6–18–10 Friday
Vol. 75 No. 117 June 18, 2010

Pages 34617–34922

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2010–10 of June 8, 2010

Unexpected Urgent Refugee and Migration Needs Related to Somalia and Food Pipeline Breaks for Refugee and Other Displaced Populations of Concern Globally

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and the laws of the United States, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (the "Act"), as amended, (22 U.S.C.2601), I hereby determine, pursuant to section 2(c)(1) of the Act, that it is important to the national interest to furnish assistance under the Act, in an amount not to exceed $33 million from the United States Emergency Refugee and Migration Assistance Fund, for the purpose of meeting unexpected and urgent refugee and migration needs, including by contributions to international, governmental, and nongovernmental organizations and payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State, related to humanitarian needs of refugees, conflict victims, and internally displaced persons in Africa, Asia, South America, and the Middle East.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, June 8, 2010.

[FR Doc. 2010–14879
Filed 6–17–10; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 702, 704, 708a, 708b, 709, 711, 712, 715, 716, 717, 721, 722, 741, 742, 745, 747, 790, 791, 792, 793, and 795

Technical Amendments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; technical amendments.

SUMMARY: NCUA is amending a number of its regulations to make minor technical corrections. The amendments update the regulations and make other grammatically necessary corrections. The amendments are intended to provide helpful changes to NCUA's regulations.

DATES: This rule is effective June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA continually reviews its regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." NCUA Interpretive Rulings and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. In 2009, NCUA internally reviewed its regulations as part of a publication process and took the opportunity to update, clarify and simplify its regulations. Based on this review, NCUA determined minor revisions to certain regulations would be helpful.

B. Regulatory Changes

This rule provides minor technical corrections and will not cause any regulatory changes.

C. Regulatory Procedures

Final Rule Under the Administrative Procedure Act

NCUA is issuing this rulemaking as a final rule, effective upon publication. Generally, the Administrative Procedure Act (APA) requires a rulemaking to be published as a notice of proposed rulemaking with the opportunity for public comment, unless the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553. NCUA believes good cause exists for issuing these amendments without notice and public comment. The amendments in this rule are not substantive but merely technical in that they make minor corrections, provide clarification or update the regulations.

Additionally, the APA requires that a final rule must have a delayed effective date of 30 days from the date of publication, except for good cause. 5 U.S.C. 553(d). NCUA also finds good cause to waive the customary 30-day delayed effective date requirement under the APA. 5 U.S.C. 553(d)(3). The rule will, therefore, be effective immediately upon publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those credit unions under ten million dollars in assets). This rule does not impose any regulatory burden. It merely makes non-substantive technical changes to certain sections of NCUA's regulations. This rule will not have a significant economic impact on a substantial number of small credit unions; thus, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so this rule may be reviewed.

List of Subjects

12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 704

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12 CFR Part 708a

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12 CFR Part 709

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12 CFR Part 711

Antitrust, Credit unions, Holding companies.

12 CFR Part 712

Administrative practice and procedure, Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 715

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12 CFR Part 716

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12 CFR Part 721

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12 CFR Part 722

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12 CFR Part 741

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12 CFR Part 742

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12 CFR Part 745

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions.

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12 CFR Part 792

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12 CFR Part 793

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Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on May 4, 2010.

Mary Rupp,

Secretary of the Board.

■ Accordingly, under the authority 12 U.S.C. 1752a, NCUA is amending 12 CFR chapter VI as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761A, 1761B, 1766, 1767, 1782, 1784, 1786, 1787, 1789, Section 701.6 is also authorized by 15 U.S.C. 1601, *et seq.;* 42 U.S.C. 1981 and 3601–3610, Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.14 [Amended]

■ 2. Section 701.14 is amended by removing in paragraphs (b)(3)(i)(A), (B), and (C) the word "Camel" and adding in its place the word "CAMEL".

§ 701.21 [Amended]

■ 3. Section 701.21 is amended by:
■ a. Removing in paragraph (b)(1) introductory text the word "NCUA's" appearing in the first sentence and adding in its place the word "NCUA".
■ b. Removing in paragraph (c)(5) the citation "§ 723.8 and 723.9" and adding in its place the citation "§§ 723.8 and 723.9".
■ c. Removing in paragraph (c)(8)(ii), in the definition of "Compensation", the words "non monetary" and adding in their place the word "non-monetary".
■ d. Removing in paragraph (c)(8)(iii)(D) the words "non senior management" and adding in their place the words "non-senior management."
■ e. Removing in paragraph (d)(4) introductory text the word "or" after the word "obligor" and before the word "endorser."
■ f. Removing in paragraph (d)(5)(iii) the comma after the words "family member of an official" and before the words "shall not be more favorable" in the first sentence.

Appendix A to Part 701 [Amended]

■ 4. Appendix A to Part 701 is amended by:
■ a. Adding in Article III, Section 5 introductory text a colon after the words "provided, however, that" at the end of the sentence.
■ b. Adding parentheses to enclose the letter "k" in Article IV, Section 4, paragraph (k).

PART 702—PROMPT CORRECTIVE ACTION

■ 5. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

§ 702.2 [Amended]

■ 6. Section 702.2 is amended by:
■ a. Adding a period after the section heading "Definitions".
■ b. Adding in paragraph (g) an end parenthesis after the words "(as defined in paragraph (f) of this section".
■ c. Adding in paragraph (g) an end parenthesis after the words "(as defined by a measure chosen under paragraph (j) of this section".

§ 702.103 [Amended]

■ 7. Section 702.103 introductory text is amended by adding the word "in" after the words "if the credit union meets both of the following criteria as reflected" and before the words "its most recent Call Report" in the first sentence.

§ 702.204 [Amended]

■ 8. Section 702.204(b)(3) is amended by removing the period after the words "as provided in § 702.202(b)(3)" and adding in its place a semicolon.

§ 702.205 [Amended]

■ 9. Section 702.205(a)(1) is amended by adding an end parenthesis after the words "(as defined in § 702.2(b)".

PART 704—CORPORATE CREDIT UNIONS

■ 10. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, 1789.

§ 704.5 [Amended]

■ 11. Section 704.5 is amended by:
■ a. Removing in paragraph (d)(4) the semicolon and the word "and" and

adding in their place a period after the words "agent ensures compliance" at the end of the second sentence.

■ b. Removing in the introductory text of paragraph (e) the word "*Lending*" and adding in its place the word "*lending,*"

§ 704.7 [Amended]

■ 12. Section 704.7 is amended by:

■ a. Removing in paragraph heading (c) the em dash after the words "*Loans to members*" and adding in its place a period.

■ b. Removing in paragraph heading (d) the em dash after the words "*Loans to nonmembers*" and adding in its place a period.

PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

■ 13. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785(b).

§ 708a.4 [Amended]

■ 14. Section 708a.4 is amended by redesignating the second paragraph (b)(4)(ii) as paragraph (b)(4)(iii).

PART 708b—MERGERS OF FEDERALLY INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

■ 15. The authority citation for Part 708b continues to read as follows:

Authority: 12 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

§ 708b [Amended]

■ 16. Section 708b.302 is amended by:

■ a. Removing the word "*Insurance*" in the section heading and adding in its place the word "*insurance*".

■ b. Adding in paragraph (b) a period after the words "The board of directors has concluded that the proposed conversion is desirable for the following reasons: (Insert reasons)" appearing in the third full paragraph of the form notice, under the subheading "INSURANCE CONVERSION."

■ c. Adding in paragraph (c) a period after the words "Please mail or bring it to: (Insert name of independent entity and address)" appearing in the first full paragraph of the form ballot.

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

■ 17. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1767, 1786(h), 1787, 1788, 1789, 1789a.

§ 709.4 [Amended]

■ 18. Section 709.4(a) is amended by removing the word "therefor" and adding in its place the word "therefore".

§ 709.9 [Amended]

■ 19. Section 709.9(f) introductory text is amended by removing the word "if" after the words "Before the end of the 90-day period beginning on the date a request" and before the word "filed" and adding in its place the word "is".

PART 711—MANAGEMENT OFFICIAL INTERLOCKS

■ 20. The authority citation for part 711 continues to read as follows:

Authority: 12 U.S.C. 1757 and 3201–3208.

§ 711.2 [Amended]

■ 21. Section 711.2(e) is amended by adding an end parenthesis after the citation "(12 U.S.C. 3201)" and before the words "having its principal office located in the United States".

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

■ 22. The authority citation for Part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

§ 712.5 [Amended]

■ 23. Section 712.5(c) is amended by removing the words "Business loan origination" and adding in their place the words "*Business loan origination.*"

PART 715—SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS

■ 24. The authority citation for part 715 continues to read as follows:

Authority: 12 U.S.C. 1761(b), 1761d, 1782(a)(6).

§ 715.5 [Amended]

■ 25. Section 715.5(b) is amended by removing the words "$10 Million" before the words "which does not choose to obtain an audit" and adding in its place the word "$10 million."

PART 716—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 26. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 6801 *et seq.,* 12 U.S.C. 1751 *et seq.*

§ 716.4 [Amended]

■ 27. Section 716.4(f)(1) is amended by adding the paragraph citation "(a)" after the words "requirements of paragraph" and before the words "of this section."

§ 716.6 [Amended]

■ 28. Section 716.6(e) paragraph heading is amended by removing the em dash after the word "*Examples*" and adding in its place a period.

PART 717—FAIR CREDIT REPORTING

■ 29. The authority citation for part 717 continues to read as follows:

Authority: 12 U.S.C. 1751 *et seq.;* 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681–1, 1681t, 1681w, 6801 and 6805, Pub. L. 108–159, 117 Stat. 1952.

§ 717.3 [Amended]

■ 30. Section 717.3(l) is amended by adding, in the definition of "Person", a comma after the word "estate" and before the word "cooperative."

§ 717.20 [Amended]

■ 31. Section 717.20 section heading is amended by adding a period after the words "*Coverage and definitions.*"

§ 717.25 [Amended]

■ 32. Section 717.25(b)(1)(v) is amended by removing the words "et seq" and adding in their place the words "*et seq.*"

§ 717.27 [Amended]

■ 33. Section 717.27(c)(2) is amended by removing the words "et seq" and adding in their place the words "*et seq.*"

PART 721—INCIDENTAL POWERS

■ 34. The authority citation for part 721 continues to read as follows:

Authority: 12 U.S.C. 1757(17), 1766, and 1789 1781.

§ 721.3 [Amended]

■ 35. Section 721.3(f) is amended by removing the words "Web site" appearing in the second sentence and adding in their place the word "website."

PART 722—APPRAISALS

■ 36. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, and 3339.

§ 722.2 [Amended]

■ 37. Section 722.2(f)(2) is amended by removing the semicolon after the words "well advised" and before the words "and acting" and adding in its place a comma.

