition of "confined space" to § 148.3.

b. One comment suggested that an entry for "ammonium nitrate, UN 1942" be added to Table 148.10.

We agree and we have adjusted this proposed rule accordingly. The footnotes and special requirements in the new entry would be the same as for ammonium nitrate fertilizer, UN 2067.

c. Four comments opposed the classification of coal as PDM and/or requested that the transport of coal be removed from the rulemaking.

We did not adopt this request. The IMSBC Code provisions for transport of coal are the result of a U.S. initiative developed with the knowledge, assistance, and concurrence of the U.S. coal industry. Where the 1994 rulemaking was not in harmony with the IMSBC Code, we have revised this proposed rule accordingly. The burden on the coal industry would be lessened by exempting domestic barge shipments of PDM, as is provided by this rulemaking.

d. Concerning the list of sections containing special requirements for coal, one comment observed that §§ 148.15, 148.80, 148.90, 148.100, 148.110, 148.115, and 148.120 also apply to coal.

Although this is generally true, § 148.15 does not apply to coal; therefore, no change to Table 148.10 is necessary to make reference to this section. The other sections cited by the comment contain general requirements that apply to all commodities listed in the table, and are not specific to coal.

e. One comment questioned the applicability to coal of footnote 24 of proposed Table 148.10, cargoes subject to liquefaction, stating that liquefaction cannot occur with coal.

Based on the IMSBC Code and other information available to the Coast Guard, we believe liquefaction can indeed occur with coal if the coal is in a finely divided form. In order to clarify this, proposed § 148.450, "Cargoes subject to liquefaction," states that it does not apply to cargoes of coal that have an average particle size of 10 mm (.394 in.) or greater. The average particle size is based on the definition of "fine-grained materials" in Appendix 2 of the IMSBC Code.

f. One comment requested that footnote 11, which indicates that petroleum coke is susceptible to spontaneous heating and ignition, be removed from the entry for petroleum coke in Table 148.10. The comment states that this footnote is not appropriate.

We found that the IMSBC Code identifies spontaneous heating and ignition as a characteristic of petroleum coke, and we have left this as a hazardous or potentially dangerous description for petroleum coke.

g. One comment opposed classification of sawdust and wood chips as PDM.

We disagree. The Coast Guard's Bulk Solid Cargoes regulations have listed sawdust as a regulated material since before 1976. Under this proposed rule, we would regulate sawdust as PDM when carried by cargo vessel; it is currently regulated as an Other Regulated Material—Class C (ORM–C). However, the proposed rule does not apply to domestic barge shipments. The principal hazard associated with these materials, sawdust and wood chips, is oxygen depletion in confined spaces. Since these materials are usually transported domestically in open hopper barges, oxygen depletion is not a significant hazard.

h. One comment recommended that an entry for Sulfur, NA 1350, Hazard Class 9, be added to 49 CFR Table 172.101 to be used for domestic transportation of sulfur.

We agree that this addition would be consistent with the entries for sulfur in 49 CFR Table 172.101. The entry for sulfur that is assigned to NA 1350 may be used only for domestic transportation. The proposed entry for Sulfur UN 1350, Hazard Class 4.1, has been retained for international transportation. The footnotes and special requirements of both entries are the same.

7. *Section 148.12.*

a. This was one of the most controversial provisions of the 1994 NPRM. Seventeen comments objected to this provision on the grounds that it would create a monopoly by naming the National Cargo Bureau, Inc. (NCB), as the exclusive agency for assisting the Coast Guard in administering Part 148. The comments requested that we authorize other competent entities to assist in the administration of these regulations.

Since 1952, the Coast Guard's hazardous materials regulations (HMRs) have contained a provision recognizing NCB. As proposed in 1994, § 148.12 (to replace existing § 148.01–13) granted no monopoly to the NCB, did not require that its services be used, and did not prohibit carriers from employing other surveyors. In this proposed rule, we have retained this section with only minor revisions.

b. One comment noted that § 148.12 implies mandatory Coast Guard inspection of each barge, creating a delay that would have an adverse economic impact.

This is not the case. Proposed § 148.12 in no way mandates inspection of every barge. We have the authority to inspect barges or other vessels to ensure compliance with the regulations, but in practice we do not carry out inspections of 100 percent of the affected vessels. The employment of NCB or any recognized marine surveying organization is voluntary on the part of a vessel operator.

8. *Section 148.55.* One comment noted that proposed paragraph (b) of this section, by authorizing compliance with international requirements in lieu of compliance with Part 148, may preclude some other regulations in Part 148.

As the rule was proposed in the 1994 NPRM, this would have been true. However, it was not the Coast Guard's intent that this provision should obviate the requirements concerning environmentally hazardous substances or zinc ashes. In this proposed rule, we have revised paragraph (b) of this section to require that these commodities must comply with Part 148 in addition to the IMSBC Code. We are not aware of any other provisions in this rulemaking that are significantly more stringent than the IMSBC Code.

9. *Section 148.60.*

a. One comment recommended that shipping papers include the shipper's and transporter's Hazardous Materials Registration Number.

Under PHMSA regulations at 49 CFR part 107, subpart G, registration is required only for shippers and transporters of certain packaged hazardous materials. Registration is not required for shippers or transporters of bulk materials, including solid materials, liquid chemicals, and compressed gases. Therefore, not all shippers and transporters of bulk solid materials will have Hazardous Materials Registration Numbers.

b. One comment stated that the proposed regulation provided inadequate protection regarding shipment by barge. Because barges do not have masters, there is no one to hold responsible for accepting the commodity.

We point to § 148.2, proposed in this rulemaking, which places the duty to comply with these regulations on "each master of a vessel, person in charge of a barge, owner, operator, charterer, or agent." We propose to revise the definition of "master" in § 148.3 to indicate that the person in charge of a barge may perform the functions of a master for the purposes of this proposed rule. We also propose to add the definition of "person in charge of a barge" to § 148.3.

c. One comment requested that the Coast Guard define the format or document to be used for notification of the master.

We do not intend to impose a format for communications between shipper and carrier. A single format cannot take into account all forms of communication between all types of shippers and carriers. Documentation should be in a form acceptable to both parties.

d. One comment suggested that it may be good practice to have a material safety data sheet (MSDS) address some portions of proposed § 148.60.

We agree with the comment, but point out that proposed § 148.61 already allows hazardous materials information to be provided in the form of an MSDS.

e. One comment observed that, as proposed in the 1994 NPRM, § 148.60(d) negated the requirement for shipping papers for shipments of PDM, including coal.

In this proposed rule, we have resolved this issue by removing

paragraph (d) of § 148.60. Because of the proposed applicability provisions at § 148.1, shipping papers would be required for all shipments of hazardous materials and PDM by cargo vessel, and by unmanned barge if the barge is on an international voyage. Shipping papers are not required for PDM when transported by barge in domestic transportation.

f. One comment stated that the shipping paper requirements for PDM in the 1994 proposal were not clear; this comment proposed that the requirement for shipper advice be dropped.

Shippers' advice to the master is essential for many materials. The shipper has the most knowledge of the characteristics and hazards of the material and therefore can provide the best advice for shipping. This information most commonly is conveyed through shipping papers and DCMs. Under SOLAS, shipping papers and a DCM are required for all hazardous cargoes. Therefore, in this proposed rule, we removed the exception for PDM in international commerce. Because of the proposed revision to the applicability provisions at § 148.1, neither shipping papers nor a DCM are needed for shipments of PDM by unmanned barge in domestic transportation.

10. *Section 148.62.* Two comments did not believe safety would be meaningfully enhanced by a requirement to transfer and maintain aboard an unmanned barge written information on the hazards of these cargoes.

The proposed regulations require that the shipping paper and emergency response information be kept on the tug or towing vessel, or, in the case of a moored barge, in a readily retrievable location. The purpose of this requirement includes the safety of first responders. If an incident should occur on board the barge, it is essential that personnel responding can obtain emergency response information. If the shipper or the master of a vessel or person in charge is not available, this may be the only source of information on the cargo.

11. *Section 148.70.*

a. One comment requested that barges be exempt from the requirement for a DCM.

Under the revised applicability provisions of this proposed rule, barges are exempt from DCM requirements unless they are on an international voyage. On international voyages, barges carrying Class 4 through 9 hazardous materials in bulk must comply with SOLAS and therefore must have a DCM.

b. Another comment questioned whether a DCM is required for materials classed as PDM.

The answer is no. A DCM is required only when a cargo vessel (or a barge on an international voyage) transports bulk materials of Hazard Classes 4 through 9.

c. One comment recommended that a DCM be required for unmanned barges.

We partially agree. Under SOLAS, an unmanned barge carrying bulk hazardous materials other than PDM on an international voyage must have a DCM on board. For barges in domestic transportation, however, the information required to be on the DCM is either not applicable or is redundant to information presented on the shipping paper. The shipping paper required on board the towing vessel or on the barge under proposed § 148.60 provides sufficient information.

12. *Section 148.80.*

a. One comment asked whether the definition of "responsible person" included members of a ship's crew designated by the master or his deputy and noted that, if so, no changes in current practices are implied.

This definition as referenced by the comment is the intended definition of "responsible person." The responsible person must be a person empowered by the master of a vessel or the owner or operator of a barge to make all decisions relating to his or her specific task and must have the necessary knowledge and experience for that purpose. We have added this definition of "responsible person" to proposed § 148.3.

b. Another comment asked whether these regulations would require either the vessel or the shipper to provide a "responsible person" to supervise the loading.

The answer is yes. The proposed rule requires that a responsible person be assigned by either the master of the vessel or the owner or operator of a barge.

13. *Section 148.90.*

a. Eighteen comments questioned the need for holds to be thoroughly cleaned of the previous cargo when the same cargo is to be loaded again.

We believe that the 1994 NPRM was ambiguously worded with regard to the cleaning of cargo holds. The current proposed rule clarifies that thorough cleaning is required only when the previous cargo is incompatible with the cargo being loaded. Compatibility is determined by reference to the stowage and segregation requirements in Subpart D of Part 148.

b. Four comments stated that the requirement that each cargo hold be as dry as practicable was in itself not practical.

The proposed rule clarifies that this requirement applies only to bulk solids that are dangerous when wet or that are subject to liquefaction.

c. Two comments expressed the need for shippers to advise masters of Great Lakes vessels regarding stowage factors and trimming, because of the unique design and operating mode of these vessels. According to the comments, the best course of action is to test every coal cargo for methane regardless of information provided by the shipper.

We agree. The IMSBC Code requires that the atmosphere above the cargo in each hold containing coal be regularly monitored for the concentration of methane, oxygen, and carbon monoxide with procedures outlined in Appendix 1.

d. Another comment recommended that the requirement to provide information on the chemical properties and related hazards of coal and petroleum coke should be omitted.

We disagree. In the interest of safety, the master of the vessel must be fully informed of the nature of the material to be loaded. The regulations, it should be noted, do not stipulate that the chemical properties and related hazards information must be provided for each shipment. For repetitious shipments by a single shipper of a material whose characteristics remain unchanged, this information need only be provided once and retained on file.

14. *Section 148.100.* One comment recommended that recording the details of cargo monitoring and gas testing in a separate dedicated book should be allowed to continue. The ship's log need only make reference to such testing or monitoring.

We agree with the comment and revised proposed § 148.100 requiring that the date and time be recorded in the ship's log. The proposed rule requires only that the detailed information be recorded, and does not specifically require that it be recorded in the ship's log.

15. *Section 148.110.* One comment stated that a cautionary statement referring to 33 CFR part 151 might be appropriate for inclusion in § 148.110.

We agree. Under 33 CFR part 151, operational and maintenance wastes such as cargo residues and deck sweepings are considered "garbage." When on U.S. territorial seas or inland waters, cargo residues and deck sweepings must be retained on the vessel and disposed of as specified in that part; therefore, we included this information in the proposed § 148.110.

16. *Section 148.150.* One comment requested that a provision be added under § 148.150 to read "sulfur must be

segregated as required in § 148.120 for Class 4.1 materials."

We agree with the comment and made this revision.

17. *Section 148.155.* One comment interpreted this section as requiring separation by one complete cargo compartment between two PDM commodities. They doubted that a vessel would be capable of sailing with an empty intermediate cargo compartment without stressing the vessel.

This comment likely refers to proposed § 148.155(d)(2). The separation provision applies only when the temperature of petroleum coke is 55 °C (131 °F) or higher when loaded. The purpose of this requirement is to prevent contact between a bulkhead of a cargo hold containing hot hazardous material and a cargo in an adjacent cargo hold that is sensitive to heat. If it is necessary to transport petroleum coke in a hold adjacent to other hazardous materials, the solution is to not load hot petroleum coke until its temperature decreases to below 55°C. Alternatively, if possible, nonhazardous cargo could be stowed in the intervening hold.

18. *Section 148.205.*

a. One comment stated that the temperature limitations for ammonium nitrate fertilizer should be ensured by monitoring and controlling temperature at the output from the manufacturing process rather than by temperature probes once the material is loaded.

We agree that the temperature of ammonium nitrate fertilizer or any other bulk commodity is best controlled through the manufacturing process. However, only monitoring immediately before loading would ensure that the temperature of the cargo on the vessel is within safe limits.

b. One comment asked if the detonation test prescribed by The Fertilizer Institute was acceptable as an equivalent test under § 148.205(b).

In this proposed rule this test has not been added to the list of allowable tests because it is no longer being maintained by The Fertilizer Institute. Therefore, the detonation test prescribed by The Fertilizer Institute is not acceptable as an equivalent.

c. One comment stated that § 148.205(c)(1) is a reasonable requirement provided it does not mean that each load offered for shipment has to be tested. According to the comment, test data on file supporting the classification by the manufacturer should be sufficient.

This proposed provision does not imply that testing is required for each shipment as long as the chemical composition of the material being shipped has not changed.

d. One comment noted that this section is deficient because it refers only to the "master" when the vessel may be a barge.

To clarify the applicability of this and similar provisions, we proposed to revise the definition of "master" in § 148.3 to include the "person in charge of a barge," and add a definition of "person in charge of a barge" to that section.

e. One comment questioned the prohibition on fuel oil transfer during loading of ammonium nitrate fertilizers. This comment saw no reason why internal fuel transfers should not be permitted.

The purpose of prohibiting bunkering and fuel transfers during the handling of ammonium nitrate and ammonium nitrate fertilizers is to preclude any possibility of forming an explosive mixture through the contamination of the ammonium nitrate. This prohibition does not extend to transfers of fuel on board the vessel through the vessel's fixed piping system. We have reworded the section to clarify this.

19. *Section 148.225.* One comment recommended that §§ 148.225 and 148.315 address the proper disposal of residue that has been "hosed down" or "washed down with fresh water." Another similar comment recommended that § 148.315 should address proper disposal of sulfur residue that has been "hosed down" or "washed down with fresh water."

Although the provision for washing down with fresh water is a direct quotation from the IMSBC Code, we recognize that it conflicts with Annex V of The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and 33 CFR part 151. Instead, in these sections, we propose to refer to 33 CFR parts 151.55 through 151.77.

20. *Section 148.240.*

a. One comment believed there should be some discrimination between supply and exhaust fans in determining which must be "safe for use in an explosive gas atmosphere." The comment recommended that all existing fans should be "grandfathered."

We disagree. Both intake and exhaust fans must be explosion-proof for two reasons. First, ventilation fans on board a vessel are often dual purpose, serving as both intake and exhaust. Second, pockets of gas may accumulate within the housings of both intake and exhaust fans during periods of non-use, creating the possibility of explosion.

b. Two comments expressed an objection to any broad-brush statement classifying all coals as hazardous material.

We support the determination by the IMO that, while some coals are more hazardous than others, all have the potential to be hazardous. We note that the U.S. coal industry was represented on the working group that recommended provisions eventually included in the IMSBC Code.

c. One comment remarked that the requirements for coal were different and less demanding than the current recommendations contained in the BC Code (now the IMSBC Code).

Although phrased differently from the IMSBC Code, the proposed provisions of this chapter concerning coal (not limited to § 148.240) are neither different nor less demanding than those of the IMSBC Code.

d. Another comment proposed that some recognition be shown for the unique construction of the Great Lakes self-unloading vessel.

We accept the fact that Great Lakes vessels may have certain unique features. However, they are exceptions to the general case addressed in these regulations. If owners/operators of Great Lakes vessels cannot comply with this proposed rule, but can provide equivalent safety through alternative means, they may take advantage of the alternative procedures provisions of § 148.5.

e. One comment found § 148.240(a) not specific enough to establish the types of electrical fittings that are required.

We determined that 46 CFR part 111, subpart 111.105, is sufficient in clarity. An item of electrical equipment must be tested or approved in order to comply with IEC 79 series publications. The specific requirements are stated in 111.105–7(a) and (b) and a reference is made to this section in 148.240.

f. Another comment noted that § 148.240(a) did not apply to adjacent spaces because § 148.18(b) recognized that such spaces may have electrical equipment that is not certified safe for use in an explosive gas atmosphere.

This comment is correct. Paragraph § 148.240(a) has been revised so that it refers only to electrical equipment in cargo holds.

g. Fifteen comments expressed very serious objections to the provision that the temperature of coal at the time of loading not exceed 41 °C (105 °F), or 15 °C (27 °F) above the ambient temperature.

We agree with the comments. The temperature requirements in the 1994 NPRM were not consistent with the IMSBC Code and have been removed from this proposed rule.

h. Three comments stated that the wording of the requirement for trimming, *i.e.,* "reasonably level," was subject to various interpretations. They recommended that the subjective nature of this section be eliminated by incorporating some quantitative factor, such as a maximum height of the peak of the pile expressed as a percentage of the vessel's beam.

We recognize the subjective nature of this provision but find it to be impractical to impose an arbitrary quantitative standard for "level." We have therefore removed this language from the proposed rule. The shipper will be responsible for providing trimming information in accordance with the new proposed shipping paper requirements.

i. Two comments observed that § 148.240(c)(1) provided no definition of "sealed", but advised that self-unloading vessels cannot meet this sort of "sealing" requirement in all cases. The comments noted that a number of obvious exemptions would be necessary.

We find that the concept of "sealed" requires no regulatory definition. The purpose of sealing the accesses and hatches is to prevent the escape of methane from the hold into other spaces on the vessel. This paragraph has been revised to clarify that, because of their design, the unloading gates on self-unloading vessels are not required to be sealed.

j. One comment found the 1994 NPRM unclear as to the meaning of the word "casing," and assumed that this refers to access trunks.

We agree. "Casing" is the term employed by the IMSBC Code. By common definition, a "casing" is the metal enclosure around a space such as an "access trunk." To eliminate confusion, the word "casing" has been removed in this proposed rule.

k. One comment noted that there was no reference to the tunnel spaces on self-unloading vessels in the section on coal, and suggested they be included in § 148.240(c)(2).

We have adopted this suggestion in the proposed rule.

l. Three comments inquired as to what specifically are "hot areas" and what is considered adequate ventilation.

We agree that the use of the term "hot areas" in the 1994 NPRM was vague, and we have deleted it from this rulemaking.

In the context of § 148.240(c)(2), adequate ventilation means an air exchange that prevents an accumulation of gas that may be harmful to personnel in working spaces. The ventilation may be natural or mechanical and should be commensurate with the risk of exposure of the space to harmful gases.

In the context of § 148.240(c)(3), adequate ventilation means surface ventilation as defined in § 148.240(f). Ventilation has been defined in the definition section, § 148.3.

m. One comment stated that paragraph (d) of this section was redundant by virtue of paragraphs (e), (f), and (i).

We do not agree. Paragraph (d) states a general prohibition on ventilation applicable to all shipments of coal. Paragraph (e) requires the temperature of coal, known to be, or suspected of being, susceptible to self-heating, to be monitored. Paragraph (f) provides an exception to paragraph (d) for coals that generate methane. Paragraph (i) prescribes that the atmosphere in a hold containing a coal described in paragraph (e) must be monitored for carbon monoxide. There is no redundancy between paragraph (d) and any other paragraph or combination of paragraphs.

n. One comment asserted that the requirement to provide characteristics of the cargo is the responsibility of the shipper or his appointed agent, and objected to the reference in the 1994 NPRM to information about the cargo possessed by the terminal operator and/or vessel operator. Another comment noted that the requirement to monitor coal temperatures before loading should be the responsibility of the shipper. Three other comments stated the view that shippers at times may find it difficult or impossible to obtain the required information. These comments stated that shippers should not be liable for information they do not have.

In response to all of these comments, the Coast Guard replies that someone in the transportation chain must accept responsibility for the condition of a material to be loaded aboard a vessel. Logically, the primary responsibility resides with the person who offers the material for shipment. This person is responsible for knowing the specific types of cargoes being shipped and their hazardous characteristics. This responsibility does not absolve the terminal operator, who may have information about cargoes obtained through experience or observation, from an obligation to pass such information on to the master, nor does it absolve the master, who has the final responsibility for the safety of his vessel. This proposed rule clarifies that the master is responsible for monitoring the temperature of the coal.

o. Several comments requested clarification as to what triggers the requirement for ventilation of the cargo space. Three comments stated that the term "freshly mined" was a subjective judgment and needed to be clarified. One comment requested clarification of what "history" would trigger the ventilation requirements for coal.

This section has been revised in the proposed rule to emphasize the coal's potential for emitting methane as the trigger for requiring ventilation of the cargo space.

p. One comment requested that temperature monitoring be waived with respect to coal stored in rail cars before loading.