PART 741—REQUIREMENTS FOR INSURANCE

■ 38. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

§ 741.8 [Amended]

■ 39. Section 741.8(c) is amended by removing the phrase "regional director" appearing in the penultimate sentence and adding in its place the word "NCUA."

PART 742—REGULATORY FLEXIBILITY PROGRAM

■ 40. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C. 1756, 1766.

§ 742.4 [Amended]

■ 41. Section 742.4 section heading is amended by removing the word "Relief" and adding in its place the word "relief."

PART 745—SHARE INSURANCE AND APPENDIX

■ 42. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351; 120 Stat. 1966.

§ 745.9–2 [Amended]

■ 43. Section 745.9–2(a) is amended by enclosing inside the quotation marks the comma appearing after the words "adequately capitalized."

Appendix to Part 745 [Amended]

■ 44. In Appendix to Part 745:
■ a. Section D, Example 1 is amended by removing the citation "§ 745.10(a)(2) and 745.3" appearing in the last sentence and adding in its place the citation "§§ 745.10(a)(2) and 754.3".
■ b. Section D, Example 5 is amended by removing the word "instrumentally" appearing in the second sentence and adding in its place the word "instrumentality."

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 45. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; 12 Stat. 1966.

§ 747.7 [Amended]

■ 46. Section 747.7(a) is amended by adding the word "shall" after the words "his or her own counsel" and before the words "sign his or her individual name" in the second sentence.

§ 747.10 [Amended]

■ 47. Section 747.10(c)(3) is amended by removing the word "processing" and adding in its place the word "proceeding".

§ 747.31 [Amended]

■ 48. Section 747.31 is amended by:
■ a. Removing in the first sentence in paragraph (a) the phrase "or such order time as parties may agree" and adding in its place the phrase "or such other time as parties may agree."
■ b. Removing in the first sentence in paragraph (a) the phrase "the recourse and conduct of the proceeding" and adding in its place the phrase "the course and conduct of the proceeding."

§ 747.39 [Amended]

■ 49. Section 747.39(b)(2) is amended by removing the word "failure" and adding in its place the word "failed".

§ 747.40 [Amended]

■ 50. Section 747.40(a) is amended by removing the word "proceedings" appearing near the end of the sentence and adding in its place the word "proceeding".

§ 747.203 [Amended]

■ 51. Section 747.203(a) is amended by removing the words "notice of charges" and adding in its place the words "Notice of Charges".

§ 747.207 [Amended]

■ 52. Section 747.207 is amended by:
■ a. Removing the word "years" appearing in paragraph 3 of the form notice and adding in its place the word "year."
■ b. Removing the words ": *Provided, however,* That" appearing in paragraph 3 of the form notice and adding in their place the words "; provided, however, that".

§ 747.302 [Amended]

■ 53. Section 747.302(a)(1) is amended by:
■ a. Removing the phrase "represent the particular party or whose behalf he acts" appearing at the end of the first sentence and adding in its place the phrase "represent the particular party on whose behalf he acts".
■ b. Removing the phrase "the satisfaction of the NCUA Board the he or she has the requisite qualifications" appearing at the end of the second sentence and adding in its place the phrase "the satisfaction of the NCUA Board that he or she has the requisite qualifications."

§ 747.306 [Amended]

■ 54. Section 747.306 is amended by:
■ a. Removing in paragraph (a) the words "within 30 says of service" appearing in the first sentence and adding in its place the words "within 30 days of service".
■ b. Removing in paragraph (b) the words "state with particularly" appearing in the first sentence and adding in its place the words "state with particularity".

§ 747.602 [Amended]

■ 55. Section 747.602(e) is amended by removing the words "NCUA board" appearing in the last sentence and adding in their place the words "NCUA Board".

§ 747.605 [Amended]

■ 56. Section 747.605(c)(3) is amended by adding the word "and" after the semicolon appearing at the end of the sentence.

§ 747.606 [Amended]

■ 57. Section 747.606(a)(3)(ii) is amended by removing the semicolon appearing at the end of the sentence and adding in its place a period.

§ 747.607 [Amended]

■ 58. Section 747.607 (a) is amended by removing the words "tax exempt" appearing in the first sentence and adding in their place the word "tax-exempt".

§ 747.611 [Amended]

■ 59. Section 747.611 is amended by removing the word "comment" at the end of the last sentence and adding in its place the word "comments".

§ 747.616 [Amended]

■ 60. Section 747.616 is amended by removing the words "Office of the Controller" wherever they appear and adding in their place the words "Office of Chief Financial Officer".

§ 747.803 [Amended]

■ 61. Section 747.803 is amended by:
■ a. Removing in paragraph (b)(1)(i) the word "Handling" and adding in its place the word "Handing".
■ b. Removing in paragraph (b)(1)(iv) the words "Mailing it be" and adding in its place the words "Mailing it by".

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the Act

■ 62. The heading for Subpart J is revised to read as set forth above.

§ 747.902 [Amended]

■ 63. Section 747.902 is amended by adding commas after the words "experience" and "character".

§ 747.2003 [Amended]

■ 64. Section 747.2003(b)(4)(iii) is amended by adding the word "to" after the word "deemed" and before the word "have".

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

■ 65. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

■ 66. Section 790.2 is amended by:

■ a. Removing in paragraph (b)(6) the word "Administration," appearing in the second sentence.

■ b. Removing in paragraph (b)(13) the words "*Office of Capital Markets and Planning*" and adding in their place the words "*Office of Capital Markets*".

■ c. Adding new paragraphs (b)(16) and (17).

■ d. The "Area within region" column of the chart appearing in paragraph (c) is amended by:

■ 1. Adding in the list for "Region No. I" after the word "Vermont" the word ", Nevada".

■ 2. Adding in the list for "Region No. II" after the words "West Virginia" the word ", California".

■ 3. Removing in the list for "Region No. V" the words "California" and "Nevada".

The additions read as follows:

§ 790.2 Central and regional office organization.

* * * * *

(b) * * *

(16) *Office of Consumer Protection.* The Office of Consumer Protection contains two divisions, the Division of Consumer Protection and the Division of Consumer Access. The office provides consumer services, including consumer education and complaint resolution; establishes, consolidates, and coordinates consumer protections within the agency; acts as the central liaison on consumer protection with other federal agencies; nationalizes field of membership processing; absorbs centralized chartering activities; and assumes the activities of the agency's ombudsman. The ombudsman investigates complaints and recommends solutions on regulatory issues that cannot be resolved at the regional level.

(17) *The Office of Chief Economist.* The Office of Chief Economist is within the Office of the Executive Director and reports to the Deputy Executive Director. The office analyzes developments in key components of the economy and monitors trends and conditions in the domestic and international markets for money, credit, foreign exchange and commodities, and relates these trends to overall macroeconomic conditions and government monetary and fiscal policies for the purpose of evaluating effects on credit unions. The office provides advice and guidance to the NCUA Board, the Office of the Executive Director, and the Office of Capital Markets.

* * * * *

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

■ 67. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

§ 791.4 [Amended]

■ 68. Section 791.4(b)(1) is amended by adding the word "matters" after the word "sensitive".

§ 791.5 [Amended]

■ 69. Section 791.5(b)(2)(i) is amended by adding a comma after the words "In cases of emergency" appearing in the last sentence.

■ 70. Section 791.8 is amended by adding new paragraph (f) to read as follows:

§ 791.8 Promulgation of NCUA rules and regulations.

* * * * *

(f) NCUA has an Office of Management and Budget (OMB) control number for rulemakings containing an information collection within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501). A list of OMB control numbers is available to the public for review online at *http://www.RegInfo.gov.*

§ 791.12 [Amended]

■ 71. Section 791.12(a)(1)(i) is amended by removing the comma after the words "foreign policy" and before the word "and" and adding in its place a semicolon.

PART 792—REQUEST FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA

■ 72. The authority citation for part 792 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR 1995 Comp., p. 333.

§ 792.66 [Amended]

■ 73. Section 792.66 is amended by:

■ a. Removing in paragraph (b)(1) the word "Investigations" and adding in its place the word "investigations" appearing at the end of the first sentence.

■ b. Removing in paragraph (b)(3) the word "Sections" appearing in the second sentence and adding in its place the word "sections".

■ c. Removing in paragraph (b)(3) the word "Section" appearing in the third sentence and adding it its place the word "section".

■ d. Removing in paragraph (b)(3) the semicolons and adding in their place a comma where ever they appear.

PART 793—TORT CLAIMS AGAINST THE GOVERNMENT

■ 74. The authority citation for part 793 continues to read as follows:

Authority: 12 U.S.C. 1766.

■ 75. Section 793.4 is amended by:

■ a. Adding paragraph (b) introductory text, after the paragraph heading "*Personal injury.*".

■ b. Removing in paragraph (d) the word "therefor" appearing in the second sentence and adding in its place the word "therefore".

§ 793.4 Administrative claims; evidence and information to be submitted.

* * * * *

(b) *Personal injury.* In support of a claim based on personal injury, the claimant may be required to submit the following evidence or information:

* * * * *

PART 795—[REMOVED AND RESERVED]

■ 76. Under the authority of 12 U.S.C. 1752a, remove and reserve part 795.

[FR Doc. 2010–14201 Filed 6–17–10; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0083; Airspace Docket No. 10–AAL–5]

Revocation of Class D and E Airspace; Big Delta, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revokes Class D and E airspace at Big Delta, AK, to eliminate duplicated controlled airspace serving Allen Army Airfield. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at Allen Army Airfield.

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

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, 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:

History

On Tuesday April 6, 2010, the FAA published a notice of proposed rulemaking in the **Federal Register** to revoke Class D and E airspace at Big Delta, AK (75 FR 17322). Controlled airspace serving Allen Army Airfield was revised in 2007 and correctly associated with the adjacent town of Delta Junction. At that time it was not noticed that the Big Delta, AK airspace description serving Allen Army Airfield was left in place and should have been removed. This action removes the unnecessary airspace associated with Big Delta, AK.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The Class D surface areas are published in paragraph 5000 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 E2 surface areas are published in paragraph 6002 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 E4 surface areas are published in paragraph 6004 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 areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of 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 will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revoking Class D and E airspace at Big Delta, AK, to remove duplicate controlled airspace serving Allen Army Airfield.

The FAA has determined that this 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 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 removes duplicate controlled airspace serving Allen Army Airfield 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).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, 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 5000 General.

* * * * *

AAL AK D Big Delta, AK [Removed]

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Big Delta, AK [Removed]

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AAL AK E4 Big Delta, AK [Removed]

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Big Delta, AK [Removed]

Issued in Anchorage, AK, on May 28, 2010.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–14690 Filed 6–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 542

[BOP–1159I]

RIN 1120–AB59

Administrative Remedy Program: Exception to Initial Filing Procedures

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) revises current regulations on the Administrative Remedy Program to add an exception to initial filing of Administrative Remedy appeals at the institution level. The exception will state that formal administrative remedy requests regarding initial decisions that did not originate with the Warden, or his/her staff, may be initially filed with the Bureau office which made the original decision, and appealed directly to the General Counsel.