As amended, the proposed rule does not specifically require monitoring the temperature of coal that is stored in rail cars before it is loaded.

q. One commenter asked if there is a specific standard for electrical equipment and cables in a hold containing coal, to ensure that they are suitable for use in a potentially explosive atmosphere.

Proposed § 148.240(g) specifies that the electrical equipment, and by implication its associated fittings, must comply with 46 CFR 111.105, which applies to installation of electrical equipment in hazardous locations.

r. One comment noted that the meaning of the expression "may not be de-energized" was not clear, and asked whether this statement was prohibitive or permissive.

According to **Federal Register** drafting conventions, the term "may not" or "No person may" always implies a prohibition. However, we have rephrased this paragraph for clarity.

s. Two comments recommended that electrical equipment in adjacent spaces be allowed to meet then-current Coast Guard requirements as long as these spaces are periodically monitored for the presence of explosive gas.

Under 46 CFR 111.105–35, existing electrical equipment in cargo holds containing coal must now be suitable for use in an explosive gas atmosphere. In adjacent spaces, electrical equipment may be suitable for use in nonhazardous atmospheres provided such equipment is de-energized if the concentration of flammable gas in the space reaches a dangerous level. Because this proposed rule introduces no new requirements, there is no need to "grandfather" existing installations.

t. One comment questioned the exception from gas emission monitoring for voyages of 72 hours or less, noting that all research data indicates that methane has the potential to leak from coal immediately and that occurrences of this sort have resulted in several accidents.

This exception was included in the 1994 NPRM to account for vessels

operating on the Great Lakes. The Coast Guard recognized the merit of the comment and removed the exception from this proposed rule.

u. One comment assumed that opening a "booby hatch" or vent pipe would not be construed as "opening the cargo hatches or entering the cargo hold."

The comment's assumption is correct.

v. Three comments noted that it had been the Chemical Transportation Advisory Committee (CTAC) Subcommittee's intent to exempt unmanned barges from all requirements to test the atmosphere above the coal.

The Coast Guard has proposed to exempt unmanned barges that are carrying any PDM, including coal, from the applicability of this part unless the barges are on an international voyage.

w. Two comments noted that, for coal, the procedure in this section for taking pre-loading temperature readings would not always be effective in determining the true status of the stockpile or cargo. Additionally, they questioned the absence of a provision for continuous electronic (infrared) temperature monitoring, a procedure that is available at some export terminals and that has been proven effective and reliable.

We removed the pre-loading temperature limitations for coal. As a means of monitoring the temperature increase for self-heating coal in the cargo hold of a vessel, we believe the procedure outlined in § 148.240(e) is satisfactory. The Coast Guard does not discount continuous electronic (infrared) temperature monitoring but has not had an opportunity to assess its equivalence to the method specified. Anyone wishing to use continuous electronic monitoring may request authorization under § 148.5.

21. *Section 148.245.*

a. Two comments noted that the procedures for loading DRI and metal sulfide concentrates in rain or snow were not addressed. They proposed that the rule include detailed procedures for monitoring rainfall and calculating the resulting moisture content, and provisions for communicating this information with the vessel master and terminal.

The Code of Federal Regulations (CFR) cannot serve as a detailed instruction manual for safe handling and loading of cargoes. It is the shipper's responsibility to provide DRI to the master of the vessel in an acceptable condition. Section 148.245.3(c) prohibits acceptance for transport of DRI or cold-molded briquettes that are wet or are known to have been wetted. How this condition is achieved and maintained is left to the shipper's good judgment.

b. One commenter felt that § 148.250(d), which prohibits the loading of DRI hot-molded briquettes during periods of rain or snow, was overstated.

We do not agree with this comment. This prohibition is a precautionary measure for keeping cargoes as dry as practicable. When DRI hot-molded briquettes are exposed to water, they react, releasing hydrogen that initiates self-heating of the cargo. As seen in several incidents over the past years, this self-heating can ultimately lead to auto ignition of the cargo, causing a fire or an explosion within the hold and endangering the life of the crew.

c. One comment requested a definition of "short international voyage."

After further review, we have removed this terminology from the proposed rule.

d. Another comment stated that while this section offers protection to radar and RDF scanners on board the vessel transporting DRI, it fails to offer any protection to the crew, adjacent property owners, etc., from the same dust which would damage the radar.

The Coast Guard's statutory mandate is to protect life and property at sea and to assure preservation of the marine environment. A ship's navigation systems are vital to such protection. Under this rulemaking and OSHA regulations, crewmembers and other persons engaged in cargo handling operations must wear protective clothing and respiratory devices when handling dusty cargoes. The protection of adjacent property and persons not employed by the terminal or the carrier is under the purview of EPA air pollution regulations or local statutes and is beyond the scope of this project. If cargo is appropriately loaded and shipped, the amount of dust released into the environment should be minimal.

22. *Section 148.265(g).* One comment felt that the requirement to take and record the temperature of fish meal or fish scrap three times a day during a voyage was particularly onerous for unmanned barges.

We agree that taking the temperature three times a day is impractical on an unmanned barge, especially when that barge is part of a multi-barge tow. The proposed rule excludes unmanned barges from the temperature-measurement requirement.

23. *Section 148.270.* One comment found § 148.270(d) misleading and thought that it might exceed Coast Guard authority.

What specifically was "misleading" was not stated. However, this provision does not exceed Coast Guard authority. It merely directs those persons responsible for loading or unloading a vessel to take all reasonable precautions to prevent dispersal of a hazardous substance into the environment, and to report any spill to the National Response Center in accordance with EPA regulations. In the proposed rule, the final sentence has been revised to refer to the "garbage" disposal requirements of 33 CFR part 151.

24. *Section 148.285.*

a. One comment asked the Coast Guard to advise on the format or type of document to be used for notifications to the master of the vessel.

We do not intend to impose a format for communications between shipper and carrier. Documentation should be in a form acceptable to both parties. The language of notification to the master has been removed from this section because that information is already contained in the proposed § 148.60.

b. One comment stated that if the sampling of metal sulfide concentrates is not conducted correctly, and, in fact, is not representative of the entire consignment at the time of shipment, then the test procedures may show the cargo safe to transport when this is not the case.

The statement is correct. We expect the information a shipper provides to the master to be both accurate and detailed.

25. *Section 148.295.* One comment noted that the 1994 NPRM § 148.295 made no mention of the self-heating or spontaneous ignition characteristic of petroleum coke, despite a reference to it in the hazardous or potentially dangerous characteristic column of Table 148.10, footnote 10, found in § 148.11.

This comment is correct. Text has been added to 148.295(g) regarding spontaneous heating of this cargo and the necessity of temperature monitoring during transport.

26. *Section 148.310.*

a. One comment suggested removing seed cake identification numbers UN 1386 and UN 2217 from the rule.

We have not accepted this suggestion. The United Nations Committee of Experts and the IMO recognize seed cake as a material that may self-heat and, if containing an excessive amount of oil, may be spontaneously combustible. Further, when transported in packages, this commodity is regulated as a hazardous material of Class 4.2 in all modes under PHMSA regulations at 49 CFR Chapter I, Subchapter C.

b. One comment recommended that the Coast Guard amend the rule to be consistent with long-established industry standards for seed cake. Two comments proposed that the exemption from Special Permit requirements not be limited to solvent-extracted rapeseed meal, pellets, and soya bean meal, but should be extended to other types of seed cake if they meet the prescribed oil and moisture content levels. A fourth comment requested that the total oil and moisture requirement for cottonseed meal be raised to a maximum of 6 percent.

The criteria for seed cake, UN 1386, are based on the established criteria for classification of hazardous materials as contained in Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) and the United Nations Recommendations on the Transport of Dangerous Goods. Exemptions that were granted to rapeseed meal, pellets, and soya bean meal were based on testing conducted on a world-wide basis that showed these specific products, with varying moisture content, did not qualify as hazardous materials. The oil and moisture requirement for cottonseed meal could possibly be amended if tests are conducted using approved methods and the results show that it is not dangerous. If the seed cake industry wishes to have certain materials deregulated when transported in bulk, they may petition the Coast Guard following the process in 33 CFR 1.05–20.

27. *Section 148.325.*

a. Two comments requested that sawdust and wood chips not be included in these regulations.

Sawdust and wood chips, which are classed as PDM, would not be regulated when transported domestically in unmanned barges. However, the regulations would continue to apply to sawdust and wood chips transported by cargo vessel in international commerce.

b. One comment requested that the Coast Guard clarify that having hatch covers completely open when loading wood chips would negate the need for self-contained breathing apparatus (SCBA).

No change to the rule is necessary. Under this rule, SCBA is required for entry into confined spaces containing sawdust or wood chips unless the atmosphere in the space has been tested and determined to contain sufficient oxygen to support life. In an emergency when testing is not possible, entry into an unventilated space is permitted only when wearing SCBA. Loading operations are not an emergency. If the cargo hold to be loaded with wood chips has been opened and ventilated, and has been determined to be safe for human occupancy, there is no reason for a worker engaged in loading operations to have to wear SCBA.

28. *Section 148.15.* Another comment proposed that the Coast Guard establish a fee schedule to issue special permits.

The Coast Guard does not charge a fee for special permits and does not plan to do so.

29. *Section 148.405.* One comment recommended that the Coast Guard recognize hot work practices for individual companies; specifically, approval of hot work by the Chief Engineer.

No change to the rule is needed. Hot work may be authorized by the vessel's master, which by definition includes "an authorized representative of the master." A ship's officer, such as the Chief Engineer, would fall under this definition of master as proposed in § 148.3.

30. *Section 148.407.* Three comments stated that it would be impractical and unnecessary to prohibit smoking anywhere on a vessel at any time.

We agree with the comments. In this proposed rule, smoking is prohibited on the weather deck of the vessel during loading and unloading. At all times while cargo is on board, smoking is prohibited in adjacent spaces and in the vicinity of hatch covers, ventilator outlets, and other accesses to the hold containing the cargo.

31. *Section 148.410.* Two comments questioned the need for a shore-supplied fire main and also the need for fresh water. The ship's supply, they stated, is more reliable, particularly in cold weather.

We agree that the requirement proposed in 1994 exceeds both the IMSBC Code and recommended industry practice. We have removed from this proposed rule the requirement for fresh water from a shore source.

32. *Section 148.415.*

a. One comment noted that there are no requirements for the gas and oxygen analyzers to be calibrated at specified intervals.

In this proposed rule, we have added a provision to §§ 148.415 and 148.85 specifying that the gas analyzing equipment must be calibrated in accordance with the manufacturer's instructions.

b. One comment stated that there was no sustainable justification for exempting unmanned barges from these requirements.

We disagree and believe there is ample reason to exclude unmanned barges from the requirement to have flammable gas analyzers on board. First, the proposed rule does not apply to barges carrying PDM, except when the barges are on an international voyage. In domestic transportation, these materials are normally carried in open hopper barges, in which gases emitted by the material would be unlikely to reach flammable concentrations. Second, for barges carrying cargoes other than PDM, it would be impractical and expensive to require a gas analyzer and tubes on each barge. An unmanned barge is not likely to have a safe and secure place to stow such delicate and sensitive devices. Finally, there is no reason for the crew of a towing vessel to enter the cargo space of a barge while underway. Apart from the potential danger to personnel working on the deck of a barge in a typical multi-barge tow, it would be difficult, if not impossible, to remove the hatch covers to gain access for entry.

33. *Section 148.430.* One comment agreed with § 148.430 as proposed in the 1994 NPRM, but noted that, in some cases, it may mean providing some additional SCBA units.

In this proposed rule, we have removed § 148.430 and incorporated its provisions into § 148.85. The substance of the observation is correct: At least two SCBA units are required under proposed § 148.85 and vessels may carry more if they deem it is necessary.

34. *Section 148.450.* One comment objected to the inclusion of coal as a cargo subject to liquefaction, because liquefaction as a practical occurrence cannot occur with coal.

This issue was addressed earlier under a comment on the entry for coal in Table 148.10. Liquefaction can occur in a cargo of coal consisting of fine-grained particles. In this proposed rule, this section has been revised to specify the maximum particle size of coal to which the section applies.

C. Changes Between the 1994 NPRM and This NPRM, Not Prompted by Specific Comments

1. *Section 148.3.* We added the definition of "threshold limit value" (TLV), and based the definition on that used by the American Conference of Governmental Industrial Hygienists (ACGIH).

2. *Section 148.10.* To conform to recent amendments to the IMSBC Code, we changed the material description "aluminum processing byproducts" to "aluminum smelting byproducts *or* aluminum remelting byproducts." For the same reason, we added to Table 148.10 the following language under "Characteristics" at the entry for silicomanganese: "With known hazard profile or known to evolve gases. With silicon content of 25 percent or more."

Additionally, we added entries for peat moss and ferrous sulfate to Table 148.10 to conform to recent addition to the IMSBC Code.

3. *Section 148.15.* We propose to set the maximum term of validity for Coast Guard special permits to 4 years. This would reduce the paperwork burden for applicants for Coast Guard special permits, and would reduce the Coast Guard's administrative burden.

4. *Section 148.145.* Paragraphs (b) and (c) of this section, as they appeared in the 1994 NPRM, were not stowage or segregation requirements, which this section addresses. We have transferred these provisions to § 148.300.

5. *Section 148.240.* To reflect a recent decision by the IMO, we revised paragraphs (e), (h), (i), and (j) to permit the monitoring of carbon monoxide emissions as an alternative means of determining rising temperature in a cargo of self-heating coal. Also, we lowered the gas emission threshold at which corrective action must be initiated from 30 percent to 20 percent.

6. *Section 148.242.* This new section contains special carriage and handling requirements for copra, based on the provisions of the IMSBC Code.

7. *Section 148.265.* Coast Guard Special Permit 14–95 authorizes treating fishmeal with a tocopherol (vitamin E) based liquid antioxidant in lieu of the antioxidants specified in the former regulations. Paragraphs (c) and (e) of this section have been revised to include this practice.

8. *Section 148.290.* This new section contains special carriage and handling provisions for peat moss, based on the provisions of the IMSBC Code.

9. *Section 148.300.* On September 28, 1995, the U.S. Department of Transportation Research and Special Programs Administration (now PHMSA) published a rulemaking in Docket HM–169A that made their regulations at Title 49 of the CFR governing the transport of radioactive materials compatible with the regulations of the International Atomic Energy Agency (IAEA). Because 49 CFR 173.403 now contains a definition of "Surface Contaminated Object" (SCO–I), this definition need not appear in Coast Guard regulations. Consequently, the term "Surface Contaminated Object" is defined in § 148.300 by reference to 49 CFR 173.403.

V. Discussion of Proposed Rule

The proposed rule would expand the list of materials that may be transported in bulk without applying for a special permit and would detail the special handling requirements. The new list aligns the CFR with mandatory international code, including requirements in Chapter VI and Chapter VII of SOLAS. The proposed rule includes materials already listed in the IMSBC Code and adds materials that have a safe transport history under existing Coast Guard special permits. The proposed rule also eliminates applications and renewals for most special permits now required when carrying materials regulated under this part.

This rulemaking would add 21 new materials to 46 CFR part 148. Some of these materials are covered by the IMSBC Code, some are covered by the HMR (49 CFR chapter I, subchapter C), and some are currently subject to Coast Guard special permits.

A. Proposed Changes to Part 97

This proposed rule would add a definition of "bulk solid cargo" and revise Subpart 97.12 to clarify that the subpart applies to bulk solid cargoes in general, rather than only to ores and ore concentrates. The new proposed rule also clarifies that this section does not apply to grain, as was the original intent of this part, although this was not specified. Further, existing § 97.12–5, which has not been revised since 1965, references a manual that was the predecessor of the IMSBC Code and is no longer in print. The proposed rule eliminates that reference and refers the reader to Part 148 as a source of information for complying with the requirement to provide guidance on safe loading and stowage to the master.

We have also added new proposed § 97.12–5 on liquefaction in order to bring forward the requirements contained in § 148.450 and apply them to all cargoes that are prone to liquefaction. We also propose to modify § 97.55–1 to apply to any bulk solid cargo to which § 148.435 applies.

In the proposed rule we have updated the authority citation for Part 97 to include 46 U.S.C. 5111 regarding the provision of loading information to the master or individual in charge of the vessel.

B. Proposed Changes to Part 148

We propose to revise the title of 46 CFR part 148 to read "Carriage of Bulk Solid Materials that Require Special Handling." We propose to update the authority citation for Part 148 to include 33 U.S.C. 1602 and Executive Order 12234 regarding international regulations, as well as 46 U.S.C. 3306 and 5111 regarding regulation of inspected vessels and provision of loading information to the master or individual in charge of the vessel.

We propose to divide Part 148 into six subparts. Within those subparts, the proposed rule reorganizes and renumbers existing sections and adds new sections. We discuss these changes in detail below.

1. Proposed Subpart A—General

The first 12 sections of the revised Part 148 would include general information applicable to the entire Part. We propose to revise the applicability section (formerly § 148.01–1, now proposed § 148.1) to align with the IMSBC Code. Specifically, this change would apply Part 148 to all foreign-flag and U.S.-flag vessels operating in U.S. waters. The proposed regulations would also apply to all classes of vessels that transport bulk solid cargoes, including unmanned barges and barge-carrying vessels. The regulations would not apply to unmanned barges when carrying cargoes classed as PDM in domestic transportation.

We propose to add a new "responsibility and compliance" section at § 148.2, making the vessel master, person in charge of a barge, owner, operator, charterer, or agent responsible for compliance with this part.

We propose to add a new "definitions" section at § 148.3. This section would contain definitions that currently are located throughout Part 148, as well as new definitions that were included for clarity and consistency with the IMSBC Code, including "away from," "Bulk Cargo Shipping Name," "compartment," "confined space," "domestic voyage," and "hazard class." We also propose to revise the definition of "bulk" for clarity and consistency with the IMSBC Code.

We propose to add a new "alternative procedures" section at § 148.5 that outlines the procedures for requesting permission to use alternative procedures, including exemptions to the IMSBC Code, in place of any requirement of this part. We propose to revise the section on permitted cargoes (formerly § 148.01–7, now proposed § 148.10 and Table 148.10) to improve usability and add additional bulk solid cargoes that appear in the IMSBC Code or are authorized under a Coast Guard special permit. In revising the table, the Coast Guard proposes to add 4 additional columns describing: the identification number; a reference to the preferred BCSN, if needed; cargo characteristics; and the applicable CFR sections containing detailed special requirements for transporting that material. These revisions would make it easier to determine the exact

requirements for carriage of each approved material.

In Table 148.10, the entry for "aluminum dross, class PDM" would read "aluminum processing byproducts or aluminum re-melting byproducts, UN 3170, Class 4.3," and the entry for "zinc ashes, dross, residues and skimmings" would read "zinc ashes, UN 1435, Class 4.3." These changes reflect reclassification of the materials by the United Nations Committee of Experts on the Transport of Dangerous Goods. In addition, the revised table would add the following to the list of permitted cargoes, to maintain consistency with the IMSBC Code and current Coast Guard special permits: aluminum ferrosilicon powder; aluminum silicon powder, uncoated, brown coal briquettes; castor beans; coal; DRI (A); DRI (B); environmentally hazardous substances, solid, n.o.s.; ferrous sulfate, fluorospar; iron oxide, spent, or iron sponge, spent; linted cotton seed; magnesia, unslaked; metal sulfide concentrates; peat moss with moisture content of more than 65 percent by weight; pitch prill; pyrites, calcined; seed cake; silicomanganese with silicon content of 25 percent or more; vanadium ore; and wood chips, wood pellets, and wood pulp pellets.

We further propose to add a new section on hazardous or potentially dangerous characteristics at § 148.11. This section would incorporate information currently contained in column 3 of the table of permitted cargoes. The new section would set forth the meaning of the "hazardous or potentially dangerous characteristics" codes given in the revised Table 148.10. This includes code 27, a reference to the Certain Dangerous Cargoes (CDC) regulations found in 33 CFR 160.204, that apply to ammonium nitrate.

Finally, we propose to renumber the existing § 148.01–13, "Assignment and certification," as § 148.12.

2. Proposed Subpart B—Special Permits

As proposed, Subpart B would set the guidelines for petitions and use of special permits. The proposed revisions to Subpart A should greatly reduce the need for special permits. However, in the event a person wishes to ship a bulk solid material not listed in Table 148.10, the proposed Subpart B allows that person to petition for authorization from the Coast Guard. The revised process for requesting a special permit remains substantively similar to the existing process, but places more responsibility on the shipper to determine the appropriate conditions of carriage. The proposed Subpart B also clarifies who must apply for a special permit, what information is required to obtain a special permit, what activities are covered by a special permit, how long a special permit remains valid, and how to obtain copies of special permits. These proposed sections are more detailed than the current regulations, and are designed to resolve recurring misunderstandings concerning the applicability of the special permit. In addition, requiring applicants to submit more detailed information about the material carried would greatly decrease the amount of research time needed by the Coast Guard when processing requests for special permits.

Included within the proposed Subpart B is a revision of existing § 148.01–11 designed to simplify the standard conditions contained in special permits, and to renumber it as §§ 148.15 through 148.30. In addition, the Coast Guard proposes to remove the current § 148.01–11(b)(1) because it describes requirements imposed by special permits.

3. Proposed Subpart C—Minimum Transportation Requirements

As proposed, Subpart C would outline minimum transportation requirements for cargoes subject to this chapter, including temperature readings, shipping paper requirements, emergency response information, DCMs, preparation and supervision of cargo transfers, confined space entry and equipment, preparations for loading, procedures after unloading, log book entries, and incident reports.

The Coast Guard proposes to clarify the proper conduct of temperature readings (formerly § 148.03–7, now proposed § 148.51), and to require log book entries (proposed § 148.90) to record each temperature measurement and each required test for toxic or flammable gases.

The Coast Guard also proposes to revise shipping paper requirements (formerly § 148.02–1, now § 148.60) to align with the IMSBC Code while requiring the shipping papers be provided in English. With regard to emergency response information, the Coast Guard proposes new § 148.61 requiring that the shipper of a material listed in Table 148.10 provide the master or his representative with appropriate emergency response information, including preliminary first aid measures and emergency procedures to be carried out in the event of an incident or fire involving the cargo. Provision of an MSDS would satisfy this requirement.

With regard to DCMs (formerly § 148.02–3, now proposed §§ 148.70 through 148.72), the Coast Guard proposes to revise the requirements for carriage and contents of the DCM. As proposed, the DCM requirements would not apply to unmanned barges not on international voyages.

With regard to confined space entry and equipment, the Coast Guard proposes new § 148.85, which would require that vessels, with the exception of unmanned barges, that carry a material listed in Table 148.10 also carry equipment capable of measuring atmospheric oxygen and at least two approved SCBA that each have at least a 30-minute air supply. Proposed § 148.86 would prohibit entry into a confined space unless the space has been tested to ensure there is sufficient oxygen to support life; in case of emergency, a person may enter a confined space without testing it if that person is wearing a SCBA, suitable protective clothing as necessary, and a wire rope safety line tended by a trained person outside the space, and if the entry is supervised by a responsible person.

With regard to procedures to be followed after unloading, the Coast Guard proposes to renumber existing § 148.03–13 as § 148.110 and revise it to require retention and proper disposal of cargo-associated wastes, cargo residue, and deck sweepings when in U.S. territorial seas or inland waters.

In addition, the Coast Guard proposes to add new § 148.55 "International Shipments," which would enable the use of the IMSBC Code as an alternate method of compliance with Part 148, as long as the bulk solid material being transported is subject to the requirements of the IMSBC Code. However, transport of zinc ashes must comply with Part 148 because zinc ashes pose environmental hazards that would not otherwise be addressed. In addition, the proposed § 148.55 would include new paragraphs (b)(3) and (b)(4) to require Coast Guard approval of any exemption granted by another government before reliance on that exemption for compliance with Part 148. Finally, § 148.55 would make the person importing a bulk solid responsible for ensuring the foreign shipper is aware of U.S. requirements.

4. Proposed Subpart D—Stowage and Segregation

Proposed Subpart D would set stowage and segregation requirements for cargoes. These proposed requirements are in addition to the minimum requirements for all materials and the general requirements for their respective hazard classes contained in Subpart A. The Coast Guard proposes to require segregation of cargoes from

incompatible materials as shown in new Tables 148.120A and B. These tables present the requirements for, respectively, segregating incompatible bulk solid cargoes, and segregating bulk solid cargoes from incompatible packaged cargoes. The segregation requirements set out in Tables 148.120A and B are based on a rational approach established by the IMO, and are identical to the IMSBC Code. The Coast Guard proposes additional stowage and segregation requirements, detailed by class, in the remainder of Subpart D.

5. Proposed Subpart E—Special Requirements for Certain Materials

Proposed Subpart E would set forth special requirements for certain hazardous materials, including ammonium nitrate, DRI, seed cake, and zinc ashes. For clarity, the requirements are presented in tabular form at new proposed Table 148.155. Many of the requirements are drawn from the IMSBC Code, or are required already under applicable special permits. The addition of Table 148.155 will reduce the number of special permits issued and harmonize these regulations with the IMSBC Code.

In addition to listing special requirements for certain hazardous materials, this subpart proposes requirements for bulk shipment of hazardous substances as defined by PHMSA regulations at 49 CFR 171.8, which in turn are based on Environmental Protection Agency (EPA) regulations implementing the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The EPA classifies materials as hazardous substances based on the material's potential to endanger public health or welfare, or the environment, if the material is accidentally released. Materials classified as hazardous substances under 49 CFR 172.101, Table 1 to Appendix A, previously were carried only pursuant to special permits on a case-by-case basis. This section would not relieve the shipper or the master from any of the reporting requirements set forth in 40 CFR part 302, but would set out minimum requirements for the safe carriage of solid hazardous substances in bulk.

Within Subpart E, the Coast Guard proposes to revise current § 148.04–13 so that a vessel may not leave port unless the Captain of the Port (COTP) is satisfied that the temperature of ferrous metal is within the limits set by the applicable provisions of this section. The current regulation merely specifies that the COTP must be notified if the temperature exceeds those limits.

In the specific context of petroleum coke, the Coast Guard proposes to combine two existing sections (§§ 148.04–15 and 148.04–17) into one section at § 148.295. The proposed requirements at new § 148.295 align with the IMSBC Code and already are required under applicable special permits.

With regard to radioactive materials, the Coast Guard proposes to revise the current § 148.04–1 as § 148.300 and align it with the IMSBC Code, which has re-defined low specific activity (LSA) radioactive materials and added a new entry for SCO–I. As a result, the proposed regulations would apply to surface contaminated objects.

In the specific context of seed cake, we have proposed to exempt from this regulation citrus pulp pellets containing not more than 2.5 percent oil and a maximum of 14 percent oil and moisture combined. Our decision was based on extensive testing at various moisture and oil levels from several countries currently transporting the product. It was found that within these limits, the product should not be considered a hazardous material.

Although the Coast Guard intends to harmonize U.S. regulations with the IMSBC Code, the proposed § 148.330, which applies to zinc ashes, zinc dross, zinc residues, and zinc skimmings in bulk, would differ significantly from the IMSBC Code. As proposed, § 148.330 requires COTP notification in advance of any cargo transfer operations involving these cargoes. The provisions of this section are based on two Coast Guard special permits, SP 8–83 and SP 4–84, which we developed as the result of incidents involving fires or explosions in cargoes of zinc skimmings, including at least one with loss of life. The intent of this section would be to reduce the possibility of generating hydrogen gas through the reaction of seawater and zinc. Therefore, the aging, storage, and temperature requirements in this proposed section exceed those in the IMSBC Code. Both the IMSBC Code and the proposed regulations require mechanical ventilation, explosion-proof fans, and installed thermocouples for temperature gauging in the cargo hold.

6. Proposed Subpart F—Additional Special Requirements

Proposed column 7 of Table 148.10, "Special Requirements," refers readers to other sections containing additional requirements. Many of those sections are contained in proposed Subpart F, which would set forth requirements for safety equipment and procedures when handling certain cargoes. The types of special requirements that may apply to certain cargoes include: prohibition on sources of ignition including, in some cases, smoking or electrical circuits; a requirement that fire hoses be available at each hatch through which a covered material is being loaded; requirements for toxic gas and flammable gas analyzers and testing; stowage precautions; and special precautions for cargoes subject to liquefaction.

With regard to cargoes subject to liquefaction, the Coast Guard's proposed rule results from specific experience. On April 11, 1991, off the California coast, a foreign-flag vessel that had loaded a bulk solid material in a U.S. port developed a severe list when the cargo shifted. Fortunately, this vessel was able to return to port and off-load. The Coast Guard investigation determined that the cargo shifted because its moisture content exceeded the safe Transportable Moisture Limit (TML). This condition caused the material to behave like a liquid. Because of this marine casualty and others of a similar nature, the Coast Guard proposes to add new § 148.450 to prescribe requirements for transporting bulk solids that are subject to liquefaction. These proposed rules are adapted from the IMSBC Code and only apply to calcined pyrites, fluorospar, fine particle coal, metal sulfide concentrates, and peat moss, as indicated in Table 148.10, and to other cargoes that exhibit the potential for liquefaction as indicated by information provided to the master in accordance with 97.12–3. The proposed rules would not apply to shipments by unmanned barges or cargoes of coal that have an average particle size of 10 mm (0.394 in) or greater. The moisture content and TML may be determined using test procedures in Appendix 2 of the IMSBC Code.

C. Distribution Table for Part 148

The Coast Guard proposes to replace existing Part 148 with a completely revised and renumbered Part 148. The following distribution table shows which sections of the proposed rule address the substance of each existing section.

Former section	Replaced by section:
148.01–1	1 148.1, .2, .3.
148.01–7	148.10.
148.01–9	148.15, .20, .21.
148.01–11	148.25, .26.
148.01–13	148.12.
148.01–15	148.9.
148.02–1	148.60, .61, .62.
148.02–3	148.70, .71, .72.
148.02–5	148.115.
148.03–1	148.50.
148.03–5	148.80.

Former section	Replaced by section:
148.03–7	148.100.
148.03–11	Subpart D.
148.03–13	148.110.
148.04–1	148.300.
148.04–9	148.265.
148.04–13	148.260.
148.04–15	148.295.
148.04–17	148.295.
148.04–19	148.320.
148.04–20	148.315.
148.04–21	148.130(a)(4) and (c).
148.04–23	148.230.

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in § 148.8 of the proposed rule. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 148.8.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VII. Regulatory Analyses

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

A. 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 (OMB) has not reviewed it under that Order.

A combined "Preliminary Regulatory Assessment and Initial Regulatory Flexibility Analysis" report discussing the impact of this proposed rule is available in the docket where indicated under **ADDRESSES**. A summary of the report follows:

The Coast Guard proposes to harmonize its regulations with recent IMO amendments to Chapter VI and Chapter VII of SOLAS that make the IMSBC Code mandatory for operations involving handling and carriage of solid bulk cargoes by vessel. The amendments require that all vessels subject to SOLAS that carry bulk solid cargoes other than grain to comply with the IMSBC Code. This proposed rule also would amend the Coast Guard regulations governing the carriage of solid hazardous materials in bulk to allow use of the IMSBC as an equivalent form of compliance. Proposed changes to the Coast Guard regulations would also expand the list of solid hazardous materials authorized for bulk transportation by vessel and include special handling procedures based on the IMSBC Code and existing special permits. These proposed changes would reduce the need for the current special permits required for the carriage of certain solid hazardous materials in bulk and result in a cost savings to industry.

The IMSBC Code facilitates safe stowage and shipment of solid bulk cargoes. It provides information on the dangers associated with shipping certain types of solid bulk cargoes and instructions on procedures for handling said cargoes. The IMSBC Code will be mandatory under the amendments to the SOLAS Convention as of January 1, 2011.

Affected Population

Based on information from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) data system, we estimate the proposed rule would affect approximately 115 vessels, consisting of 75 U.S. vessels in coastwise service and 40 U.S. vessels operating under SOLAS that ship hazardous solid cargoes in bulk.

Costs

We estimate the proposed rule would result in additional equipment, training, and operating costs to industry. Under the provisions of this proposed rule, each vessel would be required to have onboard non-sparking fans, an oxygen meter, a carbon monoxide meter, a temperature probe, two SCBA, goggles and a dust mask, and a multi-gas detector. We estimate that industry would incur equipment costs during the implementation period (Year 1) of $2.7 million undiscounted. We also estimate there will be annual recurring costs due to equipment maintenance and replacement (see the Preliminary Regulatory Analysis report available in the docket for additional details).

The use of the equipment described above would require additional training. We estimate industry would incur initial training costs in the first year of $33,900 and annual recurring training costs due to labor turnover of about $6,800 each year thereafter (estimates undiscounted). Operating costs would consist of testing, recording keeping, and vessel preparation. The equipment described above would be used to periodically test the temperature and atmospheric conditions of certain cargoes. All tests and readings must be recorded, and the date and time of testing recorded in the vessel's log book. We estimate industry would incur an annual recurring operating cost of $7.4 million undiscounted.

Cost Savings

This proposed rule would also result in cost savings to certain vessels, as preparation of permit renewals will no longer be needed. We estimate this regulation would reduce the need for ten permit requests per year. Based on information provided in the OMB-approved Information Collection Request (Carriage of Bulk Solid Materials Requiring Special Handling: 1625–0025), annual cost savings for both industry and government are estimated at $15,390 undiscounted.

Table 1 below provides the net costs (adjusted for savings) of this proposed rule. We estimate the undiscounted first-year cost of the rulemaking to be about $10.1 million. Over a 10-year period, the total present value costs of the proposed rule would be $57.2 million at a 7 percent discount rate and $69.3 million at a 3 percent discount rate.

TABLE 1—TOTAL 10-YEAR COSTS

[2009 dollars in millions]

Year	Undiscounted costs	Present value discounted costs	
		7%	3%
1	10.1	9.5	9.8
2	7.5	6.5	7.0
3	7.6	6.2	7.0
4	7.5	5.7	6.7
5	9.1	6.5	7.9

TABLE 1—TOTAL 10-YEAR COSTS—Continued

[2009 dollars in millions]

Year	Undiscounted costs	Present value discounted costs	
		7%	3%
6	7.5	5.0	6.3
7	7.6	4.7	6.2
8	7.5	4.4	5.9
9	7.6	4.1	5.8
10	9.0	4.6	6.7
Total	81.0	57.2	69.3

Note: Totals include cost savings.

Benefits

In this rulemaking, the Coast Guard anticipates that benefits would include a reduction in the risks associated with off-gassing and self-heating cargoes. These proposed standards are comprehensive safety requirements that would align with international regulations (the IMSBC Code), and are intended to increase information dissemination regarding the safe handling of hazardous cargoes.

These safety standards would extend to all U.S.-flagged vessels carrying hazardous bulk solid cargoes. A lack of safe handling of hazardous cargoes, such as coal or wood, can cause combustion of cargoes and the release of gases that could result in the loss of life, injuries, and property damage, among others. The proposed rule would also improve the efficiency of government by reducing the administrative costs associated with special permit applications.

B. 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.

A combined "Preliminary Regulatory Assessment and Initial Regulatory Flexibility Analysis" report discussing the impact of this proposed rule on small entities is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. A summary of this report follows:

For this proposed rule, we reviewed size and ownership data of affected entities by using the Coast Guard's MISLE database and public and proprietary data sources for company revenue and employee size data. We determined that 86 entities own the 115 vessels that would be impacted by this regulation. We found revenue and employment information on 33 of the 86 entities. We found that all affected entities would be businesses. Among these, eight would be considered small entities under the Small Business Administration (SBA) standard. We take a conservative approach by assuming vessels listed as "unspecified" and those with no available information are small (of which there are 52). Therefore, we estimate that 70 percent of the entities meet the SBA standards of a small entity.

Using the highest single year cost (Year 1) in the Total 10–Year Costs table above, we estimate that 75 percent of the small entities would have an annual cost impact of greater than or equal to 3 percent of annual revenue.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that the proposed regulation will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule will economically affect it.

C. 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 rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Richard Bornhorst at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice. 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.

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).

D. Collection of Information

This proposed rule would revise an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the change in annual burden follow. The estimated change covers the time for preparing or renewing permit requests for hazardous solid bulk cargoes.

Under the conditions of the proposed rule, vessels and barge companies would no longer submit special permit renewal requests to the U.S. Coast Guard. Handling requirements related to previously permitted cargoes would be part of 46 CFR part 148. Eliminating these permits would reduce the burden associated with 1625–0025 by reducing the number of respondents, responses, and burden hours associated with permits requests.

Title: Carriage of Bulk Solid Materials Requiring Special Handling.

OMB Control Number: 1625–0025.

Summary of the Collection of Information: The U.S. Coast Guard administers and enforces the law, regulations, and international conventions for the safe transportation and stowage of hazardous materials, including bulk solids. Consequently, the Coast Guard is authorized to issue special permits for the handling of hazardous solid bulk cargo as part of its missions to ensure maritime safety and facilitate U.S. commerce. In addition to special permits, this collection of information also authorizes the preparation and display of shipping papers and cargo manifests. However, the proposed rule will change only the burden estimates associated with special permits.

Need for Information: The Special Permits allow the Coast Guard to control the conditions under which shipments of hazardous materials can be made, while giving the shipping industry a greater amount of flexibility than would be afforded without the Special Permit provision. If the required information were not submitted, the Coast Guard would be unable to issue Special Permits with adequate precautions for shipping the cargo, and thus could not permit shipment.

Proposed Use of Information: The Coast Guard uses this information to make a well-informed determination as to the severity of the hazard posed by the material in question. This information allows the Coast Guard to set specific guidelines for safe carriage or, if determined that a material presents too great a hazard, to deny permission for shipping the material.

Description of the Respondents: The respondents are owners and operators of bulk carrier vessels and barges carrying hazardous solid cargo.

Number of Respondents: The existing OMB-approved number of respondents for this collection, including permit requests, shipping papers, and cargo manifest, is 583. We estimate the number of respondents will decrease by seven as the proposed rule eliminates the need for all but one special permit. The total number of respondents would be 576.

Number of Responses: The existing OMB-approved number of responses is 771. The proposed rule would decrease that number by 10. The total number of responses would be 761 per year as a result of a decrease in special permit requests.

Frequency of Response: The proposed regulation will not alter the frequency of response for permits that remain active. Since this regulation does not impact shipping papers or cargo manifests, frequency of responses for those items remain unchanged.

Burden of Response: The estimated burden for preparation of a permit request remains at 15 hours per permit.

Estimate of Total Annual Burden: This regulation will eliminate the need for all but one of the special permits associated with this collection of information. Therefore, the annual burden associated with special permits will decline from 165 hours to 15 hours. The total burden for the collection of information, including cargo manifests and shipping papers, decreases from 895 hours to 745 hours per year.

Reason for Change: The decrease in burden is the result of a program change that eliminates the need for most of the special permits in this collection of information.

As required by the Paperwork Reduction Act of 1995 (44 USC 3507(d)), we have submitted a copy of this proposed rule to the OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

E. 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.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (*See* the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke,* 529 U.S. 89 (Mar. 6, 2000)).

This proposed rule includes requirements under which certain solid materials requiring special handling may be transported in bulk by vessel. The revised regulations apply to all domestic and foreign vessels in the navigable waters of the United States that transport bulk solid materials requiring special handling. The authority to establish such regulations for vessels operating in the navigable waters of the United States has been committed to the Coast Guard by Federal statutes. Furthermore, since vessels tend to move from port to port in the national and international marketplace, the safety standards included in this rule are of national scope to avoid burdensome variances. Therefore, the Coast Guard intends this rule to preempt state action addressing the same subject matter.

Because the states may not regulate within this category, preemption considerations set forth in Executive Order 13132 are not applicable.

F. 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 1 year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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 incorporates by reference the IMSBC Code, which was developed by the IMO as a voluntary consensus standard. The proposed sections that reference this voluntary consensus standard and the locations where this standard is available are listed in the proposed 46 CFR 148.8.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded under section 2.B.2. Figure 2–1, paragraphs 34(c), (d), and (e), of the Instruction, and neither an environmental assessment nor an environmental impact statement is required. This rule affects crew training, inspection and equipping of vessels, equipment approval and carriage requirements. A preliminary "Environmental Analysis Check List" supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), and Reporting and recordkeeping requirements.

46 CFR Part 148

Cargo vessels, Hazardous materials transportation, and Marine safety.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 97 and 148 as follows:

PART 97—OPERATIONS

1. The authority citation for Part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 5111, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

2. Revise Subpart 97.12, consisting of §§ 97.12–1 through 97.12–5, to read as follows:

Subpart 97.12—Bulk Solid Cargoes

Sec.

§ 97.12–1 Definition of a bulk solid cargo.

(a) A bulk solid cargo—

(1) Consists of particles, granules, or larger pieces of material generally uniform in composition;

(2) Is not grain; and

(3) Is loaded directly into a vessel's cargo space with no intermediate form of containment.

(b) Additional requirements for bulk solid materials needing special handling are contained in Part 148 of this chapter.

§ 97.12–3 Guidance for the master.

(a) The owner or operator of a vessel must provide the master with safe loading and stowage information for each bulk solid cargo that vessel will carry.

(b) The shipper of a bulk solid cargo, as defined in § 148.3 of this chapter, must provide the master of a vessel with information regarding the nature of the cargo in advance of loading operations. Additional requirements in § 148.60 of this chapter may also apply.

§ 97.12–5 Bulk solid cargoes that may liquefy.

If the information provided in § 97.12–3(a) or (b) indicates that the bulk solid cargo to be carried is prone to liquefy during carriage, due to small particle sizes and moisture content, then the requirements contained in § 148.450 of this chapter apply.

3. Revise § 97.55–1 to read as follows:

§ 97.55–1 Master's responsibility.

Before loading bulk grain or any bulk solid cargo to which § 148.435 of this chapter applies, the master shall have the lighting circuits to cargo compartments in which the grain or bulk solid cargo is to be loaded de-energized at the distribution panel or panel board. He shall thereafter have periodic inspections made of the panel or panel board as frequently as necessary to ascertain that the affected circuits remain de-energized while this bulk cargo remains within the vessel.

4. Revise Part 148 to read as follows:

PART 148—CARRIAGE OF BULK SOLID MATERIALS THAT REQUIRE SPECIAL HANDLING

Sec.

Subpart A—General

Authority: 33 U.S.C. 1602; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 46 U.S.C. 3306, 5111; 49 U.S.C. 5103; Department of Homeland Security Delegation No. 0170.1.

Subpart A—General

§ 148.1 Purpose and applicability.

(a) This part prescribes special handling procedures for certain solid materials that present hazards when transported in bulk by vessel.