DATES: This rule is effective on June 18, 2010. Comments due by August 17, 2010.

ADDRESSES: Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov.* You may also comment via the Internet by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and are made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains/includes so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you want to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Exception to Initial Filing Procedures

In this document, the Bureau of Prisons (Bureau) revises current regulations on the Administrative Remedy Program to add an exception to initial filing of Administrative Remedy appeals at the institution level. The exception will state that formal administrative remedy requests regarding initial decisions that did not originate with the Warden, or his/her staff, may be initially filed with the Bureau office which made the original decision, and appealed directly to the General Counsel.

Section 542.14 describes filing procedures for Administrative Remedy appeals (also called "complaints" or "requests"), including the time-frame or deadline for submitting appeals, how to request extensions in filing time, and instructions for completing and submitting the requisite appeal form. The regulation states that inmates must submit appeals to the institution staff member designated to receive such appeals at the institution where the inmate is located. The regulation also states that inmates in community confinement may mail their appeals to the appropriate Community Corrections Manager for their location.

Subparagraph (d) of § 542.14 currently lists four exceptions to initial filing at the institution where the inmate is located. For sensitive issues, Discipline Hearing Officer (DHO) appeals, Control Unit appeals, and Controlled Housing Status appeals, inmates are permitted to bypass the institution level and raise the issue/appeal with the more appropriate authority. In each of these cases, because the initial decision was not made by institution staff, the appropriate authority to review appeals from such decisions is not at the institution level.

Proposed additional exception: Other requests for formal review of decisions not originating from the Warden. The Bureau now adds a fifth exception to the initial filing procedures: Formal administrative remedy requests regarding initial decisions that did not originate with the Warden, or his/her staff, may be initially filed with the Bureau office which made the original decision, and appealed directly to the General Counsel.

This new exception encompasses other situations similar to the currently existing exceptions, in which the institution level is not the appropriate or controlling authority to review an appeal because the decision being appealed was not decided at that level.

The exception is a technical change to the regulation to accommodate internal redistribution of Bureau functions. For example, in 2005, the Bureau centralized its designation and sentence computation functions in a new Bureau branch, the Designation and Sentence Computation Center (DSCC), to streamline the Bureau's administrative functions and reduce operational costs. DSCC staff, not institution staff, make determinations on initial designation and sentence computation issues. Inmate requests for formal review of these types of issues are therefore appropriately considered by the DSCC instead of institution staff.

With regard to initial determinations made by the DSCC and any other decisions not made at the institution level, Bureau policy on sentence computation and designation will direct staff to notify inmates of the alternative administrative remedy filing procedures. It is important to note, however, that if inmates mistakenly file a grievance at the institution level, they will not be penalized for that filing, but will rather be re-directed to the correct Bureau office.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for "(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that

notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

This rulemaking is exempt from normal notice-and-comment procedures because it is a technical change intended to reflect restructuring of Bureau of Prisons functions within the agency. We are also modifying our rule to permit inmates a more direct and efficient route of appeal of decisions/determinations made by Bureau entities other than institution-level staff.

Because the regulations still reflect current Bureau policy, and because the regulations are being changed only to accommodate a restructuring of Bureau functions, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute a "significant regulatory action" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of eliminating confusion in the courts that has been caused by the changes in the Bureau's statutory interpretation, while allowing us to continue to operate in compliance with the revised statute. There will be no new costs associated with this rulemaking.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 542

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 542 as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 542—ADMINISTRATIVE REMEDY

■ 1. The authority citation for 28 CFR part 542 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Add a new paragraph (d)(5) to § 542.14 to read as follows:

§ 542.14 Initial filing.

* * * * *

(d) * * *

(5) *Other requests for formal review of decisions not originating from the Warden.* Other than the exceptions listed above, formal administrative remedy requests regarding initial decisions that did not originate with the Warden, or his/her staff, may be initially filed with the Bureau office which made the original decision, and appealed directly to the General Counsel.

[FR Doc. 2010–14715 Filed 6–17–10; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2578

Rules and Regulations for Abandoned Individual Account Plans

CFR Correction

In Title 29 of the Code of Federal Regulations, Part 1927 to End, revised as of July 1, 2009, on pages 664 and 665, remove the second Appendix C; and on page 661, correct Appendix B to read as follows:

APPENDIX B TO § 2578.1

NOTIFICATION OF PLAN ABANDONMENT AND INTENT TO SERVE AS QUALIFIED TERMINATION ADMINISTRATOR

[*Date of notice*]

Abandoned Plan Coordinator, Office of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Suite 600
Washington, DC, 20210

Re:	Plan Identification	Qualified Termination Administrator
	[*Plan name and plan number*]	[*Name*]
	[*EIN*]	[*Address*]
	[*Plan account number*]	[*E-mail address*]
	[*Address*]	[*Telephone number*]
	[*Telephone number*]	[*EIN*]

Abandoned Plan Coordinator:

Pursuant to 29 CFR 2578.1(b), we have determined that the subject plan is or may become abandoned by its sponsor. We are eligible to serve as a Qualified Termination Administrator for purposes of terminating and winding up the plan in accordance with 29 CFR 2578.1, and hereby elect to do so.

We find that {*check the appropriate box below and provide additional information as necessary*}:

☐ There have been no contributions to, or distributions from, the plan for a period of at least 12 consecutive months immediately preceding the date of this letter. Our records indicate that the date of the last contribution or distribution was {*enter appropriate date*}.

☐ The following facts and circumstances suggest that the plan is or may become abandoned by the plan sponsor {*add description below*}:

_____
_____
_____
_____

We have also determined that the plan sponsor {*check appropriate box below*}:

☐ No longer exists

☐ Cannot be located

☐ Is unable to maintain the plan

We have taken the following steps to locate or communicate with the known plan sponsor and have received no objection {*provide an explanation below*}:

_____

_____

_____

Part I – Plan Information

1. Estimated number of individuals (participants and beneficiaries) with accounts under the plan: [*number*]

2. Plan assets held by Qualified Termination Administrator:
   - A. Estimated value of assets: [*value*]
   - B. Months we have held plan assets, if less than 12: [*number*]
   - C. Hard to value assets {*select "yes" or "no" to identify any assets with no readily ascertainable fair market value, and include for those identified assets the best known estimate of their value*}:

		Yes	No	
(a)	Partnership/joint venture interests	☐	☐	[*value*]
(b)	Employer real property	☐	☐	[*value*]
(c)	Real estate (other than (b))	☐	☐	[*value*]
(d)	Employer securities	☐	☐	[*value*]
(e)	Participant loans	☐	☐	[*value*]
(f)	Loans (other than (e))	☐	☐	[*value*]
(g)	Tangible personal property	☐	☐	[*value*]

3. Name and last known address and telephone number of plan sponsor:

_____

_____

_____

4. Other:

_____

_____

Part II – Known Service Providers of the Plan

	Name	Address	Telephone
1.			
2.			
3.			

Part III – Services and Related Expenses to be Paid

	Services	Service Provider	Estimated Cost
1.			
2.			
3.			

Part IV – Investigation

In the past 24 months {*check one box*}:

☐ Neither we nor our affiliates are or have been the subject of an investigation, examination, or enforcement action by the Department, Internal Revenue Service, or Securities and Exchange Commission concerning such entity's conduct as a fiduciary or party in interest with respect to any plan covered by the Act.

☐ We or our affiliates are or have been the subject of an investigation, examination, or enforcement action by the Department, Internal Revenue Service, or Securities and Exchange Commission concerning such entity's conduct as a fiduciary or party in interest with respect to any plan covered by the Act.

Part V – Contact Person {*enter information only if different from signatory*}:

[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Under penalties of perjury, I declare that I have examined this notice and to the best of my knowledge and belief, it is true, correct and complete.

[*Signature*]
[*Title of person signing on behalf the Qualified Termination Administrator*]
[*Address, e-mail address, and telephone number*]

[FR Doc. 2010–14882 Filed 6–17–10; 8:45 am]
BILLING CODE 1501–01–D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is amending the Iranian Transactions Regulations in the Code of Federal Regulations to expand the scope of Appendix A to Part 560 to encompass any person determined by OFAC to be the *Government of Iran,* as that term is defined in those regulations. OFAC also is adding to the appendix 22 persons it has determined to be the *Government of Iran.* In addition, OFAC is updating the current list of entities in appendix A, removing an entity, and consolidating and amending other listings. Finally, OFAC is reformatting and republishing in alphabetical order the entire list of persons in the expanded appendix.

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

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

The Iranian Transactions Regulations, 31 CFR part 560 (the "ITR"), implement a series of Executive orders that began with Executive Order 12613, which was issued on October 29, 1987, pursuant to authorities including the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9). In that Order, after finding, *inter alia,* that the Government of Iran was actively supporting terrorism as an instrument of state policy, the President prohibited the importation of Iranian-origin goods and services. Subsequently, in Executive Order 12957, issued on March 15, 1995, under the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), the President declared a national emergency with respect to the actions and policies of the Government of Iran, including its support for international terrorism, its efforts to undermine the Middle East peace process, and its efforts to acquire weapons of mass destruction and the means to deliver them. To deal with that threat, Executive Order 12957 imposed prohibitions on certain transactions with respect to the development of Iranian petroleum resources. On May 6, 1995, to further respond to this threat, the President issued Executive Order 12959, which imposed comprehensive trade and financial sanctions on Iran. Finally, on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

The ITR implement these Executive orders and prohibit various transactions, including, among others, transactions with the *Government of Iran,* a term defined in section 560.304. That definition includes several categories, one of which is any *entity owned or controlled by the Government of Iran,* a phrase that is itself defined in section 560.313 of the ITR.

From its initial publication in 1999 until December 2008, Appendix A to Part 560 listed financial institutions that OFAC determined to be entities owned or controlled by the Government of Iran, within the meaning of sections 560.304 and 560.313 of the ITR. In a final rule amending the ITR published on December 4, 2008, OFAC expanded the scope of Appendix A to Part 560 to include all categories of entities determined to be owned or controlled by the Government of Iran, not just financial institutions (73 FR 73788, Dec. 4, 2008). That expansion of Appendix A to Part 560 was intended to better assist U.S. persons and others engaging in transactions subject to the ITR in complying with the ITR by allowing OFAC to give notice when it determined that any entity was owned or controlled by the Government of Iran.

To further assist compliance with the ITR by U.S. persons and others engaging in transactions subject to the ITR, OFAC today is expanding the scope of Appendix A to Part 560 to encompass all persons determined by OFAC to be the Government of Iran, *i.e.,* to come within any of the categories comprising the definition of the term *Government of Iran* in section 560.304 of the ITR. That definition includes:

(a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof;

(b) Any entity owned or controlled directly or indirectly by the foregoing; and

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, * * * acting or purporting to act directly or indirectly on behalf of any of the foregoing * * *.