(b) Except as noted in paragraph (c) of this section, this part applies to all domestic and foreign vessels in the navigable waters of the U.S that transport bulk solid materials requiring special handling.

(c) This part does not apply to an unmanned barge on a domestic voyage carrying a Potentially Dangerous Material (PDM) found in Table 148.10 of this part. All barges on international voyages must follow the requirements for PDM.

(d) The regulations in this part have preemptive impact over State law on the same subject. The Coast Guard has determined, after considering the factors developed by the Supreme Court in *U.S.* v. *Locke,* 529 U.S. 89 (2000), that in directing the Secretary to regulate the safe transportation of hazardous material and the safety of individuals and property on board vessels subject to inspection, as well as the provision of loading information, Congress intended to preempt the field of safety standards for solid materials requiring special handling when transported in bulk on vessels.

§ 148.2 Responsibility and compliance.

Each master of a vessel, person in charge of a barge, owner, operator, shipper, charterer, or agent must ensure compliance with this part. These persons are also responsible for communicating requirements to every person performing any function covered by this part.

§ 148.3 Definitions.

As used in this part—

A–60 class division means a division as defined in § 32.57–5 of this chapter.

Adjacent space means any enclosed space on a vessel, such as a cargo hold, cargo compartment, accommodation space, working space, storeroom, passageway, or tunnel, that shares a common bulkhead or deck with a hatch, door, scuttle, cable fitting or other penetration, with a cargo hold or compartment containing a material listed in Table 148.10 of this part.

Away from means a horizontal separation of at least 3 meters (10 feet) projected vertically is maintained between incompatible materials carried in the same hold or on deck.

Bulk applies to any solid material, consisting of a combination of particles, granules, or any larger pieces of material generally uniform in composition, that is loaded directly into the cargo spaces of a vessel without any intermediate form of containment.

Bulk Cargo Shipping Name or *BCSN* identifies a bulk solid material during transport by sea. When a cargo is listed in this Part, the BCSN of the cargo is identified by Roman type and is listed in Column 1 of Table 148.10 of this part. When the cargo is a hazardous material, as defined in 49 CFR part 173, the proper shipping name of that material is the BCSN.

Cold-molded briquettes are briquettes of direct reduced iron (DRI) that have been molded at a temperature of under 650 °C (1202 °F) or that have a density of under 5.0 g/cm^3.

Commandant (CG–5223) means the Chief, Hazardous Materials Standards Division of the Office of Operating and Environmental Standards, United States Coast Guard, 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126. CG–5223 can be contacted at 202–372–1420 or *Hazmat@comdt.uscg.mil.*

Compartment means any space on a vessel that is enclosed by the vessel's decks and its sides or permanent steel bulkheads.

Competent authority means a national agency responsible under its national law for the control or regulation of a particular aspect of the transportation of hazardous materials.

Confined space means a cargo hold containing a material listed in Table 148.10 of this part or an adjacent space not designed for human occupancy.

Domestic voyage means transportation between places within the United States other than through a foreign country.

Hazard class means the category of hazard assigned to a material under this part and 49 CFR parts 171 through 173.

HAZARD CLASS DEFINITIONS—HAZARD CLASSES USED IN THIS PART ARE DEFINED IN THE FOLLOWING SECTIONS OF TITLE 49

Class No.	Division No. (if any)	Description	Reference (49 CFR)
1	1.1, 1.2, 1.3, 1.4, 1.5, 1.6	Explosives	§ 173.50.
2	2.1, 2.2, 2.3	Flammable Gas, Non-Flammable Compressed Gas, Poisonous Gas	§ 173.115.
3		Flammable and Combustible Liquid	§ 173.120.
4	4.1, 4.2, 4.3	Flammable Solid, Spontaneously Combustible Material, Dangerous When Wet Material	§ 173.124.
5	5.1	Oxidizer	§ 173.127.
5	5.2	Organic Peroxide	§ 173.128.
6	6.1	Poisonous Materials	§ 173.132.
6	6.2	Infectious Substance	§ 173.134.
7		Radioactive Material	§ 173.403.
8		Corrosive Material	§ 173.136.
9		Miscellaneous Hazardous Material	§ 173.140.

Hazardous substance is a hazardous substance as defined in 49 CFR 171.8.

Hold means a compartment below deck that is used exclusively for the stowage of cargo.

Hot-molded briquettes are briquettes of DRI that have been molded at a temperature of 650 °C (1202 °F) or higher, and that have a density of 5.0 g/cm^3 (312 lb/ft^3) or greater.

IMSBC Code means the English version of the "International Maritime Solid Bulk Cargoes Code" published by the International Maritime Organization (incorporated by reference, *see* § 148.8).

Incompatible materials means two materials whose stowage together may result in undue hazards in the case of leakage, spillage, or other accident.

International voyage means voyages—

(1) Between any place in the United States and any place in a foreign country;

(2) Between places in the United States through a foreign country; or

(3) Between places in one or more foreign countries through the United States.

Lower flammability limit or *LFL* means the lowest concentration of a material or gas that will propagate a flame. The LFL is usually expressed as a percent by volume of a material or gas in air.

Master means the officer having command of a vessel. The functions assigned to the master in this part may also be performed by a representative of the master or by a person in charge of a barge.

Material safety data sheet or *MSDS* is as defined in 29 CFR 1910.1200.

Person in charge of a barge means an individual designated by the owner or operator of a barge to have charge of the barge.

Potentially dangerous material or *PDM* means a material that does not fall into a particular hazard class but can present a danger when carried in bulk aboard a vessel. The dangers often result from the material's tendency to self-heat or cause oxygen depletion. Materials that present a potential danger due solely to their tendency to shift in the cargo hold are not PDMs. For international shipments prepared in accordance with the IMSBC Code (incorporated by reference, *see* § 148.8), equivalent terminology to PDM is Material Hazardous only in Bulk (MHB).

Readily combustible material means a material that may not be a hazardous material but that can easily ignite and support combustion. Examples are wood, straw, vegetable fibers, and products made from these materials, and coal lubricants and oils. The term does not include packaging material or dunnage.

Reportable quantity or *RQ* means the quantity of a hazardous substance spilled or released that requires a report to the National Response Center. The specific RQs for each hazardous substance are available in 49 CFR 172.101, Appendix A.

Responsible person means a knowledgeable person who the master of a vessel or owner or operator of a barge makes responsible for all decisions relating to his or her specific task.

Seed cake means the residue remaining after vegetable oil has been extracted by a solvent or mechanical process from oil-bearing seeds, such as coconuts, cotton seed, peanuts, and linseed.

Shipper means any person by whom, or in whose name, or on whose behalf, a contract of carriage of goods by sea has been concluded with a carrier; or any person by whom or in whose name, or on whose behalf, the goods are actually delivered to the carrier in relation to the contract of carriage by sea.

Shipping paper means a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose.

Stowage factor means the volume in cubic meters of 1,000 kilograms (0.984 long tons) of a bulk solid material.

Threshold limit value or *TLV* means the time-weighted average concentration of a material that the average worker can be exposed to over a normal eight-hour working day, day after day, without adverse effect. This is a trademark term of the American Conference of Governmental Industrial Hygienists (ACGIH).

Transported includes the various operations associated with cargo transportation, such as loading, off-loading, handling, stowing, carrying, and conveying.

Trimming means any leveling of a cargo within a cargo hold or compartment, either partial or total.

Tripartite agreement means an agreement between the national administrations of the port of loading, the port of discharge, and the flag state of the vessel, on the conditions of carriage of a cargo.

Ventilation means exchange of air from outside to inside a cargo space and includes the following types:

(1) *Continuous ventilation* means ventilation that is operating at all times. Continuous ventilation may be either natural or mechanical;

(2) *Mechanical ventilation* means power-generated ventilation;

(3) *Natural ventilation* means ventilation that is not power-generated; and

(4) *Surface ventilation* means ventilation of the space above the cargo. Surface ventilation may be either natural or mechanical.

Vessel means a cargo ship or barge.

§ 148.5 Alternative procedures.

(a) The Commandant (CG–5223) may authorize the use of an alternative procedure, including exemptions to the IMSBC Code (incorporated by reference, *see* § 148.8), in place of any requirement of this part if it is demonstrated to the satisfaction of the Coast Guard that the requirement is impracticable or unnecessary and that an equivalent level of safety can be maintained.

(b) Each request for authorization of an alternative procedure must—

(1) Be in writing;

(2) Name the requirement for which the alternative is requested; and

(3) Contain a detailed explanation of—

(i) Why the requirement is impractical or unnecessary; and

(ii) How an equivalent level of safety will be maintained.

§ 148.7 OMB control numbers assigned under the Paperwork Reduction Act.

The information collection requirements in this part are approved by the Office of Management and Budget, and assigned OMB control number 1625–0025.

§ 148.8 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regualtions/ibr_locations.html.* Also, it is available for inspection at the U.S. Coast Guard Hazardous Materials Standards Division (CG–5223), 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below.

(b) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) International Maritime Solid Bulk Cargoes Code (IMSBC Code) 2009 English edition, incorporation by reference approved for §§ 148.3; 148.5; 148.15; 148.55; 148.205; 148.220; 148.240; 148.450.

(2) [Reserved]

(c) United Nations Publications, Sales Office and Bookshop, Bureau E4, CH–1211 Geneva 10, Switzerland, (800) 253–9646, *http://unp.un.org.*

(1) UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, Fifth revised edition (2009), incorporation by reference approved for §§ 148.205, 148.220.

(2) [Reserved]

§ 148.9 Right of appeal.

Any person directly affected by enforcement of this part by or on behalf of the Coast Guard may appeal the decision or action under Subpart 1.03 of this chapter.

§ 148.10 Permitted materials.

(a) A material listed in Table 148.10 of this section may be transported as a bulk solid cargo on a vessel if it is carried according to this part. A material that is not listed in Table 148.10 of this section, but which is hazardous or a potentially dangerous material (PDM), requires a Special Permit under § 148.15 to be transported on the navigable waters of the United States.

(b) For each listed material, Table 148.10 identifies the hazard class and gives the BCSN or directs the user to the preferred BCSN. In addition, the table lists specific hazardous or potentially dangerous characteristics associated with each material and specifies or references detailed special requirements in this part pertaining to the stowage or transport of specific bulk solid materials. The column descriptions for Table 148.10 are defined as follows:

(1) *Column 1: Bulk Solid Material Descriptions and Bulk Cargo Shipping Names (BCSN).* Column 1 lists the bulk solid material descriptions and the BCSNs of materials designated as hazardous or PDM. BCSNs are limited to those shown in Roman type. Trade names and additional descriptive text are shown in italics.

(2) *Column 2: I.D. Number.* Column 2 lists the identification number assigned to each BCSN associated with a hazardous material. Those preceded by the letters "UN" are associated with BCSNs considered appropriate for international voyages as well as domestic voyages. Those preceded by the letters "NA" are associated with BCSNs not recognized for international voyages, except to and from Canada.

(3) *Column 3: Hazard Class or Division.* Column 3 designates the hazard class or division, or PDM, as appropriate, corresponding to each BCSN.

(4) *Column 4: References.* Column 4 refers the user to the preferred BCSN corresponding to bulk solid material descriptions listed in Column 1.

(5) *Column 5: Hazardous or Potentially Dangerous Characteristics.* Column 5 specifies codes for hazardous or potentially dangerous characteristics applicable to specific hazardous materials or PDMs. Refer to § 148.11 for the meaning of each code.

(6) *Column 6: Other Characteristics.* Column 6 contains other pertinent characteristics applicable to specific bulk solid materials listed in Column 1.

(7) *Column 7: Special Requirements.* Column 7 specifies the applicable sections of Part 148 of this chapter that contain detailed special requirements pertaining to stowage and/or transportation of specific bulk solid materials in this part. This column is completed in a manner which indicates that "§ 148." precedes the designated numerical entry.

(c) The following requirements apply to combinations of bulk solids carried at the same time and in the same compartment or hold:

Combinations of bulk solid materials	Requirements
(1) Material listed in Table 148.10 carried with any other non-hazardous bulk solid material.	Requirements specified in Table 148.10 for the listed material.
(2) Material carried under Special Permit with any non-hazardous bulk solid material.	Requirements specified in the Special Permit.
(3) Two or more materials listed in Table 148.10	Must apply for a Special Permit.

(d) An owner, agent, master, operator, or person in charge of a vessel or barge carrying materials listed in Table 148.10 of this section must follow the requirements contained in 46 CFR part 4 for providing notice and reporting of marine casualties and retaining voyage records.

TABLE 148.10—BULK SOLID HAZARDOUS MATERIALS TABLE

Bulk solid material descriptions and bulk cargo shipping names	I.D. number	Hazard class or division	References	Hazardous or potentially dangerous characteristics (see § 148.11)	Other characteristics	Special requirements (§ 148.***)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Aluminum Ferrosilicon Powder.	UN1395	4.3, 6.1		2, 3	Fine powder or briquettes.	135, 255, 405(b), 407, 415(a) & (e), 420(b), 445
Aluminum Nitrate	UN1438	5.1		4	Colorless or white crystals.	140
Aluminum Silicon Powder, Uncoated.	UN1398	4.3		2, 3		135, 255, 405(b), 407 415(a) & (e), 420(b), 445
Aluminum Smelting Byproducts or Aluminum Re-melting Byproducts.	UN3170	4.3		1, 2, 3	Includes aluminum dross, residues, spent cathodes, spent potliner, and skimmings.	135, 405(b), 420(b), 445
Ammonium Nitrate	UN1942	5.1		5, 27		140, 205, 405(a), 407, 410
Ammonium Nitrate Based Fertilizer.	UN2067	5.1		5, 27		140, 205, 405(a), 407, 410
Ammonium Nitrate Based Fertilizer.	UN2071	9		6	Nitrogen, Phosphate, or Potash.	140, 220, 405(a), 407
Barium Nitrate	UN1466	5.1, 6.1		4, 7		140
Brown Coal Briquettes		PDM		11, 12, 14, 25		155, 240, 405(b), 407, 415(b), 420(a), 445
Calcium fluoride			*See* Fluorospar.			
Calcium Nitrate	UN1454	5.1		4	White crystals or powder.	140, 227
Calcium Oxide			*See* Lime, Unslaked.			
Castor Beans	UN2969	9		10	Whole beans	150, 235
Charcoal		PDM		1, 11, 12	Screenings, briquettes	155
Chili Saltpeter			*See* Sodium Nitrate.			
Chilean Natural Nitrate			*See* Sodium Nitrate.			
Coal		PDM		11, 12, 13, 14, 25		155, 240, 405(b), 407, 415(b), 420(a) & (c), 445, 450
Copra	UN1363	4.2		11, 12	Dry	130, 242
Direct reduced iron (A) *with not more than 5% fines.*		PDM		1, 2, 12	Hot-molded briquettes	155, 250, 420(b)
Direct reduced iron (B) *with not more than 5% fines.*		PDM		1, 2, 12	Lumps, pellets, and cold-molded briquettes.	155, 245, 405(b), 407, 420(b), 445
Environmentally Hazardous Substances, Solid, n.o.s..	UN3077	9	Hazardous substances listed in 40 CFR part 302.	15		150, 270
Ferrophosphorous		PDM		2, 3	Including briquettes	155, 415(e),445
Ferrosilicon *with 30–90% silicon.*	UN1408	4.3, 6.1		2, 3		135, 255, 405(b), 407, 415(a) & (e), 420(b), 445
Ferrosilicon *with 25%–30% silicon or 90% or more silicon.*		PDM				155, 255,405(b), 407, 415 (a) & (e), 420(b), 445

TABLE 148.10—BULK SOLID HAZARDOUS MATERIALS TABLE—Continued

Bulk solid material descriptions and bulk cargo shipping names	I.D. number	Hazard class or division	References	Hazardous or potentially dangerous characteristics (see § 148.11)	Other characteristics	Special requirements (§ 148.***)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Ferrous Sulfate			*See* Environmentally Hazardous Substances, Solid, n.o.s.			
Ferrous Metal Borings, Shavings, Turnings, or Cuttings.	UN2793	4.2		11, 12		130, 260
Fish Meal Stabilized or Fish Scrap, Stabilized.	UN2216	9		11, 12	Ground and pelletized (mixture), anti-oxidant treated.	150, 265
Fluorospar		PDM		8, 24		155, 440(a), 450
Garbage Tankage			*See* Tankage.			
Iron Oxide, Spent or Iron Sponge, Spent.	UN1376	4.2		3, 11, 12, 14		130, 275, 415(c), (d) & (f), 445
Iron Swarf			*See* Ferrous Metal Borings, Shavings, Turnings, or Cuttings.			
Lead Nitrate	UN1469	5.1, 6.1		4, 7, 22, 26		140, 270
Lignite			*See* Brown Coal Briquettes.			
Lime, Unslaked		PDM		1		155, 230
Linted Cotton *Seed containing not more than 9% moisture and not more than 20.5% oil.*		PDM		11, 12		155
Magnesia, Unslaked		PDM		1	Lightburned magnesia, calcined magnesite.	155, 280
Magnesium Nitrate	UN1474	5.1		4		140
Metal Sulfide Concentrates.		PDM		8, 11, 12, 22, 24	Solid, finely divided sulfide concentrates of copper, iron, lead, nickel, zinc, or other metalliferous ores.	155, 285, 450
Peat Moss *with moisture content of more than 65% by weight.*		PDM		8, 12, 13, 14, 24	Fine to coarse fibrous structure.	155, 290, 450
Pencil Pitch			*See* Pitch Prill.			
Petroleum Coke *calcined or uncalcined at >55°C (131°F).*		PDM		11		155, 295
Pitch Prill		PDM		14, 16		155
Potassium Nitrate	UN1486	5.1		4		140
Prilled Coal Tar			*See* Pitch Prill.			
Pyrites, Calcined		PDM		8, 9, 24	Fly ash	155, 225, 450
Pyritic ash			*See* Pyrites, Calcined.			
Quicklime			*See* Lime, Unslaked.			
Radioactive Material	UN2912	7		17	Low specific activity	145, 300
Radioactive Material	UN2913	7		17	Surface contaminated objects.	145, 300

TABLE 148.10—BULK SOLID HAZARDOUS MATERIALS TABLE—Continued

Bulk solid material descriptions and bulk cargo shipping names	I.D. number	Hazard class or division	References	Hazardous or potentially dangerous characteristics (see § 148.11)	Other characteristics	Special requirements (§ 148.***)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Rough Ammonia Tankage.	.....	.....	*See* Tankage.			
Saltpeter	.....	.....	*See* Potassium Nitrate.			
Sawdust	.....	PDM	.....	12, 18	.....	155, 405(a), 407
Seed Cake	UN1386	4.2	.....	12, 19	Mechanically expelled or solvent extractions.	130, 310
Seed Cake	UN2217	4.2	.....	12, 19	Solvent extractions	130, 310
Silicomanganese *with silicon content of 25% or more*.	.....	PDM	.....	2, 3, 12	With known hazard profile or known to evolve gases.	155, 405(b), 407, 415(a) & (d), 420(b), 445
Sodium Nitrate	UN1498	5.1	.....	4	.....	140
Sodium Nitrate and Potassium Nitrate Mixture.	UN1499	5.1	.....	4	Mixtures prepared as fertilizer.	140
Steel Swarf	.....	.....	*See* Ferrous Metal Borings, Shavings, Turnings, or Cuttings.			
Sulfur	UN1350	4.1	.....	14, 20	Lumps or coarse-grained powder.	125, 315, 405(a), 407, 435
Sulfur	NA1350	9	.....	14, 20	Not subject to the requirements of this subchapter when formed into specific shapes (*i.e.,* prills, granules, pellets, pastiles, or flakes).	125, 315, 405(a), 407, 435
Tankage	.....	PDM	.....	11	.....	155, 320
Tankage Fertilizer	.....	.....	*See* Tankage.			
Vanadium Ore	.....	PDM	.....	21	.....	155
Wood chips, Wood Pellets, Wood Pulp Pellets.	.....	PDM	.....	12	.....	155, 325
Zinc Ashes	UN1435	4.3	.....	2, 3, 23	Includes zinc dross, residues, and skimmings.	135, 330, 405(b), 407, 420(b), 435, 445

§ 148.11 Hazardous or potentially dangerous characteristics.

(a) General. When Column 5 refers to a code for a hazardous material or PDM, the meaning of that code is set forth in this section.

(b) Table of Hazardous or Potentially Dangerous Characteristics.

Code	Hazardous or potentially dangerous characteristic
1	Contact with water may cause heating.
2	Contact with water may cause evolution of flammable gases, which may form explosive mixtures with air.
3	Contact with water may cause evolution of toxic gases.
4	If involved in a fire, will greatly intensify the burning of combustible materials.
5	A major fire aboard a vessel carrying this material may involve a risk of explosion in the event of contamination (*e.g.,* by a fuel oil) or strong confinement. If heated strongly will decompose, giving off toxic gases that support combustion.
6	These mixtures may be subject to self-sustaining decomposition if heated. Decomposition, once initiated, may spread throughout the remainder, producing gases that are toxic.
7	Toxic if swallowed and by dust inhalation.
8	Harmful and irritating by dust inhalation.
9	Highly corrosive to steel.
10	Powerful allergen. Toxic by ingestion. Skin contact or inhalation of dust may cause severe irritation of skin, eyes, and mucous membranes in some people.

Code	Hazardous or potentially dangerous characteristic
11	May be susceptible to spontaneous heating and ignition.
12	Liable to cause oxygen depletion in the cargo space.
13	Liable to emit methane gas which can form explosive mixtures with air.
14	Dust forms explosive mixtures with air.
15	May present substantial danger to the public health or welfare or the environment when released into the environment. Skin contact and dust inhalation should be avoided.
16	Combustible. Burns with dense black smoke. Dust may cause skin and eye irritation.
17	Radiation hazard from dust inhalation and contact with mucous membranes.
18	Susceptible to fire from sparks and open flames.
19	May self-heat slowly and, if wet or containing an excessive proportion of unoxidized oil, ignite spontaneously.
20	Fire may produce irritating or poisonous gases.
21	Dust may contain toxic constituents.
22	Lead nitrate and lead sulfide are hazardous substances; see code 15 of this table and § 148.270.
23	Hazardous substance when consisting of pieces having a diameter less than 100 micrometers (0.004 in.); see code 15 of this table and § 148.270.
24	Cargo subject to liquefaction.
25	Subject to liquefaction if average particle size of cargo is less than 10mm (.394 in.).
26	This entry is considered a Marine Pollutant in accordance with 49 CFR 172.101 Appendix B.
27	This entry is considered a certain dangerous cargo in accordance with 33 CFR 160.204.

§ 148.12 Assignment and certification.

(a) The National Cargo Bureau is authorized to assist the Coast Guard in administering the provisions of this part by—

(1) Inspecting vessels for suitability for loading solid materials in bulk;

(2) Examining stowage of solid materials loaded in bulk on board vessels;

(3) Making recommendations on stowage requirements applicable to the transportation of solid materials in bulk; and

(4) Issuing certificates of loading that verify stowage of the solid material in bulk meets requirements of this part.

(b) Certificates of loading from the National Cargo Bureau are accepted as evidence of compliance with bulk solid transport regulations.

Subpart B—Special Permits

§ 148.15 Petition for a special permit.

(a) Each shipper who wishes to ship a bulk solid material not listed in Table 148.10 of this part must determine whether the material meets the definition of any hazard class, or the definition of a PDM, as those terms are defined in § 148.3.

(b) If the material meets any of the definitions described in paragraph (a), the shipper then must submit a petition in writing to the Commandant (CG–5223) for authorization to ship any hazardous material or PDM not listed in Table 148.10 of this part.

(c) If the Commandant (CG–5223) approves a petition for authorization, the Commandant (CG–5223) issues the petitioner a Coast Guard special permit. The permit allows the material to be transported in bulk by vessel and outlines requirements for this transport.

(d) A tripartite agreement developed in conjunction with the United States and in accordance with the IMSBC Code (incorporated by reference, see § 148.8) may be used in lieu of a special permit.

§ 148.20 Deadlines for submission of petition and related requests.

(a) A petition for a special permit must be submitted at least 45 days before the requested effective date. Requests for extension or renewal of an existing special permit must be submitted 20 days before the date of expiration.

(b) Requests for extension or renewal must include the information required under § 148.21(a), (f), and (g).

§ 148.21 Necessary information.

Each petition for a special permit must contain at least the following:

(a) A description of the material, including, if a hazardous material—

(1) The proper shipping name from the table in 49 CFR 172.101;

(2) The hazard class and division of the material; and

(3) The identification number of the material.

(b) A material safety data sheet (MSDS) for the material or—

(1) The chemical name and any trade names or common names of the material;

(2) The composition of the material, including the weight percent of each constituent;

(3) Physical data, including color, odor, appearance, melting point, and solubility;

(4) Fire and explosion data, including auto-ignition temperature, any unusual fire or explosion hazards, and any special fire fighting procedures;

(5) Health hazards, including any dust inhalation hazards and any chronic health effects;

(6) The threshold limit value (TLV) of the material or its major constituents, if available, and any relevant toxicity data;

(7) Reactivity data, including any hazardous decomposition products and any incompatible materials; and

(8) Special protection information, including ventilation requirements and personal protection equipment required.

(c) Other potentially dangerous characteristics of the material not covered by paragraph (b)of this section, including—

(1) Self-heating;

(2) Depletion of oxygen in the cargo space;

(3) Dust explosion; and

(4) Liquefaction.

(d) A detailed description of the proposed transportation operation, including—

(1) The type of vessel proposed for water movements;

(2) The expected loading and discharge ports, if known;

(3) Procedures to be used for loading and unloading the material;

(4) Precautions to be taken when handling the material; and

(5) The expected temperature of the material at the time it will be loaded on the vessel.

(e) Test results (if required under Subpart E of this part).

(f) Previous approvals or permits.

(g) Any relevant shipping or accident experience (or any other relevant transportation history by any mode of transport).

§ 148.25 Activities covered by a special permit.

(a) Each special permit covers any shipment of the permitted material by the shipper and also covers for each shipment—

(1) Each transfer operation;

(2) Each vessel involved in the shipment; and

(3) Each individual involved in any cargo handling operation.

(b) Each special permit is valid for a period determined by the Commandant (CG–5223) and specified in the special permit. The period will not exceed 4 years and is subject to suspension or revocation before its expiration date.

§ 148.26 Standard conditions for special permits.

(a) Each special permit holder must comply with all the requirements of this part unless specifically exempted by the terms of the special permit.

(b) Each special permit holder must provide a copy of the special permit and the information required in § 148.90 to the master or person in charge of each vessel carrying the material.

(c) The master of a vessel transporting a special permit material must ensure that a copy of the special permit is on board the vessel. The special permit must be kept with the dangerous cargo manifest if such a manifest is required by § 148.70.

(d) The person in charge of a barge transporting any special permit material must ensure that a copy of the special permit is on board the tug or towing vessel. When the barge is moored, the special permit must be kept on the barge with the shipping papers as prescribed in § 148.62.

§ 148.30 Records of special permits issued.

A list of all special permits issued, and copies of each, are available from the Commandant (CG–5223).

Subpart C—Minimum Transportation Requirements

§ 148.50 Cargoes subject to this subpart.

The regulations in this subpart apply to each bulk shipment of—

(a) A material listed in Table 148.10 of this part; and

(b) Any solid material shipped under the terms of a Coast Guard special permit.

§ 148.51 Temperature readings.

When Subpart D of this part sets a temperature limit for loading or transporting a material, apply the following rules:

(a) The temperature of the material must be measured 20 to 36 centimeters (8 to 14 inches) below the surface at 3 meter (10 foot) intervals over the length and width of the stockpile or cargo hold.

(b) The temperature must be measured at every spot in the stockpile or cargo hold that shows evidence of heating.

(c) Before loading or transporting the material, all temperatures measured must be below the temperature limit set in Subpart D of this part.

§ 148.55 International shipments.

(a) Importer's responsibility. Each person importing any bulk solid material requiring special handling into the United States must provide the shipper and the forwarding agent at the place of entry into the United States with timely and complete information as to the requirements of this part that will apply to the shipment of the material within the United States.

(b) IMSBC Code. Notwithstanding the provisions of this part, a bulk solid material that is classed, described, stowed, and segregated in accordance with the IMSBC Code (incorporated by reference, *see* § 148.8), and otherwise conforms to the requirements of this section, may be offered and accepted for transportation and transported within the United States. The following conditions and limitations apply:

(1) A bulk solid material that is listed in Table 148.10 of this part, but is not subject to the requirements of the IMSBC Code, may not be transported under the provisions of this section and is subject to the requirements of this part. Examples of such materials include environmentally hazardous substances, solid, n.o.s.

(2) Zinc Ashes must conform to the requirements found in § 148.330.

(3) Exemptions granted by other competent authorities in accordance with the IMSBC Code must be approved by the Commandant (CG–5223) in accordance with § 148.5.

(4) Tripartite agreements granted by other competent authorities in accordance with the IMSBC Code must be authorized for use in the United States by the Commandant (CG–5223).

§ 148.60 Shipping papers.

The shipper of a material listed in Table 148.10 of this part must provide the master or his representative with appropriate information on the cargo in the form of a shipping paper, in English, prior to loading. Information on the shipping paper must include the following:

(a) The appropriate BCSN. Secondary names may be used in addition to the BCSN;

(b) The identification number, if applicable;

(c) The hazard class of the material as listed in Table 148.10 of this part or on the Special Permit for the material;

(d) The total quantity of the material to be transported;

(e) The stowage factor;

(f) The need for trimming and the trimming procedures, as necessary;

(g) The likelihood of shifting, including angle of repose, if applicable;

(h) A certificate on the moisture content of the cargo and its transportable moisture limit for cargoes that are subject to liquefaction;

(i) Likelihood of formation of a wet base;

(j) Toxic or flammable gases that may be generated by the cargo, if applicable;

(k) Flammability, toxicity, corrosiveness, and propensity to oxygen depletion of the cargo, if applicable;

(l) Self-heating properties of the cargo, if applicable;

(m) Properties on emission of flammable gases in contact with water, if applicable;

(n) Radioactive properties, if applicable;

(o) The name and address of the U.S. shipper (consignor) or, if the shipment originates in a foreign country, the U.S. consignee.

(p) A certification, signed by the shipper, that bears the following statement: "This is to certify that the above named material is properly named, prepared, and otherwise in proper condition for bulk shipment by vessel in accordance with the applicable regulations of the U.S. Coast Guard."

§ 148.61 Emergency response information.

The shipper of a material listed in Table 148.10 of this part must provide the master or his representative with appropriate emergency response information. This information may be included on the shipping papers or in a separate document such as a material safety data sheet (MSDS). The information must include preliminary first aid measures and emergency procedures to be carried out in the event of an incident or fire involving the cargo.

§ 148.62 Location of shipping papers and emergency response information.

(a) The shipping paper and emergency response information required by §§ 148.60 and 148.61 must be kept on board the vessel along with the dangerous cargo manifest required by § 148.70. When the shipment is by unmanned barge the shipping papers and emergency response information must be kept on the tug or towing vessel. When an unmanned barge is moored, the shipping paper and emergency response information must be on board the barge in a readily retrievable location.

(b) Any written certification or statement from the shipper to the master of a vessel or to the person in charge of

a barge must be on, or attached to, the shipping paper. *See* Subparts E and F of this part for required certifications.

§ 148.70 Dangerous cargo manifest; general.

(a) Except as provided in paragraph (b) of this section and in § 148.72, each vessel transporting materials listed in Table 148.10 of this part must have a dangerous cargo manifest on board.

(b) This document must be kept in a designated holder on or near the vessel's bridge. When required for an unmanned barge, the document must be on board the tug or towing vessel.

§ 148.71 Information included in the dangerous cargo manifest.

The dangerous cargo manifest must include the following:

(a) The name and official number of the vessel. If the vessel has no official number, the international radio call sign must be substituted;

(b) The nationality of the vessel;

(c) The name of the material as listed in Table 148.10 of this part;

(d) The hold or cargo compartment in which the material is being transported;

(e) The quantity of material loaded in each hold or cargo compartment; and

(f) The signature of the master acknowledging that the manifest is correct, and the date of the signature.

§ 148.72 Dangerous cargo manifest; exceptions.

(a) No dangerous cargo manifest is required for—

(1) Shipments by unmanned barge, except on an international voyage; and

(2) Shipments of materials designated as potentially dangerous materials in Table 148.10 of this part.

(b) When a dangerous cargo manifest is required for an unmanned barge on an international voyage, § 148.71(d) does not apply, unless the barge has more than one cargo compartment.

§ 148.80 Supervision of cargo transfer.

The master must ensure that cargo transfer operations are supervised by a responsible person as defined in § 148.3.

§ 148.85 Required equipment for confined spaces.

When transporting a material that is listed in Table 148.10 of this part, each vessel, other than an unmanned barge, must have on board the following:

(a) Equipment capable of measuring atmospheric oxygen. At least two members of the crew must be knowledgeable in the use of the equipment, which must be maintained in a condition ready for use and calibrated according to the manufacturer's instructions.

(b) At least two self-contained, pressure-demand-type, air breathing apparatus approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH), each having at least a 30-minute air supply. Each foreign flag vessel must have on board at least two such apparatus that are approved by the flag state administration. The master must ensure that the breathing apparatus is used only by persons trained in its use.

§ 148.86 Confined space entry.

(a) Except in an emergency, no person may enter a confined space unless that space has been tested to ensure there is sufficient oxygen to support life. If the oxygen content is below 19.5 percent, the space must be ventilated and retested before entry.

(b) In an emergency, a confined space may be entered by a trained person wearing self-contained breathing apparatus, suitable protective clothing as necessary, and a wire rope safety line tended by a trained person outside the hold or in an adjacent space. Emergency entry into a confined space must be supervised by a responsible person as defined in § 148.3.

§ 148.90 Preparations before loading.

Before loading any material listed in Table 148.10 of this part, in bulk on board a vessel, the following conditions must be met:

(a) If a hold previously has contained any material required under Subpart D of this part to be segregated from the material to be loaded, the hold must be thoroughly cleaned of all residue of the previous cargoes.

(b) If the material to be loaded is Class 4.1, 4.2, or 5.1, then all combustible materials must be removed from the hold. Examples of some combustible materials are residue of previous cargoes, loose debris, and dunnage. Permanent wooden battens or sheathing may remain in the hold unless forbidden by Subpart E of this part.

(c) If the material to be loaded is classified as Class 4.3, or is subject to liquefaction, the hold and associated bilge must be as dry as practicable.

§ 148.100 Log book entries.

During the transport in bulk of a material listed in Table 148.10 of this part, the master must keep a record of each temperature measurement and each test for toxic or flammable gases required by this part. The date and time of each measurement and test must be recorded in the vessel's log.

§ 148.110 Procedures followed after unloading.

(a) After a material covered by this part has been unloaded from a vessel, each hold or cargo compartment must be thoroughly cleaned of all residue of such material unless the hold is to be reloaded with that same cargo.

(b) When on U.S. territorial seas or inland waters, cargo associated wastes, cargo residue, and deck sweepings must be retained on the vessel and disposed of in accordance with 33 CFR parts 151.51 through 151.77.

§ 148.115 Report of incidents.

(a) When a fire or other hazardous condition occurs on a vessel transporting a material covered by this part, the master must notify the nearest COTP as soon as possible and comply with any instructions given.

(b) Any incident or casualty occurring while transporting a material covered by this part must also be reported as required under 49 CFR 171.15, if applicable. A copy of the written report required under 49 CFR 171.16 must also be sent to the Commandant (CG–5223), U.S. Coast Guard, 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126, at the earliest practicable moment.

(c) Any release to the environment of a hazardous substance in a quantity equal to or in excess of its reportable quantity (RQ) must be reported immediately to the National Response Center at (800) 424–8802 (toll free) or (202) 267–2675.

Subpart D—Stowage and Segregation

§ 148.120 Stowage and segregation requirements.

(a) Each material listed in Table 148.10 of this part must be segregated from incompatible materials in accordance with—

(1) The requirements of Tables 148.120A and 148.120B of this section that pertain to the primary or subsidiary hazard class to which the materials belong. Whenever a subsidiary hazard may exist, the most stringent segregation requirement applies; and

(2) Any specific requirements in Subpart D of this part.

(b) Materials that are required to be separated during stowage must not be handled at the same time. Any residue from a material must be removed before a material required to be separated from it is loaded.

(c) Definitions and application of segregation terms:

(1) "*Separated from*" means located in different cargo compartments or holds when stowed under deck. If the intervening deck is resistant to fire and

liquid, a vertical separation, i.e., in different cargo compartments, is acceptable as equivalent to this segregation.

(2) "*Separated by a complete cargo compartment or hold from*" means either a vertical or horizontal separation, for example, by a complete cargo compartment or hold. If the intervening decks are not resistant to fire and liquid, only horizontal separation is acceptable.

(3) "*Separated longitudinally by an intervening complete cargo compartment or hold from*" means that vertical separation alone does not meet this requirement.

TABLE 148.120A—SEGREGATION BETWEEN INCOMPATIBLE BULK SOLID CARGOES

Bulk solid materials	Class	4.1	4.2	4.3	5.1	6.1	7	8	9/PDM
Flammable solid	4.1	X							
Spontaneously combustible material	4.2	2	X						
Dangerous when wet material	4.3	3	3	X					
Oxidizer	5.1	3	3	3	X				
Poisonous material	6.1	X	X	X	2	X			
Radioactive material	7	2	2	2	2	2	X		
Corrosive material	8	2	2	2	2	X	X	X	
Miscellaneous hazardous material and potential dangerous material	9/PDM	X	X	X	X	X	2	X	X

Numbers and symbols indicate the following terms as defined in § 148.3 of this part:
2—"Separated from"
3—"Separated by a complete hold or compartment from"
X—No segregation required, except as specified in an applicable section of this subpart or Subpart E of this part.

TABLE 148.120B—SEGREGATION BETWEEN BULK SOLID CARGOES AND INCOMPATIBLE PACKAGED CARGOES

Packaged hazardous material	Bulk solid material								
	Class	4.1	4.2	4.3	5.1	6.1	7	8	9/PDM
Explosives	1.1 1.2 1.5	4	4	4	4	2	2	4	X
Explosives	1.3 1.6	3	3	4	4	2	2	2	X
Explosives	1.4	2	2	2	2	X	2	2	X
Flammable gas	2.1	2	2	1	2	X	2	2	X
Non-flammable compressed gas	2.2	2	2	X	X	X	2	1	X
Poisonous gas	2.3	2	2	X	X	X	2	1	X
Flammable liquid	3	2	2	2	2	X	2	1	X
Flammable solid	4.1	X	1	X	1	X	2	1	X
Spontaneously combustible material	4.2	1	X	1	2	1	2	1	X
Dangerous when wet material	4.3	X	1	X	2	X	2	1	X
Oxidizer	5.1	1	2	2	X	1	1	2	X
Organic peroxide	5.2	2	2	2	2	1	2	2	X
Poisonous material	6.1	X	1	X	1	X	X	X	X
Infectious substance	6.2	3	3	2	3	1	3	3	X
Radioactive material	7	2	2	2	1	X	X	2	X
Corrosive material	8	1	1	1	2	X	2	X	X
Miscellaneous hazardous material	9	X	X	X	X	X	X	X	X

Numbers and symbols indicate the following terms as defined in § 148.3:
1—"Away from"
2—"Separated from"
3—"Separated by a complete hold or compartment from"
4—"Separated longitudinally by an intervening complete compartment or hold from"
X—No segregation required, except as specified in an applicable section of this subpart or Subpart E of this part.

§ 148.125 Stowage and segregation for materials of Class 4.1.

(a) Class 4.1 materials listed in Table 148.10 of this part must—

(1) Be kept as cool and dry as practical before loading;

(2) Not be loaded or transferred between vessels during periods of rain or snow;

(3) Be stowed separated from foodstuffs; and

(4) Be stowed clear of sources of heat and ignition and protected from sparks and open flame.

(b) Bulkheads between a hold containing a Class 4.1 material and incompatible materials must have cable and conduit penetrations sealed against the passage of gas and vapor.

§ 148.130 Stowage and segregation for materials of Class 4.2.

(a) Class 4.2 materials listed in Table 148.10 of this part must—

(1) Be kept as cool and dry as practical before loading;

(2) Not be loaded or transferred between vessels during periods of rain or snow;

(3) Be stowed clear of sources of heat and ignition and protected from sparks and open flame; and

(4) Except for copra and seed cake, be stowed separate from foodstuffs.

(b) The bulkhead between a hold containing a Class 4.2 material and a hold containing a material not permitted to mix with Class 4.2 materials must have cable and conduit penetrations

sealed against the passage of gas and vapor.

§ 148.135 Stowage and segregation for materials of Class 4.3.

(a) Class 4.3 materials listed in Table 148.10 of this part which, in contact with water, emit flammable gases, must—

(1) Be kept as cool and dry as practical before loading;

(2) Not be loaded or transferred between vessels during periods of rain or snow;

(3) Be stowed separate from foodstuffs and all Class 8 liquids; and

(4) Be stowed in a mechanically ventilated hold. Exhaust gases must not penetrate into accommodation, work or control spaces. Unmanned barges that have adequate natural ventilation need not have mechanical ventilation.

(b) The bulkhead between a hold containing a Class 4.3 material and incompatible materials must have cable and conduit penetrations sealed against the passage of gas and vapor.

§ 148.140 Stowage and segregation for materials of Class 5.1.

(a) Class 5.1 materials listed in Table 148.10 of this part must—

(1) Be kept as cool and dry as practical before loading;

(2) Be stowed away from all sources of heat or ignition; and

(3) Be stowed separate from foodstuffs and all readily combustible materials.

(b) Special care must be taken to ensure that holds containing Class 5.1 materials are clean and, whenever practical, only noncombustible securing and protecting materials are used.

(c) Class 5.1 materials must be prevented from entering bilges or other cargo holds.

§ 148.145 Stowage and segregation for materials of Class 7.

(a) Class 7 material listed in Table 148.10 of this part must be stowed—

(1) Separate from foodstuffs; and

(2) In a hold or barge closed or covered to prevent dispersal of the material during transportation.

(b) [Reserved]

§ 148.150 Stowage and segregation for materials of Class 9.

(a) A bulk solid cargo of Class 9 material (miscellaneous hazardous material) listed in Table 148.10 of this part must be stowed and segregated as required by this section.

(b) Ammonium nitrate fertilizer of Class 9 must be segregated as required for Class 5.1 materials in §§ 148.120 and 148.140 and must be stowed—

(1) Separated by a complete hold or compartment from readily combustible materials, chlorates, hypochlorites, nitrites, permanganates, and fibrous materials (*e.g.,* cotton, jute, sisal, etc.);

(2) Clear of all sources of heat, including insulated piping; and

(3) Out of direct contact with metal engine-room boundaries.