This expansion in scope of Appendix A to Part 560 will better assist U.S. persons and others engaging in transactions subject to the ITR in complying with the ITR by identifying additional categories of persons that come within the term *Government of Iran.*

In addition, OFAC today is adding the following 22 persons to Appendix A to Part 560, having determined that they all come within the definition of *Government of Iran* in section 560.304 of the ITR: Bimeh Iran Insurance Company (U.K.) Limited, Iran Insurance Company, Intra Chem Trading GmbH, Iran Petrochemical Commercial Company, Iranian Oil Company (U.K.) Limited, Kala Limited, Kala Pension Trust Limited, MSP Kala Naft Co. Tehran, Naftiran Trading Services Co. (NTS) Limited, National Iranian Oil Company Pte Ltd, National Petrochemical Company, NICO Engineering Limited, NIOC International Affairs (London) Limited, NPC International Limited, P.C.C. (Singapore) Private Limited, Petrochemical Commercial Company International Limited, Petrochemical Commercial Company FZE, Petrochemical Commercial Company (U.K.) Limited, Petroiran Development Company (PEDCO) Limited, Petropars International FZE, Petropars Ltd, and Petropars UK Limited.

OFAC also is updating the current list of persons in Appendix A to Part 560. As a result, OFAC is removing the Iran Overseas Trading Company Limited (Subsidiary) from the appendix, because this entity has been dissolved and no longer exists, and is amending the listing for Naftiran Intertrade Co. (NICO) Limited to reflect current identifying information. In addition, OFAC is consolidating the listings for the Iran Overseas Investment Bank Limited (Representative Office), the Iran Overseas Investment Bank Limited (Agency), and the Iran Overseas Investment Corporation Limited under

Bank Saderat PLC, and is consolidating the listings for Agricultural Cooperative Bank of Iran, Agricultural Development Bank of Iran, Bank Josiaiyi Keshahvarzi, and Bank Taavon Keshavarzi Iran under Bank Keshavarzi Iran. Finally, OFAC is reformatting and republishing in alphabetical order the entire list of persons in the expanded appendix A.

It is important to note that Appendix A to Part 560 is not a comprehensive list of persons falling within the definition of *Government of Iran.* Even if a person is not listed in Appendix A to Part 560, if the person satisfies the definition of the term *Government of Iran* in the ITR, U.S. persons and others engaging in transactions subject to the ITR are prohibited from engaging in transactions with that person, regardless of its location, to the same extent they are prohibited from engaging in transactions with the persons listed in Appendix A to Part 560. U.S. persons and others engaging in transactions subject to the ITR also are prohibited from engaging in most transactions with any person located in Iran, even if that person does not come within the definition of the term *Government of Iran.* Finally, a person listed in Appendix A to Part 560 also may be subject to other sanctions programs administered by OFAC, in which case that person's name would also appear in the list at Appendix A to 31 CFR chapter V. Such a person is identified in Appendix A to Part 560 by references ("tags"), located at the end of the person's listing, to the sanctions program(s) to which the person is subject (*e.g.,* [IRAN] [NPWMD] or [IRAN] [SDGT]).

Public Participation

Because the amendment of the ITR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the ITR are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Banks, Banking, Brokers, Foreign Trade, Investments, Loans, Securities, Iran.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 560 to read as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. The authority citation for Part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; Pub. L. 110–96, 121 Stat. 1011; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

■ 2. Revise Appendix A to Part 560 to read as follows:

Appendix A To Part 560—Persons Determined To Be The Government Of Iran, As Defined In § 560.304 Of This Part

This non-exhaustive appendix lists persons determined by the Office of Foreign Assets Control ("OFAC") to be the Government of Iran, as defined in § 560.304 of this part. The persons listed below are considered to be the *Government of Iran* not only when they operate from the locations listed below, but also when they operate from any other location. The names and addresses are subject to change. This part 560 contains prohibitions against engaging in most transactions with persons that meet the definition of the *Government of Iran,* whether such persons are located or incorporated inside or outside of Iran. Moreover, regardless of whether a person is listed below, if the person comes within the definition of *Government of Iran* in § 560.304, the prohibitions on engaging in transactions with the person, wherever located worldwide, apply to the same extent they would apply if the person were listed in this appendix. Note that the prohibitions in this part 560 also apply to most transactions with persons located in Iran that are not the Government of Iran. Finally, a person listed in Appendix A to Part 560 also may be subject to other sanctions programs administered by OFAC, in which case that person's name would also appear in the list at Appendix A to 31 CFR chapter V. Such a person is identified in Appendix A to Part 560 by references ("tags"), located at the end of the person's listing, to the sanctions program(s) to which the person is subject (e.g., [IRAN] [NPWMD] or [IRAN] [SDGT]).

Notes to Appendix A to Part 560:

1. The alphabetical list below provides the following information concerning persons determined by OFAC to be the Government of Iran: the name (including known former or alternate names), address, [IRAN] tag, and, if applicable, the tag(s) denoting other sanctions program(s) under which the person also is blocked.

2. The abbreviations used in this appendix are "a.k.a." (also known as) and "f.k.a." (formerly known as).

3. The references to sanctions programs in 31 CFR chapter V include: [IRAN] (Iranian Transactions Regulations, part 560); [NPWMD] (Weapons of Mass Destruction Proliferators Sanctions Regulations, part 544); and [SDGT] (Global Terrorism Sanctions Regulations, part 594).

4. The names of persons listed in Appendix A to Part 560 also are published on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN" list), available on OFAC's Web site. New names of persons determined to be the Government of Iran and changes to existing listings will be published in the **Federal Register** as the names are added to the SDN list on OFAC's Web site. Appendix A to Part 560 will be republished annually.

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077. Please consult OFAC's Web site prior to engaging in transactions that may be subject to the prohibitions contained in part 560.

BANK KESHAVARZI IRAN (a.k.a. AGRICULTURAL BANK OF IRAN; a.k.a. BANK KESHAVARZI), PO Box 14155–6395, 129 Patrice Lumumba St, Jalal-al-Ahmad Expressway, Tehran 14454, Iran; all offices worldwide [IRAN]

BANK MARKAZI JOMHOURI ISLAMI IRAN (a.k.a. BANK MARKAZI IRAN; a.k.a. CENTRAL BANK OF IRAN; a.k.a. CENTRAL BANK OF THE ISLAMIC REPUBLIC OF IRAN), 213 Ferdowsi Avenue, Tehran 11365, Iran;

PO Box 15875/7177, 144 Mirdamad Blvd, Tehran, Iran [IRAN]

BANK MASKAN (a.k.a. HOUSING BANK (OF IRAN)), PO Box 11365/5699, No 247 3rd Floor Fedowsi Ave, Cross Sarhang Sakhaei St, Tehran, Iran; all offices worldwide [IRAN]

BANK MELLAT, 327 Forsat and Taleghani Avenue, Tehran 15817, Iran; PO Box 375010, Amiryan Str #6, P/N–24, Yerevan, Armenia; Keumkang Tower—13th & 14th Floor, 889–13 Daechi-Dong, Gangnam-Ku, Seoul 135–280, Korea, South; PO Box 79106425, Ziya Gokalp Bulvari No 12, Kizilay, Ankara, Ankara, Turkey; Cumhuriyet Bulvari No 88/A, PK 7103521, Konak, Izmir, Turkey; Buyukdere Cad, Cicek Sokak No 1—1 Levent, Levent, Istanbul, Turkey; Head Office Bldg, 327 Taleghani Ave, Tehran 15817, Iran; all offices worldwide [IRAN] [NPWMD]

BANK MELLI IRAN (a.k.a. BANK MELLI; a.k.a. NATIONAL BANK OF IRAN), 43 Avenue Montaigne, Paris 75008, France; Room 704–6, Wheelock Hse, 20 Pedder St, Central, Hong Kong; Bank Melli Iran Bldg, 111 St 24, 929 Arasat, Baghdad, Iraq; PO Box 2643, Ruwi, Muscat 112, Oman; PO Box 2656, Liva Street, Abu Dhabi, United Arab Emirates; PO Box 248, Hamad Bin Abdulla St, Fujairah, United Arab Emirates; PO Box 1888, Clock Tower, Industrial Rd, Al Ain Club Bldg, Al Ain, Abu Dhabi, United Arab Emirates; PO Box 1894, Baniyas St, Deira, Dubai City, United Arab Emirates; PO Box 5270, Oman Street Al Nakheel, Ras Al-Khaimah, United Arab Emirates; PO Box 459, Al Borj St, Sharjah, United Arab Emirates; PO Box 3093, Ahmed Seddiqui Bldg, Khalid Bin El-Walid St, Bur-Dubai, Dubai City 3093, United Arab Emirates; PO Box 1894, Al Wasl Rd, Jumeirah, Dubai, United Arab Emirates; Postfach 112 129, Holzbruecke 2, D–20459, Hamburg, Germany; Nobel Ave. 14, Baku, Azerbaijan; Unit 1703–4, 17th Floor, Hong Kong Club Building, 3 A Chater Road Central, Hong Kong; PO Box 11365–171, Ferdowsi Avenue, Tehran, Iran; all offices worldwide [IRAN] [NPWMD]

BANK OF INDUSTRY AND MINE (OF IRAN) (a.k.a. BANK SANAD VA MADAN; a.k.a. "BIM"), No 1655, Firouzeh Building, Mahmoudiye Street, Valiasr Ave, Tehran, Iran; PO Box 15875–4456, Firouzeh Tower, No 1655 Vali-Asr Ave after Chamran Crossroads, Tehran 1965643511, Iran; all offices worldwide [IRAN]

BANK REFAH KARGARAN (a.k.a. BANK REFAH; a.k.a. WORKERS' WELFARE BANK (OF IRAN)), No. 40 North Shiraz Street, Mollasadra Ave, Vanak Sq, Tehran 19917, Iran; all offices worldwide [IRAN]