(c) Castor beans must be stowed separate from foodstuffs and Class 5.1 materials.

(d) Fish meal must be stowed and segregated as required for Class 4.2 materials in §§ 148.120 and 148.130 of this part. In addition, its temperature at loading must not exceed 35 °C (95 °F), or 5 °C (41°F) above ambient temperature, whichever is higher.

(e) Sulfur must be stowed and segregated as required under §§ 148.120 and 148.125 for a material of Class 4.1.

§ 148.155 Stowage and segregation for potentially dangerous materials.

(a) A PDM must be stowed and segregated according to the requirements of this section and Table 148.155 of this section.

(b) When transporting coal—

(1) Coal must be stowed separate from materials of Class/division 1.4 and Classes 2, 3, 4, and 5 in packaged form; and separated from bulk solid materials of Classes 4 and 5.1;

(2) No material of Class 5.1, in either packaged or bulk solid form, may be stowed above or below a cargo of coal; and

(3) Coals must be separated longitudinally by an intervening complete cargo compartment or hold from materials of Class 1 other than Class/division 1.4.

(c) When transporting direct reduced iron (DRI)—

(1) DRI lumps, pellets, or cold-molded briquettes, and DRI hot-molded briquettes, must be separated from materials of Class/division 1.4, Classes 2, 3, 4, 5, Class 8 acids in packaged form, and bulk solid materials of Classes 4 and 5.1; and

(2) No material of Class 1, other than Class/division 1.4, may be transported on the same vessel with DRI.

(d) Petroleum coke, calcined or uncalcined, must be—

(1) Separated longitudinally by an intervening complete cargo compartment or hold from materials of Class/divisions 1.1 and 1.5; and

(2) Separated by a complete cargo compartment or hold from all hazardous materials and other potentially dangerous materials in packaged and bulk solid form.

TABLE 148.155—STOWAGE AND SEGREGATION REQUIREMENTS FOR POTENTIALLY DANGEROUS MATERIAL

Potentially dangerous material	Segregate as for class listed [1]	"Separate from" foodstuffs	Load only under dry weather conditions	Keep dry	Mechanical ventilation required	"Separate from" material listed	Special provisions
Aluminum Smelting By-products or Aluminum Re-melting By-products.	4.3	X	X	X	X	Class 8 liquids.	
Brown Coal Briquettes						*See* paragraph (b) of this section.	*See* paragraph (b) of this section.
Charcoal	4.1			X		Oily materials.	
Coal						*See* paragraph (b) of this section.	*See* paragraph (b) of this section.
Direct reduced iron (A)						*See* paragraph (c) of this section.	*See* paragraph (c) of this section.
Direct reduced iron (B)						*See* paragraph (c) of this section.	*See* paragraph (c) of this section.
Ferrophosphorus	4.3	X	X	X	X	Class 8 liquids.	
Ferrolilicon	4.3	X	X	X	X	Class 8 liquids.	
Fluorospar		X				Class 8 liquids.	
Lime, Unslaked				X		All packaged and bulk solid hazardous materials.	

TABLE 148.155—STOWAGE AND SEGREGATION REQUIREMENTS FOR POTENTIALLY DANGEROUS MATERIAL—Continued

Potentially dangerous material	Segregate as for class listed [1]	"Separate from" foodstuffs	Load only under dry weather conditions	Keep dry	Mechanical ventilation required	"Separate from" material listed	Special provisions
Linted Cotton Seed	.....	.....	.....	X			
Magnesia, Unslaked	.....	.....	.....	.....	.....	All packaged and bulk solid hazardous materials.	
Metal Sulfide Concentrates	4.2	X	.....	.....	.....	Class 8 liquids.	
Petroleum Coke	.....	X	.....	.....	.....	.....	*See* section 148.155(d).
Pitch Prill	4.1						
Pyrites, Calcined	.....	X	X	X	X		
Sawdust	4.1	.....	.....	X	.....	All Class 5.1 and 8 liquids.	
Silicomanganese	4.3	X	X	X	X	Class 8 liquids.	
Tankage	4.2	X	X				
Vanadium	6.1	X					
Wood chips	4.1						
Wood pellets	4.1						
Wood pulp pellets	4.1						

[1] *See* Tables 148.120A and B.

Subpart E—Special Requirements for Certain Materials

§ 148.200 Purpose.

This subpart prescribes special requirements for specific materials. These requirements are in addition to the minimum transportation requirements in Subpart C of this part that are applicable to all materials listed in Table 148.10 of this part.

§ 148.205 Ammonium nitrate and ammonium nitrate fertilizers.

(a) This section applies to the stowage and transportation in bulk of ammonium nitrate and the following fertilizers composed of uniform, non-segregating mixtures containing ammonium nitrate:

(1) Ammonium nitrate containing added organic matter that is chemically inert towards the ammonium nitrate; containing at least 90 percent ammonium nitrate and a maximum of 0.2 percent of combustible material (including organic material calculated as carbon); or containing less than 90 percent but more than 70 percent of ammonium nitrate and a maximum of 0.4 percent combustible material;

(2) Ammonium nitrate with calcium carbonate and/or dolomite, containing more than 80 percent but less than 90 percent of ammonium nitrate and a maximum of 0.4 percent of total combustible material;

(3) Ammonium nitrate with ammonium sulfate containing more than 45 percent but a maximum of 70 percent of ammonium nitrate and containing a maximum of 0.4 percent of combustible material; and

(4) Nitrogen phosphate or nitrogen/potash type fertilizers or complete nitrogen/phosphate/potash type fertilizers containing more than 70 percent but less than 90 percent of ammonium nitrate and a maximum of 0.4 percent of combustible material.

(b) No material covered by this section may be transported in bulk unless it demonstrates resistance to detonation when tested by one of the following methods:

(1) Appendix 2, Section 5, of the IMSBC Code (incorporated by reference, *see* § 148.8);

(2) Test series 1 and 2 of the Class 1 (explosive) in the UN Manual of Tests and Criteria, Part I (incorporated by reference, *see* § 148.8); or

(3) An equivalent test satisfactory to the Administration of the country of shipment.

(c) Before loading a material covered by this section—

(1) The shipper must give the master of the vessel written certification that the material has met the test requirements of paragraph (b) of this section;

(2) The cargo hold must be inspected for cleanliness and free from readily combustible materials;

(3) Each cargo hatch must be weathertight as defined in § 42.13–10 of this chapter;

(4) The temperature of the material must be less than 55 °C (131 °F); and

(5) Each fuel tank under a cargo hold where the material is stowed must be pressure tested before loading to ensure that there is no leakage of manholes or piping systems leading through the cargo hold.

(d) Bunkering or transferring of fuel to or from the vessel may not be performed during cargo loading and unloading operations involving a material covered by this section.

(e) When a material covered by this section is transported on a cargo vessel—

(1) No other material may be stowed in the same hold with that material;

(2) In addition to the segregation requirements in § 148.140, the material must be separated by a complete cargo compartment or hold from readily combustible materials, chlorates, chlorides, chlorites, hypochlorites, nitrites, permanganates, and fibrous materials; and

(3) The bulkhead between a cargo hold containing a material covered by this section and the engine room must be insulated to "A–60" class division or an equivalent arrangement to the satisfaction of the cognizant Coast Guard Captain of the Port or the Administration of the country of shipment.

§ 148.220 Ammonium nitrate-phosphate fertilizers.

(a) This section applies to the stowage and transportation of uniform, nonsegregating mixtures of nitrogen/phosphate or nitrogen/potash type fertilizers, or complete fertilizers of nitrogen/phosphate/potash type containing a maximum of 70 percent of ammonium nitrate and containing a maximum of 0.4 percent total added combustible material or containing a maximum of 45 percent ammonium nitrate with unrestricted combustible material.

(b) A fertilizer mixture described in paragraph (a) of this section is exempt if—

(1) When tested in accordance with the trough test prescribed in Appendix 2, Section 4, of the IMSBC Code or in the UN Manual of Tests and Criteria, Part III, Subsection 38.2 (incorporated by reference, *see* § 148.8), it is found to be free from the risk of self-sustaining decomposition.

(2) [Reserved]

(c) No fertilizer covered by this section may be transported in bulk if, when tested in accordance with the trough test prescribed in Appendix 2, Section 4, of the IMSBC Code or in the UN Manual of Tests and Criteria, Part III, Subsection 38.2 (incorporated by reference, *see* § 148.8), it has a self-sustaining decomposition rate that is greater than 0.25 meters per hour, or is liable to self-heat sufficient to initiate decomposition.

(d) Fertilizers covered by this section must be stowed away from all sources of heat, and out of direct contact with a metal engine compartment boundary.

(e) Bunkering or transferring of fuel may not be performed during loading and unloading of fertilizer covered by this section.

(f) Fertilizer covered by this section must be segregated as prescribed in §§ 148.140 and 148.220(d).

§ 148.225 Calcined pyrites (pyritic ash, fly ash).

(a) This part does not apply to the shipment of calcined pyrites that are the residual ash of oil or coal fired power stations.

(b) This section applies to the stowage and transportation of calcined pyrites that are the residual product of sulfuric acid production or elemental metal recovery operations.

(c) Before loading calcined pyrites covered by this section—

(1) The cargo space must be as clean and dry as practical;

(2) The calcined pyrites must be dry; and

(3) Precautions must be taken to prevent the penetration of calcined pyrites into other cargo spaces, bilges, wells, and ceiling boards.

(d) After calcined pyrites covered by this section have been unloaded from a cargo space, the cargo space must be thoroughly cleaned. Cargo residues and sweepings must be disposed of as prescribed in 33 CFR parts 151.55 through 151.77.

§ 148.227 Calcium nitrate fertilizers.

This part does not apply to commercial grades of calcium nitrate fertilizers consisting mainly of a double salt (calcium nitrate and ammonium nitrate) and containing a maximum of 15.5 percent nitrogen and at least 12 percent of water.

§ 148.230 Calcium oxide (lime, unslaked).

(a) When transported by barge, unslaked lime (calcium oxide) must be carried in an unmanned, all steel, double-hulled barge equipped with weathertight hatches or covers. The barge must not carry any other cargo while unslaked lime is on board.

(b) The shipping paper requirements in § 148.60 and the dangerous cargo manifest requirements in § 148.70 do not apply to the transportation of unslaked lime under paragraph (a) of this section.

§ 148.235 Castor beans.

(a) This part applies only to the stowage and transportation of whole castor beans. Castor meal, castor pomace, and castor flakes may not be shipped in bulk.

(b) Persons handling castor beans must wear dust masks and goggles.

(c) Care must be taken to prevent castor bean dust from entering accommodation, control, or service spaces during cargo transfer operations.

§ 148.240 Coal.

(a) The electrical equipment in cargo holds carrying coal must meet the requirements of Subpart 111.105 of this chapter or an equivalent standard approved by the administration of the vessel's flag state.

(b) Before coal is loaded in a cargo hold, the bilges must be as clean and dry as practical. The hold must also be free of any readily combustible material, including the residue of previous cargoes if other than coal.

(c) The master of each vessel carrying coal must ensure that—

(1) All openings to the cargo hold, except for unloading gates on self-unloading vessels, are sealed before loading the coal and, unless the coal is as described in paragraph (f) of this section, the hatches must also be sealed after loading;

(2) As far as practical, gases emitted by the coal do not accumulate in enclosed working spaces such as storerooms, shops, or passageways, and tunnel spaces on self-unloading vessels, and that such spaces are adequately ventilated;

(3) The vessel has adequate ventilation as required by paragraph (f) of this section; and

(4) If the temperature of the coal is to be monitored under paragraph (e)(2)(i) of this section, the vessel has instruments that are capable of measuring the temperature of the cargo in the range 0 °–100 °C (32 °–212 °F) without entry into the cargo hold.

(d) A cargo hold containing coal must not be ventilated unless the conditions of paragraph (f) of this section are met, or unless methane is detected under paragraph (h) of this section.

(e) If coal waiting to be loaded has shown a tendency to self-heat, has been handled so that it may likely self-heat, or has been observed to be heating, the master is responsible for monitoring the temperature of the coal at several intervals during these times:

(1) Before loading; and

(2) During the voyage, by—

(i) Measuring the temperature of the coal;

(ii) Measuring the emission of carbon monoxide; or

(iii) Both.

(f) If coal waiting to be loaded has a potential to emit dangerous amounts of methane, for example it is freshly mined, or has a history of emitting dangerous amounts of methane, then:

(1) Surface ventilation, either natural or from fixed or portable nonsparking fans, must be provided; and

(2) The atmosphere above the coal must be monitored for the presence of methane as prescribed in paragraph (h) of this section. The results of this monitoring must be recorded at least twice in every 24-hour period, unless the conditions of paragraph (m) of this section are met.

(g) Electrical equipment and cables in a hold containing a coal described in paragraph (f) of this section must be either suitable for use in an explosive gas atmosphere or de-energized at a point outside the hold. Electrical equipment and cables necessary for continuous safe operations, such as lighting fixtures, must be suitable for use in an explosive gas atmosphere. The master of the vessel must ensure that the affected equipment and cables remain de-energized as long as this coal remains in the hold.

(h) For all coal loaded on a vessel, other than an unmanned barge, the atmosphere above the coal must be routinely tested for the presence of methane, carbon monoxide, and oxygen, following the procedures in the Appendices to the schedules for Coal and Brown Coal Briquettes as contained in the IMSBC Code (incorporated by reference, *see* § 148.8). This testing must be performed in such a way that the cargo hatches are not opened and entry into the hold is not necessary.

(i) When carrying a coal described in paragraph (e) of this section, the atmosphere above the coal must be monitored for the presence of carbon

monoxide as prescribed in paragraph (h) of this section. The results of this monitoring must be recorded at least twice in every 24-hour period, unless the conditions of paragraph (m) of this section are met. If the level of carbon monoxide is increasing rapidly or reaches 20 percent of the lower flammability limit (LFL), the frequency of monitoring must be increased.

(j) When a cargo of coal has a potential to self-heat or has been observed to be heating, the hatches should be closed and sealed and all surface ventilation halted except as necessary to remove any methane that may have accumulated.

(k) If the level of carbon monoxide monitored under paragraph (i) of this section continues to increase rapidly or the temperature of coal carried on board a vessel exceeds 55 °C (131 °F) and is increasing rapidly, the master must notify the nearest Coast Guard Captain of the Port of—

(1) The name, nationality, and position of the vessel;

(2) The most recent temperature, if measured, and levels of carbon monoxide and methane;

(3) The port where the coal was loaded and the destination of the coal;

(4) The last port of call of the vessel and its next port of call; and

(5) What action has been taken.

(l) If the level of methane as monitored under paragraph (h) of this section reaches 20 percent of the LFL or is increasing rapidly, ventilation of the cargo hold, under paragraph (f) of this section, must be initiated. If this ventilation is provided by opening the cargo hatches, care must be taken to avoid generating sparks.

(m) The frequency of monitoring required by paragraph (l) of this section may be reduced at the discretion of the master provided that—

(1) The level of gas measured is less than 20 percent of the LFL;

(2) The level of gas measured has remained steady or decreased over three consecutive readings, or has increased by less than 5 percent over four consecutive readings spanning at least 48 hours; and

(3) Monitoring continues at intervals sufficient to determine that the level of gas remains within the parameters of paragraphs (n)(1) and (n)(2) of this section.

§ 148.242 Copra.

Copra must have surface ventilation. It must not be stowed against heated surfaces including fuel oil tanks which may require heating.

§ 148.245 Direct reduced iron (DRI); lumps, pellets, and cold-molded briquettes.

(a) Before loading DRI lumps, pellets, or cold-molded briquettes—

(1) The master must have a written certification from a competent person appointed by the shipper and recognized by the Commandant (CG–5223) stating that the DRI, at the time of loading, is suitable for shipment;

(2) The DRI must be aged for at least 3 days, or be treated with an air passivation technique or some other equivalent method that reduces its reactivity to at least the same level as the aged DRI; and

(3) Each hold and bilge must be as clean and dry as practical. Other than double bottom tanks, adjacent ballast tanks must be kept empty when possible. All wooden fixtures, such as battens, must be removed from the hold.

(b) Each boundary of a hold where DRI lumps, pellets, or cold-molded briquettes are to be carried must be resistant to fire and passage of water.

(c) DRI lumps, pellets, or cold-molded briquettes that are wet, or that are known to have been wetted, may not be accepted for transport. The moisture content of the DRI must not exceed 0.3 percent prior to loading.

(d) DRI lumps, pellets and cold-molded briquettes must be protected at all times from contact with water, and must not be loaded or transferred from one vessel to another during periods of rain or snow.

(e) DRI lumps, pellets, or cold-molded briquettes may not be loaded if their temperature is greater than 65 °C (150 °F).

(f) The shipper of DRI lumps, pellets, or cold-molded briquettes in bulk must ensure that an inert atmosphere of less than 5 percent oxygen and 1 percent hydrogen, by volume, is maintained throughout the voyage in any hold containing these materials.

(g) When DRI lumps, pellets, or cold-molded briquettes are loaded, precautions must be taken to avoid the concentration of fines (pieces less than 6.35mm in size) in any one location in the cargo hold.

(h) Radar and RDF scanners must be protected against the dust generated during cargo transfer operations of DRI lumps, pellets, or cold-molded briquettes.

§ 148.250 Direct reduced iron (DRI); hot-molded briquettes.

(a) Before loading DRI hot-molded briquettes—

(1) The master must have a written certification from a competent person appointed by the shipper and recognized by the Commandant (CG–5223) that at the time of loading the DRI hot-molded briquettes are suitable for shipment; and

(2) Each hold and bilge must be as clean and dry as practical. Except double bottom tanks, adjacent ballast tanks must be kept empty where possible. All wooden fixtures, such as battens, must be removed.

(b) All boundaries of a hold must be resistant to fire and passage of water to carry DRI hot-molded briquettes.

(c) DRI hot-molded briquettes must be protected at all times from contact with water. They must not be loaded or transferred from one vessel to another during periods of rain or snow.

(d) DRI hot-molded briquettes may not be loaded if their temperature is greater than 65 °C (150 °F).

(e) When loading DRI hot-molded briquettes, precautions must be taken to avoid the concentration of fines (pieces less than 6.35mm in size) in any one location in the cargo hold.

(f) Adequate surface ventilation must be provided when carrying or loading DRI hot-molded briquettes.

(g) When DRI hot-molded briquettes are carried by unmanned barge—

(1) The barge must be fitted with vents adequate to provide natural ventilation; and

(2) The cargo hatches must be closed at all times after loading the DRI hot-molded briquettes.

(h) Radar and RDF scanners must be adequately protected against dust generated during cargo transfer operations of DRI hot-molded briquettes.

(i) During final discharge only, a fine spray of water may be used to control dust from DRI hot-molded briquettes.

§ 148.255 Ferrosilicon, aluminum ferrosilicon, and aluminum silicon containing more than 30% but less than 90% silicon.

(a) This section applies to the stowage and transportation of ferrosilicon, aluminum ferrosilicon, and aluminum silicon containing more than 30 percent but less than 90 percent silicon.

(b) The shipper of material described in paragraph (a) of this section must give the master a written certification stating that after manufacture the material was stored under cover, but exposed to the weather, in the particle size in which it is to be shipped, for at least three days before shipment.

(c) Material described in paragraph (a) of this section must be protected at all times from contact with water, and must not be loaded or unloaded during periods of rain or snow.

(d) Except as provided in paragraph (e) of this section, each hold containing

material described in paragraph (a) of this section must be mechanically ventilated by at least two separate fans. The total ventilation must be at least five air changes per hour, based on the empty hold. Ventilation must not allow escaping gas to reach accommodation or work spaces, on or under deck.

(e) An unmanned barge which is provided with natural ventilation need not comply with paragraph (d) of this section.

(f) Each space adjacent to a hold containing material described in paragraph (a) of this section must be well ventilated with mechanical fans. No person may enter that space unless it has been tested to ensure that it is free from phosphine and arsine gases.

(g) Scuttles and windows in accommodation and work spaces adjacent to holds containing material described in paragraph (a) of this section must be kept closed while this material is being loaded and unloaded.

(h) Any bulkhead between a hold containing material described in paragraph (a) of this section and an accommodation or work space must be gas tight and adequately protected against damage from any unloading equipment.

(i) When a hold containing material described in paragraph (a) of this section is equipped with atmosphere sampling type smoke detectors with lines that terminate in accommodation or work spaces, those lines must be blanked off gas-tight.

(j) If a hold containing material described in paragraph (a) of this section must be entered at any time, the hatches must be open for two hours before entry to dissipate any accumulated gases. The atmosphere in the hold must be tested to ensure that there is no phosphine or arsine gas present.

(k) After unloading material described in paragraph (a) of this section, each cargo hold must be thoroughly cleaned and tested to ensure that no phosphine or arsine gas remains.

§ 148.260 Ferrous metal.

(a) This part does not apply to the stowage and transportation in bulk of stainless steel borings, shavings, turnings, or cuttings; nor does this part apply to an unmanned barge on a voyage entirely on the navigable waters of United States.

(b) Ferrous metal may not be stowed or transported in bulk unless the following conditions are met:

(1) All wooden sweat battens, dunnage, and debris must be removed from the hold before the ferrous metal is loaded;

(2) If weather is inclement during loading, hatches must be covered or otherwise protected to keep the material dry;

(3) During loading and transporting, the bilge of each hold in which ferrous metal is stowed or will be stowed must be kept as dry as practical;

(4) During loading, the ferrous metal must be compacted in the hold as frequently as practicable with a bulldozer or other means that provides equivalent surface compaction;

(5) No other material may be loaded in a hold containing ferrous metal unless—

(i) The material to be loaded in the same hold with the ferrous metal is not a material listed in Table 148.10 of this part or a readily combustible material;

(ii) The loading of the ferrous metal is completed first; and

(iii) The temperature of the ferrous metal in the hold is below 55 °C (131 °F) or has not increased in eight hours before the loading of the other material; and

(6) During loading, the temperature of the ferrous metal in the pile being loaded must be below 55 °C (131 °F).

(c) The master of a vessel that is loading or transporting a ferrous metal must ensure that the temperature of the ferrous metal is taken—

(1) Before loading;

(2) During loading, in each hold and pile being loaded, at least once every twenty-four hours and, if the temperature is rising, as often as is necessary to ensure that the requirements of this section are met; and

(3) After loading, in each hold, at least once every 24 hours.

(d) During loading, if the temperature of the ferrous metal in a hold is 93 °C (200 °F) or higher, the master must notify the Coast Guard Captain of the Port and suspend loading until the Captain of the Port is satisfied that the temperature of the ferrous metal is 88 °C (190 °F) or less.

(e) After loading ferrous metal—

(1) If the temperature of the ferrous metal in each hold is 65 °C (150 °F) or above, the master must notify the Coast Guard Captain of the Port, and the vessel must remain in the port area until the Captain of the Port is satisfied that the temperature of ferrous metal has shown a downward trend below 65 °C (150 °F) for at least eight hours after completion of loading of the hold; or

(2) If the temperature of the ferrous metal in each hold is less than 88 °C (190 °F) and has shown a downward trend for at least eight hours after the completion of loading, the master must notify the Coast Guard Captain of the Port, and the vessel must remain in the port area until the Captain of the Port confirms that the vessel is sailing directly to another port, no further than 12 hours sailing time, for the purpose of loading more ferrous metal in bulk or to completely off-load the ferrous metal.

(f) Except for shipments of ferrous metal in bulk which leave the port of loading under the conditions specified in paragraph (e)(2) of this section, if after the vessel leaves the port, the temperature of the ferrous metal in the hold rises above 65 °C (150 °F), the master must notify the nearest Coast Guard Captain of the Port as soon as possible of—

(1) The name, nationality, and position of the vessel;

(2) The most recent temperature taken;

(3) The length of time that the temperature has been above 65 °C (150 °F) and the rate of rise, if any;

(4) The port where the ferrous metal was loaded and the destination of the ferrous metal;

(5) The last port of call of the vessel and its next port of call;

(6) What action has been taken; and

(7) Whether any other cargo is endangered.

§ 148.265 Fish meal or fish scrap.

(a) This part does not apply to fish meal or fish scrap that contains less than 5 percent moisture by weight.

(b) Fish meal or fish scrap may contain a maximum of 12 percent moisture by weight and a maximum of 15 percent fat by weight.

(c) At the time of production, fish meal or fish scrap must be treated with an effective antioxidant (at least 400 mg/kg (ppm) ethoxyquin, at least 1000 mg/kg (ppm) butylated hydroxytoluene, or at least 1000 mg/kg (ppm) of tocopherol-based liquid antioxidant).

(d) Shipment of the fish meal or fish scrap must take place a maximum of 12 months after the treatment prescribed in paragraph (c) of this section.

(e) Fish meal or fish scrap must contain at least 100 mg/kg (ppm) of ethoxyquin or butylated hydroxytoluene or at least 250 mg/kg (ppm) of tocopherol-based antioxidant at the time of shipment.

(f) At the time of loading, the temperature of the fish meal or fish scrap to be loaded may not exceed 35 °C (95 °F), or 5 °C (41 °F) above the ambient temperature, whichever is higher.

(g) For each shipment of fish meal or fish scrap, the shipper must give the master a written certification stating—

(1) The total weight of the shipment;

(2) The moisture content of the material;

(3) The fat content of the material;
(4) The type of antioxidant and its concentration in the fish meal or fish scrap at the time of shipment;
(5) The date of production of the material; and
(6) The temperature of the material at the time of shipment.
(h) During a voyage, temperature readings must be taken of fish meal or fish scrap three times a day and recorded. If the temperature of the material exceeds 55 °C (131 °F) and continues to increase, ventilation to the hold must be restricted. This paragraph does not apply to shipments by unmanned barge.

§ 148.270 Hazardous substances.

(a) Each bulk shipment of a hazardous substance must—
(1) Be assigned a shipping name in accordance with 49 CFR 172.203(c); and
(2) If the hazardous substance is also listed as a hazardous solid waste in 40 CFR part 261, follow the applicable requirements of 40 CFR chapter I, subchapter I.
(b) Each release of a quantity of a designated substance equal to or greater than the reportable quantity, as set out in Table 1 to Appendix A of 49 CFR 171.101, when discharged into or upon the navigable waters of the United States, adjoining shorelines, into or upon the contiguous zone, or beyond the contiguous zone, must be reported as required in Subpart B of 33 CFR part 153.
(c) A hazardous substance must be stowed in a hold or barge that is closed or covered and prevents dispersal of the material during transportation.
(d) During cargo transfer operations, a spill or release of a hazardous substance must be minimized to the greatest extent possible. Each release must be reported as required in paragraph (b) of this section.
(e) After a hazardous substance is unloaded, the hold in which it was carried must be cleaned thoroughly. The residue of the substance must be disposed of pursuant to 33 CFR parts 151.55 through 151.77 and the applicable regulations of 40 CFR subchapter I.

§ 148.275 Iron oxide, spent; iron sponge, spent.

(a) Before spent iron oxide or spent iron sponge is loaded in a closed hold, the shipper must give the master a written certification that the material has been cooled and weathered for at least eight weeks.
(b) Both spent iron oxide and spent iron sponge may be transported on open hold all-steel barges after exposure to air for a period of at least ten days.

§ 148.280 Magnesia, unslaked (lightburned magnesia, calcined magnesite, caustic calcined magnesite).

(a) This part does not apply to the transport of natural magnesite, magnesium carbonate, or magnesia clinkers.
(b) When transported by barge, unslaked magnesia must be carried in an unmanned, all-steel, double-hulled barge equipped with weathertight hatches or covers. The barge may not carry any other cargo while unslaked magnesia is on board.
(c) The shipping paper requirements in § 148.60 and the dangerous cargo manifest requirements in § 148.70 do not apply to unslaked magnesia transported under the requirements of paragraph (b) of this section.

§ 148.285 Metal sulfide concentrates.

(a) When information given by the shipper under § 148.60 indicates that the metal sulfide concentrate may generate toxic or flammable gases, the appropriate gas detection equipment from §§ 148.415 and 148.420 must be on board the vessel.
(b) No cargo hold containing a metal sulfide concentrate may be ventilated.
(c) No person may enter a hold containing a metal sulfide concentrate unless—
(1) The atmosphere in the cargo hold has been tested and contains sufficient oxygen to support life and, where the shipper indicates that toxic gas(es) may be generated, the atmosphere in the cargo hold has been tested for the toxic gas(es) and the concentration of the gas(es) is found to be less than the TLV; or
(2) An emergency situation exists and the person entering the cargo hold is wearing the appropriate self-contained breathing apparatus.

§ 148.290 Peat moss.

(a) Before shipment, peat moss must be stockpiled under cover to allow drainage and reduce its moisture content.
(b) The cargo must be ventilated so that escaping gases cannot reach living quarters on or above deck.
(c) Persons handling or coming into contact with peat moss must wear gloves, a dust mask, and goggles.

§ 148.295 Petroleum coke, calcined or uncalcined, at 55 °C (131 °F) or above.

(a) This part does not apply to shipments of petroleum coke, calcined or uncalcined, on any vessel when the temperature of the material is less than 55 °C (131 °F).
(b) Petroleum coke, calcined or uncalcined, or a mixture of calcined and uncalcined petroleum coke may not be loaded when its temperature exceeds 107 °C (225 °F).
(c) No other hazardous materials may be stowed in any hold adjacent to a hold containing petroleum coke except as provided in paragraph (d) of this section.
(d) Before petroleum coke at 55 °C (131 °F) or above may be loaded into a hold over a tank containing fuel or material having a flashpoint of less than 93 °C (200 °F), a 0.6 to 1.0 meter (2 to 3 foot) layer of the petroleum coke at a temperature not greater than 43 °C (110 °F) must first be loaded.
(e) Petroleum coke must be loaded as follows:
(1) For a shipment in a hold over a fuel tank, the loading of a cooler layer of petroleum coke in the hold as required by paragraph (d) of this section must be completed before loading the petroleum coke at 55 °C (131 °F) or above in any hold of the vessel;
(2) Upon completion of the loading described in paragraph (e)(1) of this section, a 0.6 to 1.0 meter (2 to 3 foot) layer of the petroleum coke at 55 °C (131 °F) or above must first be loaded into each hold, including those holds already containing a cooler layer of the petroleum coke; and
(3) Upon completion of the loading described in paragraph (e)(2) of this section, normal loading of the petroleum coke may be completed.
(f) The master of the vessel must warn members of a crew that petroleum coke is hot, and that injury due to burns is possible.
(g) During the voyage, the temperature of the petroleum coke must be monitored often enough to detect spontaneous heating.

§ 148.300 Radioactive materials.

(a) Radioactive materials that may be stowed or transported in bulk are limited to those radioactive materials defined in 49 CFR 173.403 as Low Specific Activity Material, LSA–1, or Surface Contaminated Object, SCO–1.
(b) Skin contact, inhalation or ingestion of dusts generated by Class 7 material listed in Table 148.10 of this part must be minimized.
(c) Each hold used for the transportation of Class 7 material (radioactive) listed in Table 148.10 of this part must be surveyed after the completion of off-loading by a qualified person using appropriate radiation detection instruments. Such holds must not be used for the transportation of any other material until the non-fixed contamination on any surface, when averaged over an area of 300 cm^2, does not exceed the following levels:

(1) 4.0 Bq/cm² (10^{-4} uCi/cm²) for beta and gamma emitters and low toxicity alpha emitters, natural uranium, natural thorium, uranium-235, uranium-238, thorium-232, thorium-228 and thorium-230 when contained in ores or physical or chemical concentrates, and radionuclides with a half-life of less than 10 days; and

(2) 0.4 Bq/cm² (10^{-5} uCi/cm²) for all other alpha emitters.

§ 148.310 Seed cake.

(a) This part does not apply to solvent-extracted rape seed meal, pellets, soya bean meal, cotton seed meal, or sunflower seed meal that—

(1) Contains a maximum of 4 percent vegetable oil and a maximum of 15 percent vegetable oil and moisture combined; and

(2) As far as practical, is free from flammable solvent.

(b) This part does not apply to mechanically expelled citrus pulp pellets containing not more than 2.5 percent oil and a maximum of 14 percent oil and moisture combined.

(c) Before loading, the seed cake must be aged per the instructions of the shipper.

(d) Before loading, the shipper must give the master or person in charge of a barge a certificate from a competent testing laboratory stating the oil and moisture content of the seed cake.

(e) The seed cake must be kept as dry as practical at all times.

(f) If the seed cake is solvent-extracted, it must be—

(1) As free as practical from flammable solvent; and

(2) Stowed in a mechanically ventilated hold.

(g) For a voyage with a planned duration greater than 5 days, the vessel must be equipped with facilities for introducing carbon dioxide or another inert gas into the hold.

(h) Temperature readings of the seed cake must be taken at least once in every 24-hour period. If the temperature exceeds 55 °C (131 °F) and continues to increase, ventilation to the cargo hold must be discontinued. If heating continues after ventilation has been discontinued, carbon dioxide or the inert gas required under paragraph (g) of this section must be introduced into the hold. If the seed cake is solvent-extracted, the use of inert gas must not be introduced until fire is apparent, to avoid the possibility of igniting the solvent vapors by the generation of static electricity.

(i) Seed cake must be carried under the terms of a Special Permit issued by the Commandant (CG–5223) per subpart B of this part if—

(1) The oil was mechanically expelled; and

(2) It contains more than 10 percent vegetable oil or more than 20 percent vegetable oil and moisture combined.

§ 148.315 Sulfur.

(a) This part applies to lump or coarse grain powder sulfur only. Fine-grained powder (“flowers of sulfur”) may not be transported in bulk.

(b) After the loading or unloading of lump or coarse grain powder sulfur has been completed, sulfur dust must be removed from the vessel’s decks, bulkheads, and overheads. Cargo residues and deck sweepings must be disposed of pursuant to 33 CFR parts 151.55 through 151.77.

(c) A cargo space that contains sulfur or the residue of a sulfur cargo must be adequately ventilated, preferably by mechanical means. Each ventilator intake must be fitted with a spark-arresting screen.

§ 148.320 Tankage; garbage tankage; rough ammonia tankage; or tankage fertilizer.

(a) This part applies to rough ammonia tankage in bulk that contains 7 percent or more moisture by weight, and garbage tankage and tankage fertilizer that contains 8 percent or more moisture by weight.

(b) Tankage to which this part applies may not be loaded in bulk if its temperature exceeds 38 °C (100 °F).

(c) During the voyage, the temperature of the tankage must be monitored often enough to detect spontaneous heating.

§ 148.325 Wood chips; wood pellets; wood pulp pellets.

(a) This part applies to wood chips and wood pulp pellets in bulk that may oxidize, leading to depletion of oxygen and an increase in carbon dioxide in the cargo hold.

(b) No person may enter a cargo hold containing wood chips, wood pellets, or wood pulp pellets, unless—

(1) The atmosphere in the cargo hold has been tested and contains enough oxygen to support life; or

(2) The person entering the cargo hold is wearing the appropriate self-contained breathing apparatus.

§ 148.330 Zinc ashes; zinc dross; zinc residues; zinc skimmings.

(a) The shipper must inform the cognizant Coast Guard Captain of the Port in advance of any cargo transfer operations involving zinc ashes, zinc dross, zinc residues, or zinc skimmings (collectively, “zinc material”) in bulk.

(b) Zinc material must be aged by exposure to the elements for at least one year before shipment in bulk.

(c) Before loading in bulk, zinc material must be stored under cover for a period of time to ensure that it is as dry as practical. No zinc material that is wet may be accepted for shipment.

(d) Zinc material may not be loaded in bulk if its temperature is greater than 11.1 °C (52 °F) in excess of the ambient temperature.

(e) Paragraphs (e)(1) through (e)(5) of this section apply only when zinc materials are carried by a cargo vessel:

(1) Zinc material in bulk must be stowed in a mechanically ventilated hold that—

(i) Is designed for at least one complete air change every 30 minutes based on the empty hold;

(ii) Has explosion-proof motors approved for use in Class I, Division 1, Group B atmospheres or equivalent motors approved by the vessel’s flag state administration for use in hydrogen atmospheres; and

(iii) Has nonsparking fans.

(2) Combustible gas detectors capable of measuring hydrogen concentrations of 0 to 4.1 percent by volume must be permanently installed in holds that will carry zinc material. If the concentration of hydrogen in the space above the cargo exceeds 1 percent by volume, the ventilation system must be run until the concentration drops below 1 percent by volume.

(3) Thermocouples must be installed approximately 6 inches below the surface of the zinc material or in the space immediately above the zinc material. If an increase in temperature is detected, the mechanical ventilation system required by paragraph (d) of this section must be used until the temperature of the zinc material is below 55 °C (131 °F).

(4) Except as provided in paragraph (e)(5) of this section, the cargo hatches of holds containing zinc material must remain sealed to prevent the entry of seawater.

(5) If the concentration of hydrogen is near 4.1 percent by volume and increasing, despite ventilation, or the temperature of the zinc material reaches 65 °C (150 °F), the cargo hatches should be opened provided that weather and sea conditions are favorable. When hatches are opened take care to prevent sparks and minimize the entry of water.

Subpart F—Additional Special Requirements

§ 148.400 Applicability.

Unless stated otherwise, the requirements of this subpart apply only to the shipment or loading of materials, listed in Table 148.10 of this part, for which Table 148.10 contains a reference to a section or paragraph of this subpart.

§ 148.405 Sources of ignition.

(a) Except in an emergency, no welding, burning, cutting, chipping, or other operations involving the use of fire, open flame, sparks, or arc-producing equipment, may be performed in a cargo hold containing a Table 148.10 material or in an adjacent space.

(b) A cargo hold or adjacent space must not have any flammable gas concentrations over 10 percent of the LFL before the master may approve operations involving the use of fire, open flame, or spark- or arc-producing equipment in that hold or adjacent space.

§ 148.407 Smoking.

When Table 148.10 of this part associates a material with a reference to this section, and that material is being loaded or unloaded, smoking is prohibited anywhere on the weatherdeck of the vessel. While such a material is on board the vessel, smoking is prohibited in spaces adjacent to the cargo hold and on the vessel's deck in the vicinity of cargo hatches, ventilator outlets, and other accesses to the hold containing the material. "NO SMOKING" signs must be displayed in conspicuous locations in the areas where smoking is prohibited.

§ 148.410 Fire hoses.

When Table 148.10 of this part associates a material with a reference to this section, a fire hose must be available at each hatch through which the material is being loaded.

§ 148.415 Toxic gas analyzers.

When Table 148.10 of this part associates a material with a reference to a paragraph in this section, each vessel transporting the material, other than an unmanned barge, must have on board a gas analyzer appropriate for the toxic gas listed in that paragraph. At least two members of the crew must be knowledgeable in the use of the equipment. The equipment must be maintained in a condition ready for use and calibrated according to the instructions of its manufacturer. The atmosphere in the cargo hold and adjacent spaces must be tested before a person is allowed to enter these spaces. If toxic gases are detected, the space must be ventilated and retested before entry. The toxic gases for which the requirements of this section must be met are:

(a) Arsine,
(b) Carbon monoxide,
(c) Hydrogen cyanide,
(d) Hydrogen sulfide,
(e) Phosphine, and
(f) Sulfur dioxide.

§ 148.420 Flammable gas analyzers.

When Table 148.10 of this part associates a material with a reference to a paragraph in this section, each vessel transporting the material, other than an unmanned barge, must have on board a gas analyzer appropriate for the flammable gas listed in that paragraph. At least two members of the crew must be knowledgeable in the use of the equipment. The equipment must be maintained in a condition ready for use, capable of measuring 0 to 100 percent LFL for the gas indicated, and calibrated in accordance with the instructions of its manufacturer. The atmosphere in the cargo hold must be tested before any person is allowed to enter. If flammable gases are detected, the space must be ventilated and retested before entry. The flammable gases for which the requirements of this section must be met are:

(a) Carbon monoxide,
(b) Hydrogen, and
(c) Methane.

§ 148.435 Electrical circuits in cargo holds.

During transport of a material that Table 148.10 of this part associates with a reference to this section, each electrical circuit terminating in a cargo hold containing the material must be electrically disconnected from the power source at a point outside of the cargo hold. The point of disconnection must be marked to prevent the circuit from being reenergized while the material is on board.

§ 148.445 Adjacent spaces.

When transporting a material that Table 148.10 of this part associates with a reference to this section, the following requirements must be met:

(a) Each space adjacent to a cargo hold must be ventilated by natural ventilation or by ventilation equipment safe for use in an explosive gas atmosphere;

(b) Each space adjacent to a cargo hold containing the material must be regularly monitored for the presence of the flammable gas indicated by reference to § 148.420. If the level of flammable gas in any space reaches 30 percent of the LFL, all electrical equipment that is not certified safe for use in an explosive gas atmosphere must be de-energized at a location outside of that space. This location must be labeled to prohibit reenergizing until the atmosphere in the space is tested and found to be less than 30 percent of the LFL;

(c) Each person who enters any space adjacent to a cargo hold or compartment containing the material must wear a self-contained breathing apparatus unless—

(1) The space has been tested, or is routinely monitored, for the appropriate flammable gas and oxygen;

(2) The level of flammable gas is less than 10 percent of the LFL; and

(3) The level of toxic gas, if required to be tested, is less than the TLV;

(d) No person may enter an adjacent space if the level of flammable gas is greater than 30 percent of the LFL. If emergency entry is necessary, each person who enters the space must wear a self-contained breathing apparatus and caution must be exercised to ensure that no sparks are produced.

§ 148.450 Cargoes subject to liquefaction.

(a) This section applies only to cargoes identified in Table 148.10 of this part with a reference to this section and cargoes identified in the IMSBC Code (incorporated by reference, see § 148.8) as cargoes that may liquefy.

(b) This section does not apply to—

(1) Shipments by unmanned barge; or

(2) Cargoes of coal that have an average particle size of 10mm (.394 in.) or greater.

(c) Definitions as used in this section—

(1) *Cargo subject to liquefaction* means a material that is subject to moisture migration and subsequent liquefaction if shipped with moisture content in excess of the transportable moisture limit.

(2) *Moisture migration* is the movement of moisture by settling and consolidation of a material, which may result in the development of a flow state in the material.

(3) *Transportable moisture limit* or *TML* of a cargo that may liquefy is the maximum moisture content that is considered safe for carriage on vessels.

(d) Except on a vessel that is specially constructed or specially fitted for the purpose of carrying such cargoes (*see* also section 7 of the IMSBC Code, incorporated by reference, *see* § 148.8), a cargo subject to liquefaction may not be transported by vessel if its moisture content exceeds its TML.