BANK SADERAT IRAN (a.k.a. IRAN EXPORT BANK), Ground Floor Business Room, Building Banke Khoon Road, Harat, Afghanistan; No. 56, Opposite of Security Department, Toraboz Khan Str., Kabul, Afghanistan; 5 Lothbury, London EC2R 7HD, United Kingdom; Postfach 112227, Deichstrasse 11, 20459, Hamburg, Germany; PO Box 4308, 25–29 Venizelou St, Athens, Attica GR 105 64, Greece; PO Box 15745–631, Bank Saderat Tower, 43 Somayeh Avenue, Tehran, Iran; 16 rue de la Paix, Paris 75002, France; Postfach 160151, Friedenstr 4, D–60311, Frankfurt am Main, Germany; 3rd Floor, Aliktisad Bldg, Ras El Ein Street Baalbak, Baalbak, Lebanon; Saida Branch, Sida Riad Elsoleh St, Martyrs Sq, Saida, Lebanon; Borj Albarajneh Branch—20 Alholom Bldg, Sahat Mreijeh, Kafaat St, Beirut, Lebanon; 1st Floor, Alrose Bldg, Verdun—Rashid Karame St, Beirut, Lebanon; PO Box 5126, Beirut, Lebanon; 3rd Floor, Mteco Centre, Mar Elias, Facing Al Hellow Barrak, POB 5126, Beirut, Lebanon; Alghobeiri Branch—Aljawhara Bldg, Ghobeiry Blvd, Beirut, Lebanon; PO Box 1269, Muscat 112, Oman; PO Box 4425, Salwa Rd, Doha, Qatar; PO Box 2256, Doha, Qatar; 2nd Floor, No 181 Makhtoomgholi Ave, Ashgabat, Turkmenistan; PO Box 700, Abu Dhabi, United Arab Emirates; PO Box 16, Liwara Street, Ajman, United Arab Emirates; PO Box 1140, Al-Am Road, Al-Ein, Al Ain, Abu Dhabi, United Arab Emirates; Bur Dubai, Khaled Bin Al Walid St, Dubai City, United Arab Emirates; Sheikh Zayed Rd, Dubai City, United Arab Emirates; PO Box 4182, Almaktoum Rd, Dubai City, United Arab Emirates; PO Box 4182, Murshid Bazar Branch, Dubai City, United Arab Emirates; PO Box 316, Bank Saderat Bldg, Alaroda St, Borj Ave, Sharjah, United Arab Emirates; all offices worldwide [IRAN] [SDGT]

BANK SADERAT PLC (f.k.a. IRAN OVERSEAS INVESTMENT BANK LIMITED; f.k.a. IRAN OVERSEAS INVESTMENT BANK PLC; f.k.a. IRAN OVERSEAS INVESTMENT CORPORATION LIMITED), 5 Lothbury, London EC2R 7HD, United Kingdom; PO Box 15175/584, 6th Floor, Sadaf Bldg, 1137 Vali Asr Ave, Tehran 15119–43885, Iran; UK Company Number 01126618 (United Kingdom); all offices worldwide [IRAN] [SDGT]

BANK SEPAH, 64 Rue de Miromesnil, Paris 75008, France; Hafenstrasse 54, D–60327, Frankfurt am Main, Germany; Via Barberini 50, Rome, RM 00187, Italy; 17 Place Vendome, Paris 75008, France; Imam Khomeini Square, Tehran 1136953412, Iran; all offices worldwide [IRAN] [NPWMD]

BANK TEJARAT, 130, Zandi Alley, Taleghani Avenue, No 152, Ostad Nejat Ollahi Cross, Tehran 14567, Iran; 124–126 Rue de Provence, Angle 76 bd Haussman, Paris 75008, France; PO Box 734001, Rudaki Ave 88, Dushanbe 734001, Tajikistan; Office C208, Beijing Lufthansa Center No 50, Liangmaqiao Rd, Chaoyang District, Beijing 100016, China; c/o Europaisch-Iranische Handelsbank AG, Depenau 2, D–20095, Hamburg, Germany; PO Box 119871, 4th Floor, c/o Persia International Bank PLC, The Gate Bldg, Dubai City, United Arab Emirates; c/o Persia International Bank, 6 Lothbury, London EC2R 7HH, United Kingdom; PO Box 11365–5416, 152 Taleghani Avenue, Tehran 15994, Iran; all offices worldwide [IRAN]

BIMEH IRAN INSURANCE COMPANY (U.K.) LIMITED (a.k.a. BIUK), 4/5 Fenchurch Buildings, London EC3M 5HN, United Kingdom; UK Company Number 01223433 (United Kingdom); all offices worldwide [IRAN]

EUROPAISCH–IRANISCHE HANDELSBANK AG (f.k.a. DEUTSCH–IRANISCHE HANDELSBANK AG; a.k.a. EUROPAEISCH–IRANISCHE HANDELSBANK AKTIENGESELLSCHAFT), PO Box 79415–148, Sanaee Avenue, Kish Island, Iran; No. 1655/1 Valiasr Avenue, PO Box 19615–851, Tehran 19565 43 511, Iran; Depenau 2, D–20095, Hamburg, Germany; all offices worldwide [IRAN]

INTRA CHEM TRADING GMBH (a.k.a. INTRA–CHEM TRADING CO. (GMBH)), Schottweg 3, Hamburg 22087, Germany; Registration ID HRB48416 (Germany); all offices worldwide [IRAN]

IRAN INSURANCE COMPANY (a.k.a. BIMEH IRAN), Abdolaziz-Al-Masaeed Building, Sheikh Maktoom St., Deira, P.O. Box 2004, Dubai, United Arab Emirates; P.O. Box 1867, Al Ain, Abu Dhabi, United Arab Emirates; 107 Dr Fatemi Avenue, Tehran 14155/6363, Iran; P.O. Box 3281, Abu Dhabi, United Arab Emirates; P.O. Box 1666, Sharjah, United Arab Emirates; P.O. Box 849, Ras-Al-Khaimah, United Arab Emirates; P.O. Box 417, Muscat 113, Oman; P.O. Box 676, Salalah 211, Oman; P.O. Box 995, Manama, Bahrain; Al-Lami Center, Ali-Bin-Abi Taleb St. Sharafia, P.O. Box 11210, Jeddah 21453, Saudi Arabia; Al Alia

Center, Salaheddine Rd., Al Malaz, P.O. Box 21944, Riyadh 11485, Saudi Arabia; Al Rajhi Bldg., 3rd Floor, Suite 23, Dhahran St., P.O. Box 1305, Dammam 31431, Saudi Arabia; all offices worldwide [IRAN]

IRAN PETROCHEMICAL COMMERCIAL COMPANY (a.k.a. PETROCHEMICAL COMMERCIAL COMPANY; a.k.a. SHERKATE BASARGANI PETROCHEMIE (SAHAMI KHASS); a.k.a. SHERKATE BAZARGANI PETRCHEMIE; a.k.a. "IPCC"; a.k.a. "PCC"), INONU CAD. SUMER Sok., Zitas Bloklari C.2 Bloc D.H, Kozyatagi, Kadikoy, Istanbul, Turkey; Topcu Ibrahim Sokak No: 13 D: 7 Icerenkoy-Kadikoy, Istanbul, Turkey; No. 1339, Vali Nejad Alley, Vali-e-Asr St., Vanak Sq., Tehran, Iran; 99–A, Maker Tower F, 9th Floor, Cuffe Parade, Colabe, Mumbai 400 005, India; No. 1014, Doosan We've Pavilion, 58, Soosong-Dong, Jongno-Gu, Seoul, Korea, South; Office No. 707, No. 10, Chao Waidajie, Chao Tang District, Beijing 100020, China; all offices worldwide [IRAN]

IRANIAN OIL COMPANY (U.K.) LIMITED (a.k.a. IOC UK LTD), Riverside House, Riverside Drive, Aberdeen AB11 7LH, United Kingdom; UK Company Number 01019769 (United Kingdom); all offices worldwide [IRAN]

KALA LIMITED (a.k.a. KALA NAFT LONDON LTD), NIOC House, 4 Victoria Street, Westminster, London SW1H 0NE, United Kingdom; UK Company Number 01517853 (United Kingdom); all offices worldwide [IRAN]

KALA PENSION TRUST LIMITED, C/O Kala Limited, N.I.O.C. House, 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 01573317 (United Kingdom); all offices worldwide [IRAN]

MSP KALA NAFT CO. TEHRAN (a.k.a. KALA NAFT CO SSK; a.k.a. KALA NAFT COMPANY LTD; a.k.a. KALA NAFT TEHRAN; a.k.a. KALA NAFT TEHRAN COMPANY; a.k.a. KALAYEH NAFT CO; a.k.a. M.S.P.-KALA; a.k.a. MANUFACTURING SUPPORT & PROCUREMENT CO.-KALA NAFT; a.k.a. MANUFACTURING SUPPORT AND PROCUREMENT (M.S.P.) KALA NAFT CO. TEHRAN; a.k.a. MANUFACTURING, SUPPORT AND PROCUREMENT KALA NAFT COMPANY; a.k.a. MSP KALA NAFT TEHRAN COMPANY; a.k.a. MSP KALANAFT; a.k.a. MSP–KALANAFT COMPANY; a.k.a. SHERKAT SAHAMI KHASS KALA NAFT; a.k.a. SHERKAT SAHAMI KHASS POSHTIBANI VA TEHIYEH KALAYE NAFT TEHRAN; a.k.a. SHERKATE POSHTIBANI SAKHT VA TAHEIH KALAIE NAFTE TEHRAN), 242 Sepahbod Gharani Street, Karim Khan Zand Bridge, Corner Kalantari Street, 8th Floor, P.O. Box 15815–1775/15815–3446, Tehran 15988, Iran; Building No. 226, Corner of Shahid Kalantari Street, Sepahbod Gharani Avenue, Karimkhan Avenue, Tehran 1598844815, Iran; No. 242, Shahid Kalantari St., Near Karimkhan Bridge, Sepahbod Gharani Avenue, Tehran, Iran; Head Office Tehran, Sepahbod Gharani Ave., P.O. Box 15815/1775 15815/3446, Tehran, Iran; P.O. Box 2965, Sharjah, United Arab Emirates; 333 7th Ave SW #1102, Calgary, AB T2P 2Z1, Canada; Chekhov St., 24.2, AP 57, Moscow, Russia; Room No. 704—No. 10 Chao Waidajie Chao Yang District, Beijing 10020, China; Sanaee Ave., P.O. Box 79417–76349, N.I.O.C., Kish, Iran; 10th Floor, Sadaf Tower, Kish Island, Iran; all offices worldwide [IRAN]

NAFTIRAN INTERTRADE CO. (NICO) LIMITED (a.k.a. NAFT IRAN INTERTRADE COMPANY LTD; a.k.a. NAFTIRAN INTERTRADE COMPANY (NICO); a.k.a. NAFTIRAN INTERTRADE COMPANY LTD; a.k.a. NICO), 3rd Floor, Windward House, La Route De La Liberation, St Helier JE2 3BQ, Jersey; Petro Pars Building, Saadat Abad Ave, No 35, Farhang Blvd, Tehran, Iran; all offices worldwide [IRAN]

NAFTIRAN INTERTRADE CO. (NICO) SARL (a.k.a. NICO), 6, Avenue de la Tour-Haldimand, Pully, VD 1009, Switzerland; all offices worldwide [IRAN]

NAFTIRAN TRADING SERVICES CO. (NTS) LIMITED, 47 Queen Anne Street, London W1G 9JG, United Kingdom; 6th Floor NIOC Ho, 4 Victoria St, London SW1H 0NE, United Kingdom; UK Company Number 02600121 (United Kingdom); all offices worldwide [IRAN]

NATIONAL IRANIAN OIL COMPANY (a.k.a. NIOC), Hafez Crossing, Taleghani Avenue, P.O. Box 1863 and 2501, Tehran, Iran; all offices worldwide [IRAN]

NATIONAL IRANIAN OIL COMPANY PTE LTD, 7 Temasek Boulevard #07–02, Suntec Tower One 038987, Singapore; Registration ID 199004388C (Singapore); all offices worldwide [IRAN]

NATIONAL PETROCHEMICAL COMPANY (a.k.a. "NPC"), No. 104, North Sheikh Bahaei Blvd., Molla Sadra Ave., Tehran, Iran; all offices worldwide [IRAN]

NICO ENGINEERING LIMITED, 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; Registration ID 75797 (Jersey); all offices worldwide [IRAN]

NIOC INTERNATIONAL AFFAIRS (LONDON) LIMITED, NIOC House, 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 02772297 (United Kingdom); all offices worldwide [IRAN]

NPC INTERNATIONAL LIMITED (a.k.a. N P C INTERNATIONAL LTD; a.k.a. NPC INTERNATIONAL COMPANY), 5th Floor NIOC House, 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 02696754 (United Kingdom); all offices worldwide [IRAN]

P.C.C. (SINGAPORE) PRIVATE LIMITED (a.k.a. P.C.C. SINGAPORE BRANCH; a.k.a. PCC SINGAPORE PTE LTD), 78 Shenton Way, #08–02 079120, Singapore; 78 Shenton Way, 26–02A Lippo Centre 079120, Singapore; Registration ID 199708410K (Singapore); all offices worldwide [IRAN]

PETROCHEMICAL COMMERCIAL COMPANY (U.K.) LIMITED (a.k.a. PCC (UK); a.k.a. PCC UK; a.k.a. PCC UK LTD), 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 02647333 (United Kingdom); all offices worldwide [IRAN]

PETROCHEMICAL COMMERCIAL COMPANY FZE (a.k.a. PCC FZE), 1703 17th Floor, Dubai World Trade Center Tower Sheikh Zayed Road, Dubai, United Arab Emirates; Office No. 99–A, Maker Tower "F" 9th Floor Cutte Pavade, Colabe, Bumbai 700005, India; all offices worldwide [IRAN]

PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL LIMITED (a.k.a. PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL LTD; a.k.a. PETROCHEMICAL TRADING COMPANY LIMITED; a.k.a. "PCCI"), P.O. Box 261539, Jebel Ali, Dubai, United Arab Emirates; 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; Ashkhabat, Ave. 54, Yimpash Business Center, No. 506, 507, Turkmenistan; No. 21 End of 9th St, Gandi Ave, Tehran, Iran; 21, Africa Boulevard, Tehran, Iran; Registration ID 77283 (Jersey); all offices worldwide [IRAN]

PETROIRAN DEVELOPMENT COMPANY (PEDCO) LIMITED (a.k.a. PETRO IRAN DEVELOPMENT COMPANY; a.k.a. "PEDCO"), National Iranian Oil Company—PEDCO, P.O. Box 2965, Al Bathaa Tower, 9th Floor, Apt. 905, Al Buhaira Corniche, Sharjah, United Arab Emirates; P.O. Box 15875–6731, Tehran, Iran; 41, 1st Floor, International House, The

Parade, St. Helier JE2 3QQ, Jersey; No. 22, 7th Lane, Khalid Eslamboli Street, Shahid Beheshti Avenue, Tehran, Iran; No. 102, Next to Shahid Amir Soheil Tabrizian Alley, Shahid Dastgerdi (Ex Zafar) Street, Shariati Street, Tehran 19199/45111, Iran; Kish Harbour, Bazargan Ferdos Warehouses, Kish Island, Iran; Registration ID 67493 (Jersey); all offices worldwide [IRAN]

PETROPARS INTERNATIONAL FZE (a.k.a. PPI FZE), P.O. Box 72146, Dubai, United Arab Emirates; all offices worldwide [IRAN]

PETROPARS LTD. (a.k.a. PETROPARS LIMITED; a.k.a. "PPL"), Calle La Guairita, Centro Profesional Eurobuilding, Piso 8, Oficina 8E, Chuao, Caracas 1060, Venezuela; No. 35, Farhang Blvd., Saadat Abad, Tehran, Iran; P.O. Box 3136, Road Town, Tortola, Virgin Islands, British; all offices worldwide [IRAN]

PETROPARS UK LIMITED, 47 Queen Anne Street, London W1G 9JG, United Kingdom; UK Company Number 03503060 (United Kingdom); all offices worldwide [IRAN]

Dated: June 14, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–14678 Filed 6–16–10; 2:00 pm]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

National Geospatial-Intelligence Agency

32 CFR Part 320

Privacy Act; Implementation

CFR Correction

In Title 32 of the Code of Federal Regulations, Parts 191 to 399, revised as of July 1, 2009, on page 912, revise the heading of part 320 to read as set forth below, and on page 914, in § 320.5, in paragraph (b)(2), revise "NIMA" to read "NGA".

PART 320—NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY (NGA) PRIVACY

[FR Doc. 2010–14884 Filed 6–17–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0395]

RIN 1625–AA08

Special Local Regulation; Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent Special Local Regulation on the navigable waters of Long Island Sound between Port Jefferson, NY and Captain's Cove Seaport, Bridgeport, CT due to the annual Swim Across the Sound event. This special local regulation is necessary to provide for the safety of life by protecting swimmers and their safety craft from the hazards imposed by marine traffic. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, CT.

DATES: This rule is effective July 19, 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–2009–0395 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0395 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Joseph Graun, Prevention Department, USCG Sector Long Island Sound at 203–468–4454, *joseph.l.graun@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 July 21, 2009 the Coast Guard published a notice of proposed rulemaking with request for comments titled, "Special Local Regulation, Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT" (Docket number USCG–2009–0395) in the **Federal Register** (74 FR 35834).

On April 2, 2010, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) entitled: Special Local Regulation, Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT in the **Federal Register** (75 FR 16700). The Coast Guard received no comments or requests for meetings on the proposed rule.

Basis and Purpose

Swim Across the Sound is a 25 km swim that has historically involved over 200 swimmers and accompanying safety craft. The swim course is located directly northwest of Port Jefferson, NY and extends to Captain's Cove Seaport, Bridgeport, CT. Prior to this rule there was not a permanent regulation in place to protect the swimmers or safety craft from the hazards imposed by marine traffic. To provide for the safety of life, the Coast Guard is establishing a permanent special local regulation on the navigable waters of Long Island Sound that excludes all unauthorized persons and vessels from approaching within 100 yards of any swimmer or safety craft on the race course. This section will be enforced from 8:30 a.m. to 7:30 p.m. on August 7, 2010 and thereafter annually on a single, specified Saturday in either July or August. Notification of the exact dates will be announced in the **Federal Register**, via a Notice of Enforcement, and separate Marine Broadcasts and a local notice to mariners.

Background

On July 21, 2009, the notice of proposed rulemaking's regulated area encompassed 100 yards around the race course for the duration of the race. This provided safety of life for swimmers and safety craft, but any vessel transiting through Long Island Sound would have to pass through the regulated area, putting a burden on vessel traffic. Due to the length of the race course, participants will only be occupying a small portion of the course at any given time. This regulated area, was considered but was not chosen due to its burden on vessel traffic.

On April 2, 2010, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) entitled: Special Local Regulation, Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT in the **Federal Register**

(75 FR 16700). This notice proposed a 100-yard regulated area that encompasses the swimmers and safety craft moving with them as they travel the race course. This moving regulated area provides protection for swimmers and safety craft, with a much smaller regulated area. It allows vessels to pass through the race course as long as they stay clear of the swimmers and safety craft, reducing the burden on vessel traffic. This proposal was chosen because it provides the same amount of safety as the previously proposed regulated area while being less of a burden on vessel traffic.

Discussion of Comments and Changes

No comments or requests for meetings were received. However, during the final edits of the Final Rule we realized that the description of the regulated area was incorrect and needed clarification. A supplemental notice of proposed rulemaking with request for comments was then published to provide clarification of the regulatory text and minimize the regulated area.

The changes in the text redefined the regulated area from 100 yards of the race course to 100 yards from any swimmer or safety craft so that it would not block the entire waterway. This will reduce the burden on vessels by allowing them to pass through the race course as long as they stay clear of the swimmers and safety craft.

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.

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.

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)(h), of the Instruction. This rule finalizes the establishment of a special local regulation. No comments were received that would affect the assessment of environmental impacts from this action. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.121 to read as follows:

§ 100.121 Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT.

(a) *Regulated area.* All navigable waters of Long Island Sound within 100 yards of any swimmer or safety craft on the race course bounded by the following points: Starting Point at Port Jefferson Beach at approximate position 40°58′11.71″ N 073°05′51.12″ W, northwesterly to the finishing point at Captain's Cove Seaport at approximate location 41°09′25.07″ N 073°12′47.82″ W.

(b) *Definitions.* The following definition applies to this section: *Designated On-scene Patrol Personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Special local regulations.* (1) No person or vessel may approach or remain within 100 yards of any swimmer or safety craft within the regulated area during the enforcement period of this regulation unless they are officially participating in the Swim Across the Sound event or are otherwise authorized by the Captain of the Port Long Island Sound or by Designated On-scene Patrol Personnel.

(2) All persons and vessels must comply with the instructions from Coast Guard Captain of the Port or the Designated On-scene Patrol Personnel. The Designated On-scene Patrol Personnel may delay, modify, or cancel the swim event as conditions or circumstances require.

(3) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(4) Persons and vessels desiring to enter the regulated area within 100 yards of a swimmer or safety craft may request permission to enter from the designated on scene patrol personnel by contacting them on VHF–16 or by a request to the Captain of the Port Long Island Sound via phone at (203) 468–4401.

(d) *Enforcement Period.* This rule is enforced on August 7, 2010 and thereafter annually on a single Saturday during the last weekend of July or one of the first two weekends in August, depending on the tides. Notification of the specific date and enforcement of the special local regulation will be made via a Notice of Enforcement in the **Federal Register**, separate marine broadcasts and local notice to mariners.