(e) The shipper of a cargo subject to liquefaction must give the master the material's moisture content and TML.

(f) The master of a vessel shipping a cargo subject to liquefaction must ensure that—

(1) A cargo containing a liquid is not stowed in the same cargo space with a cargo subject to liquefaction; and

(2) Precautions are taken to prevent the entry of liquids into a cargo space containing a cargo subject to liquefaction.

(g) The moisture content and TML of a material may be determined by the tests described in Appendix 2, Section 1, of the IMSBC Code (incorporated by reference, *see* § 148.8).

Dated: June 10, 2010.

F.J. Sturm,

Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2010–14464 Filed 6–11–10; 4:15 pm]

BILLING CODE 9110–04–P

Federal Register

Thursday,
June 17, 2010

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid

42 CFR Parts 412 and 413

Medicare Program; Supplemental Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Supplemental Proposed Fiscal Year 2011 Rates; Corrections; Proposed Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1498–CN2]

RIN 0938–AP80

Medicare Program; Supplemental Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Supplemental Proposed Fiscal Year 2011 Rates; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical and typographical errors in the supplementary proposed rule entitled "Medicare Program; Supplemental Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Supplemental Proposed Fiscal Year 2011 Rates" which appeared in the June 2, 2010 **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–12567 of June 2, 2010, there were technical and typographical errors that are identified and corrected in the Correction of Errors section below.

II. Summary of Errors

On page 30920, in our discussion of Frontier counties, we inadvertently omitted the term "frontier counties" when referencing the statutory definition of the term. We correct this error in section IV.A.1. of this correction notice.

On page 30921, in our discussion of the proposed revisions for FY 2011 to Table 4J, we inadvertently omitted a discussion of the data use error we made when calculating the out-migration adjustment values presented in the May 4, 2010 FY 2011 IPPS/LTCH PPS proposed rule and that the out-migration adjustment values in revised Table 4J are based on corrected wage data as well as the changes made in accordance with the Affordable Care Act. We correct this error in section IV.A.2. of this correction notice.

In our preamble discussion and the regulations text regarding payment adjustment for low-volume hospitals (pages 30924 and 30925, and pages 30972 and 30973, respectively), we made several typographical and technical errors. In the table that references the number of Medicare discharges and the payment adjustment add-on percentage, we inadvertently indicated that one of the discharge ranges was 201–301 instead of 201–300. Therefore, in section IV.B.2.b. of this correction notice, we correct this error. We also correct the other typographical and technical errors regarding the payment adjustment for low-volume hospitals in sections IV.A.3. and 4. and B.1. and 2.a. of this correction notice.

On page 30966, in our preamble discussion regarding the long-term care hospital prospective payment system (LTCH PPS), we made a typographical error in an internal cross-reference to a specific section of the preamble of the supplemental proposed rule which discussed changes to the LTCH PPS policies that were required by the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), as amended by the American Recovery and Reinvestment Act of 2009 (ARRA), and the Patient Protection and Affordable Care Act. We are correcting this error in section IV.A.5. of this correction notice.

On pages 31049 through 31057 in Table 4J.—Proposed Out-Migration Adjustment for Acute Care Hospitals—FY 2011, in the second column, we made an error in the fiscal year referenced in the column heading. Therefore, in section IV.C.1. of this correction notice we correct this error.

On page 31103, in our impact analysis discussion of the overall effect of geographic reclassification, we erroneously cited an adjustment of 0.995425. Therefore, in section IV.C.2. of this correction notice, we are correcting this error.

On page 31107, in our impact analysis discussion of the effects of additional payments to qualifying hospitals in low Medicare spending counties, we made errors in the figures regarding the spending for FY 2011 and FY 2012. Therefore, in section IV.C.3. of this correction notice we are correcting these errors.

On page 31117, we erroneously reference the date that the first FY 2011 hospital inpatient prospective payment systems/long-term care prospective payment system (IPPS/LTCH PPS) proposed rule appeared in the **Federal Register** as May 10, 2010 instead of May 4, 2010. Therefore, in section IV.C.4. of this correction notice, we correct these errors.

III. Waiver of 60-Day Comment Period

We ordinarily permit a 60-day comment period on notices of proposed rulemaking in the **Federal Register,** as provided in section 1871(b)(1) of the Act. However, this period may be shortened, as provided under section 1871(b)(2)(C) of the Act, when the Secretary finds good cause that a 60-day comment period would be impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

The changes made by this correction notice do not constitute agency rulemaking, and therefore the 60-day comment period does not apply. This correction notice merely corrects typographical and technical errors in the FY 2011 IPPS/LTCH PPS supplemental proposed rule and does not make substantive changes to either that proposed rule or the first FY 2011 IPPS/LTCH PPS proposed rule appearing in the May 4, 2010 **Federal Register** that would require additional time on which to comment. Instead, this correction notice is intended to ensure the accuracy of the FY 2011 IPPS/LTCH PPS supplemental proposed rule.

We further note that this document makes corrections to a supplemental proposed rule for which the Secretary has found good cause to shorten the required 60-day comment period; we refer readers to section III.B. of the FY 2011 IPPS/LTCH PPS supplemental proposed rule for additional discussion on that point. Therefore, to the extent that the 60-day comment period does apply, we find that good cause to shorten that period for the reasons set forth above, as well as for the reasons articulated in section III.B. of the FY 2011 IPPS/LTCH PPS supplemental proposed rule.

IV. Correction of Errors

In FR Doc. 2010–12567 of June 2, 2010, make the following corrections:

A. Corrections to the Preamble

1. On page 30920, third column, second full paragraph, line 10 and 11, the phrase "The statute defines as counties" is corrected to read "The statute defines Frontier Counties as counties"

2. On page 30921, first column, third full paragraph, line 4, after the sentence that ends with the phrase "Affordable Care Act." the paragraph is corrected by adding the following sentences: "Also, Table 4J is revised to include corrected out-migration adjustment values due to an error in the calculation that was used for the FY 2011 IPPS/LTCH PPS

proposed rule, which appeared in the May 4, 2010 **Federal Register.** In the FY 2011 proposed rule, the out-migration adjustment was erroneously calculated based on data from 2008, 2009, and 2010 rather than data from 2009, 2010, and 2011. The out-migration adjustment included in this FY 2011 supplemental proposed rule reflects these changes."

3. On page 30924—

a. First column, fourth full paragraph, line l, the word "Section" is corrected to read "Sections."

b. Second column, first partial paragraph, line 1, the phrase "We therefore" is corrected to read "Therefore, we"

c. Third column, first full paragraph, lines 9 and 10, the phrase "under Part B," see section 1852(a)(1)(B)(i) of the Act." is corrected to read "under Part B." (*See* section 1852(a)(1)(B)(i) of the Act.)"

4. On page 30925—

a. First column second full paragraph, line 1 and 2, the reference "sections 3125(4) of Pub. L. 111–148 and 10314(2), " is corrected to read "sections 3125 and 10314 of Pub. L. 111–148."

b. Second column, first full paragraph, last line, the phrase "qualifying criteria," is corrected to read "qualifying criteria.".

5. On page 30966, first column, last paragraph, line 1, the reference "section XX" is corrected to read "section II.I. of the preamble of this supplemental proposed rule."

B. Corrections to the Regulations Text

1. On page 30972, third column—

a. Second full paragraph, lines 1 and 2 (definition of Medicare discharges), the phrase "discharge of inpatients" is corrected to read "discharges of inpatients."

b. Sixth full paragraph, line 9, the parenthetical statement "(of this section" is corrected to read "(of this section)".

c. Eighth full paragraph, lines 3 through 9, the phrase "Medicare and non-Medicare, during" is corrected to read "Medicare and non-Medicare discharges, during".

2. On page 30973—

a. First column, first partial paragraph, lines 1 and 2, the parenthetical phrase, "(as defined in paragraph (a) of this section)" is corrected to read "(that is, Medicare discharges as defined in paragraph (a) of this section)."

b. First column, fourth full paragraph, in the table, the Medicare discharge range "201–301" is corrected to read "201–300."

C. Corrections to the Addendum and Appendix

1. On pages 31049 through 31057, in Table 4J.—Proposed Out-Migration Adjustment for Acute Care Hospitals—FY 2011, second column, the column heading "Reclassified for FY 2010" is corrected to read "Reclassified for FY 2011."

2. On page 31103, first column, first full paragraph, line 5, the figure "0.995425" is corrected to read "0.991476."

3. On page 31107, third column, last paragraph, lines 12 and 13, the phrase "$200 million in FY 2011 and $200 million in FY 2012" is corrected to read "$150 million in FY 2011 and $250 million in FY 2012."

4. On page 31117—

a. Top of the page,

1. First column, first partial paragraph, line 11, the date "May 10, 2010" is corrected to read "May 4, 2010."

2. Third column, first partial paragraph, lines 10 and 11, the date "May 10, 2010" is corrected to read "May 4, 2010."

b. Middle of the page, second column, first partial paragraph, last line, the date "May 10, 2010" is corrected to read "May 4, 2010."

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 15, 2010.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2010–14808 Filed 6–15–10; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1406–CN2]

RIN 0938–AQ03

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates: Final Fiscal Year 2010 Wage Indices and Payment Rates Implementing the Affordable Care Act; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of notice.

SUMMARY: This document corrects technical errors in the notice entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates: Final Fiscal Year 2010 Wage Indices and Payment Rates Implementing the Affordable Care Act" which appeared in the June 2, 2010 **Federal Register**.

DATES: *Effective Date:* This document corrects technical errors that appeared in a notice that described revised standard Federal rates effective for payment years beginning October 1, 2009. Hospitals are paid based on the rates published in that notice, as corrected by this document, for discharges on or after April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–12563 of June 2, 2010 (that is, the fiscal year 2010 hospital inpatient prospective payment systems/rate year 2010 long-term care hospital prospective payment system (FY 2010 IPPS/RY 2010 LTCH PPS) notice), there were several technical and typographic errors that are identified and corrected in the Correction of Errors section below. This document corrects technical errors that appeared in the FY 2010 IPPS/RY 2010 LTCH PPS notice that described revised standard Federal rates effective for payment years beginning October 1, 2009. Hospitals are paid based on the rates published in that notice, as corrected by this document, for discharges on or after April 1, 2010.

II. Summary of Errors

In the Addendum to the notice, we made technical and typographical errors in the titles of the Tables 1A through 1E and 4J. In Tables 1A through 1E, we inadvertently indicated that the values listed in the tables were applicable to payments made for discharges on or after October 1, 2009 through discharges on or before September 30, 2010 instead of the second half of the fiscal year which is April 1, 2010 through September 30, 2010. Although these rates are effective for all of FY 2010 and RY 2010 as applicable, hospitals were not paid on the basis of the rates until April 1, 2010. Therefore, in section III. 1. and 2. of this notice, we correct this error in the listing of tables on page 31147 as well as the table headings on page 31148. In Table 4J, we made errors in the table heading in this list of tables and the table heading and table description that immediately precede the table. We are correcting these errors in section III.5. of this correction notice.

In addition, we inadvertently included two section 508 hospitals in the FY 2010 wage index as reclassified under the Medicare Geographic Classification Review Board (MGCRB) rather than assigning them their section 508 reclassification. Therefore, in section III.3., 4. and 6.b. of this notice, we are correcting, Tables 2, 4C, and 9B. In Table 9B, we also inadvertently titled the third column "Geographic CBSA" instead of "Section 508 Reclassification CBSA." We are correcting this error in section III.6.a. of this correction notice.

III. Correction of Errors

In FR Doc. 2010–12563 of June 2, 2010, make the following corrections:

1. On page 31147,

a. First column, in the title for Table 1A, the date "October 1, 2009" is corrected to read "April 1, 2010."

b. Second column—

(1) In the title for Table 1B, the date "October 1, 2009" is corrected to read "April 1, 2010."

(2) In the title for Table 1C, the date "October 1, 2009" is corrected to read "April 1, 2010."

(3) In the title for Table 1D, the date "October 1, 2009" is corrected to read "April 1, 2010."

(4) In the title for Table 1E, the date "October 1, 2009" is corrected to read "April 1, 2010."

(5) In the title for Table 2, the parenthetical phrase, "(April 1, 2010 through September 30, 2010)" is corrected to read "(April 1, 2010 through September 30, 2010 unless otherwise footnoted)."

c. Third column, the title, "Table 4J.—Out-Migration Adjustment—FY 2010 (April 1, 2010 through September 30, 2010)" is corrected to read "Table 4J.—(Abbreviated) Out-Migration Adjustment for Acute Care Hospitals—FY 2010 (April 1, 2010 through September 30, 2010)"

2. On page 31148—

a. First column—

(1) In the title for Table 1A, in the bracketed statement, the date "October 1, 2009" is corrected to read "April 1, 2010."

(2) In the title for Table 1B, in the bracketed statement, the date "October 1, 2009" is corrected to read "April 1, 2010."

(3) In the title for Table 1C, in the bracketed statement, the date "October 1, 2009" is corrected to read "April 1, 2010."

b. Second column

(1) In the title for Table 1D, in the bracketed statement, the date "October 1, 2009" is corrected to read "April 1, 2010."

(2) In the title for Table 1E, in the bracketed statement, the date "October 1, 2009" is corrected to read "April 1, 2010."

3. On pages 31148 through 31211, in Table 2,

a. In the title for Table 2, the parenthetical phrase "(April 1, 2010 through September 30, 2010)" is corrected to read "(April 1, 2010 through September 30, 2010 unless otherwise footnoted)."

b. The listed entries are corrected to read as follows:

TABLE 2—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2008; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2010 (APRIL 1, 2010 THROUGH SEPTEMBER 30, 2010 UNLESS OTHERWISE FOOTNOTED); HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2008 (2004 WAGE DATA), 2009 (2005 WAGE DATA), AND 2010 (2006 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES

Provider No.	Case-mix index [2]	FY 2010 wage index	Average hourly wage FY 2008	Average hourly wage FY 2009	Average hourly wage FY 2010 [1]	Average hourly wage ** (3 years)
070006 [6]	1.5739	1.2695	39.3935	41.2165	41.9550	40.8714
070010 [6]	1.6536	1.2695	36.7227	38.6114	38.7345	38.0240
070015	1.5383	1.2695	37.3454	39.9249	42.4738	39.9522
070018 [6]	1.4603	1.2695	41.8460	42.4771	44.1370	42.8524
070028 [6]	1.5644	1.2695	38.0855	40.9645	41.2950	40.1488
070033	1.4800	1.2695	41.7955	44.6717	46.5982	44.4108
070034 [6]	1.4667	1.2695	40.1685	42.4111	45.7694	42.8155
070036 [6]	1.6717	1.2886	42.3391	43.6374	44.0756	43.3656
310002	1.8480	1.2769	37.8652	37.9484	39.7599	38.5483
310009	1.4222	1.2769	33.6165	35.4624	37.9098	35.6657
310015	1.9526	1.2769	39.2928	40.8229	39.5076	39.8655
310017	1.3448	1.2769	35.7308	35.9806	34.8881	35.5276
310018	1.1786	1.2769	32.9704	32.6956	33.5069	33.0673
310021 [6]	1.6643	1.2769	31.6562	32.2064	33.2554	32.3743
310028 [6]	1.1675	1.2769	33.9911	34.8332	37.2987	35.4152
310038	1.9228	1.2769	36.3344	39.8707	40.7395	39.0018
310039	1.3348	1.2769	33.2100	32.6425	33.4253	33.0853
310050 [6]	1.3393	1.2769	32.3686	37.9214	32.5213	34.0930
310051 [6]	1.5305	1.2769	38.1174	39.7671	37.9104	38.5967
310054	1.4187	1.2769	36.9095	38.2432	37.2851	37.4826
310060 [6]	1.2940	1.2769	27.8242	27.9134	30.4626	28.7274
310070	1.4413	1.2769	36.3279	36.9999	36.8951	36.7447
310076	1.7144	1.2769	37.5163	38.1671	39.0325	38.2365
310083	1.3697	1.2769	31.9151	28.3406	28.2875	29.3819
310093	1.2441	1.2769	30.2860	32.3860	33.4460	32.0464
310096	1.8766	1.2769	35.0707	34.2014	36.3201	35.2111
310108	1.4508	1.2769	34.5866	36.2848	38.3403	36.4174
310115 [6]	1.3215	1.2769	31.9208	32.1197	33.7061	32.6067
310119	1.8872	1.2769	41.5702	41.2997	46.1339	42.9802
310120 [6]	1.1045	1.2769	33.3861	35.1661	36.3365	34.9295
330023 [6]	1.5109	1.2930	36.4736	37.5135	40.9595	38.3939
330027	1.3567	1.2930	45.1920	45.9571	49.0573	46.6599
330049 [6]	1.5474	1.2930	34.8585	34.9740	38.0110	36.0057
330067 [6]	1.4022	1.2930	29.2571	30.7537	31.5572	30.4995
330126 [6]	1.3626	1.2930	36.5689	37.7807	40.0542	38.1472
330135 [6]	1.2423	1.2930	32.0525	33.2314	35.3624	33.5938
330167	1.6734	1.2930	39.1251	39.2421	40.8753	39.7618
330181	1.3412	1.2930	43.0977	46.2181	47.2523	45.4811
330182	2.2325	1.2930	41.3033	42.7962	46.6346	43.5697
330198	1.4522	1.2930	34.8985	35.8715	37.9641	36.3109
330205 [6]	1.2381	1.2930	33.9418	35.3792	37.0171	35.4769
330225	1.2075	1.2930	35.7651	32.9036	33.7052	34.1540
330259	1.5187	1.2930	36.4788	39.0213	38.5914	37.9800
330331	1.3291	1.2930	41.2694	44.1734	44.3947	43.3044
330332	1.3587	1.2930	37.0111	38.6932	40.8557	38.8521
330372	1.2862	1.2930	35.1297	37.0323	40.3348	37.4455

[6] The wage index for these section 508 and special exception providers are effective October 1, 2009 due to section 3137, as amended by section 10317 of the Affordable Care Act.

4. On pages 31206 through 31209, in Table 4C, the wage index and geographic adjustment factors for the listed entries are corrected to read as follows:

TABLE 4C—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR ACUTE CARE HOSPITALS THAT ARE RECLASSIFIED BY CBSA AND BY STATE—FY 2010 (APRIL 1, 2010 THROUGH SEPTEMBER 30, 2010)

[Wage Index includes rural floor budget neutrality adjustment]

CBSA Code	Area	State	Wage index	GAF
35644	New York–White Plains–Wayne, NY–NJ	CT	1.2695	1.1775
35644	New York–White Plains–Wayne, NY–NJ	NJ	1.2769	1.1822
35644	New York–White Plains–Wayne, NY–NJ	NY	1.2930	1.1924

5. On page 31211, in Table 4J, the table title and description are corrected to read as follows:

Table 4J—(Abbreviated) Out-Migration Adjustment for Acute Care Hospitals—FY 2010 (April 1, 2010 Through September 30, 2010)

The following abbreviated version of Table 4J lists one hospital that is added to the list of hospitals eligible to have their area wage index increased by the out-migration adjustment as a result of the implementation of the provisions of the Affordable Care Act. Hospitals cannot receive the out-migration adjustment if they are reclassified under section 1886(d)(10) of the Act or redesignated under section 1886(d)(8)(B) of the Act or if they are receiving a section 508 reclassification or special exception wage index. Hospitals that have already been reclassified under section 1886(d)(10) of the Act or redesignated under section 1886(d)(8)(B) of the Act, or that will now receive a section 508 reclassification or special exception wage index are designated with an asterisk.

6. On pages 31212 through 31213, in Table 9B—

a. Third column, the column heading "Geographic CBSA" is corrected to read "Section 508 Reclassification CBSA."

b. The table is corrected by adding the following providers:

TABLE 9B—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL UNDER SECTION 508 OF PUBLIC LAW 108–173

[Revised as of April 1, 2010 and effective October 1, 2009 through September 30, 2010]

Provider No.	Note	Section 508 reclassification CBSA	Wage index CBSA section 508 reclassification	Own wage index
070010		35644	1.2695	
070028		35644	1.2695	

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance with section 553(d) of the APA. However, we can waive this notice and comment procedure and the 30-day delay in the effective date if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

The changes made by this notice do not constitute agency rulemaking. This correction notice merely corrects typographical and technical errors in the addendum of the FY 2010 IPPS/RY 2010 LTCH PPS notice and does not make substantive changes to either that notice or the policies or methodologies set forth in the FY 2010 IPPS/RY 2010 LTCH PPS final rule. Instead, this correction notice is intended to ensure that the FY 2010 IPPS/RY 2010 LTCH PPS notice accurately describes the changes to the FY 2010 IPPS and RY 2010 LTCH PPS payment amounts required by the Affordable Care Act. We further note that this document makes corrections to a notice that itself did not constitute agency rulemaking; we refer readers to section III.B. of the FY 2010 IPPS/RY 2010 LTCH PPS notice for additional discussion on that point.

However, to the extent that notice and comment rulemaking or a delay in effective date or both would otherwise apply, we find that notice and comment rulemaking and a delay in effective date would be unnecessary and impracticable for the reasons set forth above, as well as for the reasons articulated in section III.B. of the FY 2010 IPPS/RY 2010 LTCH PPS notice.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 15, 2010.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2010–14810 Filed 6–15–10; 4:15 pm]

BILLING CODE 4120–01–P

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