Dated: June 3, 2010.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 2010–14719 Filed 6–17–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0378]

RIN 1625–AA00

Safety Zone; Jameson Beach 4th of July Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Lake Tahoe, for the Jameson Beach 4th of July 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 8:45 a.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–2010–0378 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2010–0378 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule

without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, 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**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Background and Purpose

Pyro Spectaculars, Inc., will sponsor a fireworks display on 04 July 2010, in the waters of Lake Tahoe. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area in Lake Tahoe, in the vicinity of Jameson Beach at South Lake Tahoe, CA around the fireworks launch barge during loading of the pyrotechnics and during the fireworks display. This restricted area around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barges. 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 temporary safety zone in the navigable waters of Lake Tahoe. During the loading of the fireworks barge and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on 04 July 2010, and will take place at Jameson Beach in South Lake Tahoe, CA. Towing of the barge from the Pier to the display location is scheduled to take place at 9 a.m. on July 3, 2010. From 9:30 p.m. until 10 p.m. on 04 July 2010, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. During the fireworks display, scheduled to commence at approximately 9:45 p.m. on 04 July 2010, the fireworks barge will be located approximately 1,000 feet off of the shoreline of Jameson Beach in South Lake Tahoe, CA in position 38°56′24.89″ N, 120°02′07.37″ W. (NAD 83) The fireworks display is scheduled to last approximately fifteen minutes.

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

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because 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 Lake Tahoe 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 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. 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, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–316 to read as follows:

§ 165.T11–316 Safety Zone; Jameson Beach 4th of July Fireworks Display.

(a) *Location.* This temporary safety zone is established for the waters of Lake Tahoe.

(1) Loading of the pyrotechnics onto the fireworks barge will take place at 9 a.m. at Jameson Beach pier in South Lake Tahoe, CA.

(2) Towing of the barge from the pier to the display location is scheduled to take place at 10 a.m. on 03 July 2010.

(3) During the fireworks display, scheduled to commence at approximately 9:45 p.m. on 04 July 2010, the fireworks barge will be located approximately 1,000 feet off of Jameson Beach in South Lake Tahoe, CA in position 38°56′24.89″ N, 120°02′07.37″ W (NAD 83).

(4) During the loading of the fireworks barge and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. From 9:30 p.m. until 10 p.m. on 04 July 2010, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet.

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

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

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

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's 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 COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or the 24-

hour Command Center via telephone at (415) 399–3547.

(d) *Effective period.* This section is effective from 8:45 a.m. through 10 p.m. on July 4, 2010.

Dated: May 28, 2010.

P.M. Gugg,

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

[FR Doc. 2010–14718 Filed 6–17–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0293]

RIN 1625–AA00

Safety Zone; Reedville July 4th Celebration, Cockrell's Creek, Reedville, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Cockrell's Creek in the vicinity of Reedville, Virginia in support of the Reedville July 4th Celebration event. This action is intended to restrict vessel traffic movement on Cockrell's Creek to protect mariners from the hazards associated with fireworks displays.

DATES: This rule is effective from 8 p.m. until 10 p.m. on July 2, 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–2010–0293 and are available online by going to *http://www.regulations.gov*, inserting USCG–2010–0293 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 Reedville July 4th Celebration, Cockrell's Creek, Reedville, VA in the **Federal Register** (75 FR 26157). 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 2, 2010 Greater Reedville Association will sponsor a fireworks display on Cockrell's Creek at position 37°49′54″ N/076°16′44″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to Cockrell's Creek within 420 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 because 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 Cockrell's Creek from 8 p.m. to 10 p.m. on July 2, 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 temporary safety zone around a fireworks display. 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.T05–0293 to read as follows:

§ 165.T05–0293 Safety Zone; Reedville July 4th Celebration, Cockrell's Creek, Reedville, VA

(a) *Regulated Area.* The following area is a safety zone: specified waters of Cockrell's Creek located within a 420 foot radius of the fireworks display at approximate position 37°49′54″N/ 076°16′44″W (NAD 1983) in the vicinity of Reedville, Virginia.

(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 2, 2010 from 8 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. 2010–14742 Filed 6–17–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0257]

RIN 1625–AA00

Safety Zone; Private Fireworks, Wilson Creek, Gloucester, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Wilson Creek in the vicinity of Gloucester, Virginia in support of a private fireworks event. This action is intended to restrict vessel traffic movement on Wilson Creek to protect mariners from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. until 10 p.m. on July 3, 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–2010–0257 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0257 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 April 29, 2010 we published a notice of proposed rulemaking (NPRM) entitled Private Fireworks, Wilson Creek, Gloucester, VA in the **Federal Register** (75 FR 22545). 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 3, 2010 Blair Farinholt will sponsor a fireworks display on Wilson Creek at position 37°21′49″ N/ 076°28′51″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to Wilson Creek within 420 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**. No public meeting was requested, and none was held.

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 Wilson Creek from 9 p.m. to 10 p.m. on July 3, 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 temporary safety zone around a fireworks display. 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.T05–0257 to read as follows:

§ 165.T05–0257 Safety Zone; Private Fireworks, Wilson Creek, Gloucester, VA

(a) *Regulated Area.* The following area is a safety zone: Specified waters of Wilson Creek located within a 420 foot radius of the fireworks display at approximate position 37°21′49″ N/ 076°28′51″ W (NAD 1983) in the vicinity of Gloucester, 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 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period.* This regulation will be enforced on July 3, 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. 2010–14736 Filed 6–17–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Atlantic Ocean Off John F. Kennedy Space Center, FL; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is revising its regulations by establishing a new restricted area in the Atlantic Ocean off the coast of the John F. Kennedy Space Center (KSC), Florida. The KSC is the main launch facility for the National Aeronautics and Space Administration (NASA) and they need to have the capability to secure their shoreline at KSC. This amendment to the existing regulations is necessary to enhance KSC's ability to secure their shoreline to counter postulated threats to their facilities and to provide for safe launch operations.

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

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–1680.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the regulations in 33 CFR part 334 by establishing a new restricted area in Florida offshore of the KSC facilities. The modification to the regulations is described below.

The proposed rule was published in the February 25, 2010, issue of the **Federal Register** (75 FR 8570), and its regulations.gov docket number is COE–2010–0001. No comments were received in response to the proposed rule.

The amendment to this regulation will allow the Director, KSC to restrict passage of persons, watercraft, and vessels in waters contiguous to this facility during launch operations and whenever there is a perceived threat to the facility.

Procedural Requirements

a. *Review Under Executive Order 12866.* This regulation is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The regulation has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The Corps determined that this regulation would have practically no economic impact on the public nor would it result in any anticipated navigational hazard or interference with existing waterway traffic. This regulation will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* This regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared. It may be reviewed at the district office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

d. *Unfunded Mandates Act.* This regulation does not impose an enforceable duty on the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this regulation.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.525 to read as follows:

§ 334.525 Atlantic Ocean off John F. Kennedy Space Center, FL; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, contiguous to the area offshore of the John F. Kennedy Space Center (KSC), Florida. The area is bounded by a line connecting the following coordinates: Commencing from the shoreline at the southwest portion of the area, at latitude 28°35.008′ N, longitude 80°34.448′ W, thence directly to latitude 28°35.716′ N, longitude 80°32.938′ W, thence follow the mean high water line northerly at a distance of 1.5 nautical miles to a point at latitude 28°43.566′ N, longitude 80°39.094′ W, thence proceed westerly to terminate at a point on the shoreline at latitude 28°43.566′ N, longitude 80°41.189′ W.

(b) *The regulation.* (1) The area described in paragraph (a) of this section will be closed when it is deemed necessary by the Director, KSC or his/her designee during launch operations or to address any perceived threat to the facilities. With the exception of local, State, and Federal law enforcement entities, all persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the restricted area when it is closed, unless they have the permission of the Director, KSC or his/her designee.

(2) Due to the nature of this restricted area, closures may occur with little advance notice. Closure of the area shall be noticed by warning statements displayed on the electronic marquee signs located at the gates of the KSC and on an electronic marquee sign located on the north side of the Port Canaveral ship channel between the Trident and Poseidon wharfs during the duration of the closure. If time permits, additional information will be published in area newspapers and announced on marine radio broadcast.

(c) *Enforcement.* The regulations in this section shall be enforced by the Director, KSC and/or such persons or agencies as he/she may designate.

Date: June 7, 2010.

Approved:

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010–14790 Filed 6–17–10; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0871; FRL–9164–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions establish transportation conformity regulations for the State of Maryland. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 17, 2010 without further notice, unless EPA receives adverse written comment by July 19, 2010. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0871 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0871, Cristina Fernandez, Associate Director, Office of Air Planning Programs, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2008–0871. 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

I. What is transportation conformity?

Transportation conformity is required under section 176(c) of the Clean Air Act to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the Clean Air Act for the following transportation related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity for purposes of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR part 93 ("Federal conformity rule") and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. What is the background for this action?

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was signed into law. SAFETEA–LU revised certain provisions of section 176(c) of the Clean Air Act, related to transportation conformity. Prior to SAFETEA–LU, States were required to address all of the Federal conformity rule's provisions in their conformity SIPs. After SAFETEA–LU, State's SIPs were required to contain all or portions of only the following three sections of the Federal conformity rule, modified as appropriate to each State's circumstances: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (written commitments to implement certain kinds of control measures); and 40 CFR 93.125(c) (written commitments to implement certain kinds of mitigation measures). States are no longer required to submit conformity SIP revisions that address the other sections of the Federal conformity rule.

III. What did the State submit and how did we evaluate it?

On August 4, 1998, the Maryland Department of the Environment submitted a revision to its State Implementation Plan (SIP), Revision #98–14, to EPA for parallel processing for transportation conformity amendments adopted on May 4, 1995 and proposed for adoption on July 31, 1998. The SIP revision included regulations .01, .02, and .03 under COMAR 26.11.26 (Conformity). On January 29, 2003, the Maryland Department of the Environment submitted a revision to its SIP, Revision #03–02, for transportation conformity amendments that were adopted on July 12, 1999. The 2003 SIP revision included amendments to Regulations 26.11.26.02 and .03, new Regulations

.04 through .08, and recodification of Regulation .04 to Regulation .09 (excluding Regulation .06). On February 5, 2007, the Maryland Department of the Environment submitted a revision to its SIP, Revision #06–07, for transportation conformity purposes. The SIP revision included amendments to Regulation 26.11.26.01 through .05 and .07 through .09. This SIP revision addresses the three provisions of the EPA Conformity Rule required under SAFETEA–LU: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (control measures); and 40 CFR 93.125(c) (mitigation measures). On July 8, 2008, the Maryland Department of the Environment supplemented its SIP with Revision #06–07. The SIP submission corrected minor citation errors, removed COMAR 26.11.26.05E(4), and corrected a citation in COMAR 26.11.26.01 which was mislabeled as section 176(c) of the Clean Air Act and should have read section 176(c)(4)(E) of the Clean Air Act.

We reviewed the submittals to assure consistency with the February 14, 2006, "Interim Guidance for Implementing the Transportation Conformity provisions in SAFETEA–LU." The guidance document can be found at *http://epa.gov/otaq/stateresources/transconf/policy.htm.* The guidance document states that each State is only required to address and tailor the aforementioned three sections of the Federal Conformity Rule to be included in their State conformity SIPs. EPA's review of Maryland's SIP Revision indicates that it is consistent with EPA's guidance in that it includes the three aforementioned regulatory elements specified by SAFETEA–LU. Consistent with the EPA Conformity Rule at 40 CFR 93.105 (consultation procedures), COMAR 26.11.26.02, COMAR 26.11.26.04, and COMAR 26.11.26.05 identify the appropriate agencies, procedures, and allocation of responsibilities. In addition, COMAR 26.11.26.07 provides for appropriate public consultation/public involvement consistent with 40 CFR 93.105. With respect to the requirements of 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), the SIP specifies that written commitments to implement control measures and mitigation measures for meeting these requirements will be provided as needed.

IV. Final Action

EPA is approving the Maryland SIP revisions for Transportation Conformity, which were submitted on August 4, 1998, January 29, 2003, February 5, 2007, and supplemented on July 8, 2008. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 17, 2010 without further notice unless EPA receives adverse comment by July 19, 2010. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *August 17, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this final rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness

of such rule or action. This action to approve the Maryland transportation conformity regulation may not be challenged later in proceedings to enforce its requirements. (*See,* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 7, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V— Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by removing the existing entries for COMAR 26.11.26.01 and 26.11.26.03, and adding new entries for COMAR 26.11.26.01, 26.11.26.02, 26.11.26.03, 26.11.26.04, 26.11.26.05, 26.11.26.07, 26.11.26.08, and 26.11.26.09. The amendments read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
26.11.26 Conformity				
26.11.26.01	Purpose	1/29/07	June 18, 2010 [Insert page number where the document begins].	New Regulation.
26.11.26.02	Definitions	8/9/99 1/29/07	June 18, 2010 [Insert page number where the document begins].	Definitions added for transportation conformity; definitions for general conformity were approved at (c)(136).
26.11.26.03	Transportation Conformity	6/5/95 1/29/07	June 18, 2010 [Insert page number where the document begins].	New Regulation; current COMAR citation is current COMAR citation is 26.11.26.04.
26.11.26.04	Transportation Conformity—Consultation in General.	8/9/99 1/29/07	June 18, 2010 [Insert page number where the document begins].	New Regulation; current COMAR citation is 26.11.26.05.
26.11.26.05	Transportation Conformity—Interagency Consultation Requirements.	8/9/99 1/29/07 6/30/08	June 18, 2010 [Insert page number where the document begins].	New Regulation; current COMAR citation is 26.11.26.06.
26.11.26.07	Transportation Conformity—Public Consultation Procedures.	8/9/99 1/29/07	June 18, 2010 [Insert page number where the document begins].	New Regulation; current COMAR citation is 26.11.26.08.
26.11.26.08	Transportation Conformity—Interagency Consultation.	8/9/99 1/29/07	June 18, 2010 [Insert page number where the document begins].	New Regulation; current COMAR citation is 26.11.26.09.
26.11.26.09	General Conformity	1/29/07	June 18, 2010 [Insert page number where the document begins].	Formerly SIP regulation 26.11.26.03.
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[FR Doc. 2010–14766 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2010–0207; A–1–FRL–9163–2]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Air Emission Standards for Halogenated Solvent Cleaning Machines: State of Rhode Island Department of Environmental Management

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act ("CAA") and Federal regulations promulgated thereunder, the Rhode Island Department of Environmental Management ("RI DEM") submitted a request for approval to implement and enforce Air Pollution Control Regulation Number 36, Control of Emissions from Organic Solvent Cleaning ("RI Regulation No. 36"), and the Rhode Island Air Pollution Control, General Definitions Regulation ("RI General Definitions Rule"), as a partial substitution for the National Emissions Standards for Halogenated Solvent Cleaning ("Halogenated Solvent NESHAP"), as it applies to organic solvent cleaning machines in Rhode Island, except continuous web cleaning machines, with respect to which the Halogenated Solvent NESHAP shall continue to apply. EPA has reviewed this request and has determined that RI Regulation No. 36 and the RI General Definitions Rule satisfy the requirements necessary for partial substitution approval. Thus, EPA is hereby granting RI DEM the authority to implement and enforce RI Regulation No. 36 and the RI General Definitions Rule in place of the Halogenated Solvent NESHAP for organic solvent cleaning machines, but EPA is retaining its authority with respect to continuous web cleaning machines in Rhode Island. This approval makes RI Regulation No. 36 and the RI General Definitions Rule Federally enforceable.

DATES: This direct final rule will be effective August 17, 2010, unless EPA receives adverse comments by July 19, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 17, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2010–0207 by one of the following methods:

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

2. *E-mail: mcdonnell.ida@epa.gov.*

3. *Fax:* (617) 918–0653.

4. *Mail:* "EPA–R01–OAR–2010–0207", Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Air Permits, Toxics and Indoor Programs Unit, Five Post Office Square, Suite 100 (mail code OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier.* Deliver your comments to: Ida McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2010–0207. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA will forward copies of all submitted comments to the Rhode Island Department of Environmental Management.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI, 02908.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1656, fax number (617) 918–0656, e-mail *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

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I. Background and Purpose

Under CAA section 112(l), EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA's approval of State and local rules or programs under section 112(l) are found in 40 CFR part 63, subpart E. Under these regulations, a State air pollution control agency has the option to request EPA's approval to substitute a State rule for the applicable Federal rule (*e.g.,* the National Emission Standards for Hazardous Air Pollutants). Upon approval by EPA, the State agency is authorized to implement and enforce its rule in place of the Federal rule.

EPA promulgated the National Emissions Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning Facilities ("Halogenated Solvent NESHAP") on December 2, 1994. *See* 40 CFR part 63, subpart T. EPA promulgated several amendments to the Halogenated Solvent NESHAP, with the latest amendments promulgated on May 3, 2007.

On January 8, 2001, EPA received a request from RI DEM to implement and enforce its Air Pollution Control Regulation Number 36, Control of Emissions from Organic Solvent Cleaning ("RI Regulation No. 36") as a substitute for the Halogenated Solvent NESHAP, as it applies to organic solvent cleaning machines in Rhode Island, except continuous web cleaning machines. Upon evaluation, EPA requested that the RI DEM revise its January 8, 2001 submission. On March 11, 2005, RI DEM submitted a revised rule substitution package.

In a letter dated October 9, 2007, EPA requested that RI DEM further revise RI Regulation No. 36 to address new facility-wide emission limits and associated reporting and recordkeeping issued in the May 3, 2007 amendments to the Halogenated Solvent NESHAP, as well as several other requirements. On October 9, 2008, RI DEM finalized amendments to RI Regulation No. 36, as well as to Rhode Island Air Pollution Control General Definitions Regulation ("RI General Definitions Rule"). On April 20, 2009, RI DEM submitted its amended RI Regulation No. 36 and RI General Definitions Rule to be implemented and enforced as a partial rule substitution in place of the Halogenated Solvent NESHAP for all organic solvent cleaning machines, except continuous web cleaning machines. RI DEM provided supplemental information to its April 20, 2009 submission on June 12, 2009.

On September 30, 2009, EPA determined that the RI DEM April 20, 2009 submission, supplemented on June 12, 2009, was complete. As explained below, EPA has reviewed the State's submission and determined that the RI Regulation No. 36 and RI General Definitions Rule are no less stringent than the Halogenated Solvent NESHAP, as applied to all organic cleaning machines in Rhode Island, except continuous web cleaning machines.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What requirements must a State rule meet to substitute for a section 112 rule?

A State must demonstrate that it has satisfied the general delegation/approval criteria contained in 40 CFR 63.91(d). The process of providing "up-front approval" assures that a State has met the delegation criteria in section 112(l)(5) of the CAA (as codified in 40 CFR 63.91(d)), that is, that the State has demonstrated that its NESHAP program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR 63.91(d)(3), interim or final Title V program approval satisfies the criteria set forth in 40 CFR 63.91(d) for "up-front approval." On October 1, 2001, EPA promulgated full approval of RI DEM's operating permits program. *See* 66 FR 49839. Accordingly, RI DEM has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the "rule substitution" option requires EPA to make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93. A rule will be approved if the State or local government demonstrates: (1) The State and local rules contain applicability criteria that are no less stringent than the corresponding Federal rule; (2) the State and local rule requires levels of control and compliance and enforcement measures that would achieve emission reductions from each affected source that are no less stringent than would result from the otherwise applicable Federal standard; (3) the schedule for implementation and compliance is consistent with the deadlines established in the otherwise applicable Federal rule; and (4) the State requirements include additional compliance and enforcement measures as specified in 40 CFR 63.93(b)(4). *See* 40 CFR 63.93(b). After reviewing RI DEM's amended partial rule substitution request and equivalency demonstration for the Halogenated Solvent NESHAP, EPA has determined this request meets all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

III. How will EPA determine equivalency for State alternative NESHAP requirements?

Before we can approve alternative requirements in place of a part 63 emissions standard, the State must submit to us detailed information that demonstrates how the alternative

requirements compare with the otherwise applicable Federal standard. Under 40 CFR part 63 subpart E, the level of control in the State rule must be at least as stringent as the level of control in the Federal rule. In addition, in order for equivalency to be granted, the level of control and compliance and enforcement measures ("MRR") of the State rule, taken together as a whole, must be equivalent to the level of control and MRR of the Federal rule, taken together as a whole. A detailed discussion of how EPA will determine equivalency for State alternative NESHAP requirements is provided in the preamble to EPA's proposed Subpart E amendments on January 12, 1999. *See* 64 FR 1908.

IV. EPA Determination of Rule Equivalency

A. What are the major differences between Rhode Island Regulation No. 36 and the Halogenated Solvent NESHAP?

Rhode Island Regulation No. 36 differs in several ways from the Halogenated Solvent NESHAP. Most of these differences make RI Regulation No. 36 more stringent than the Halogenated Solvent NESHAP. However, some of the provisions require explanation and clarification to explain how they are no less stringent than the Halogenated Solvent NESHAP. The provisions of RI Regulation No. 36 that are the same as the Halogenated Solvent NESHAP are not discussed in this section.

i. How do the applicability requirements differ?

The Halogenated Solvent NESHAP applies to each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform, or any combination of these Hazardous Air Pollutant ("HAP") solvents, in a total concentration greater than five percent by weight, as a cleaning and/or drying agent. *See* 40 CFR 63.460(a). RI Regulation No. 36 applies to any organic solvent cleaning machine using any volatile organic compound ("VOC") or any volatile HAP, including all types of solvent cleaning machines specified in the Halogenated Solvent NESHAP for cleaning or drying parts, except any cold cleaning machine that uses a solvent which contains no more than 5% VOC or volatile HAP by weight. *See* RI Regulation 36.2 and 36.1. RI Regulation No. 36 is more stringent than the Halogenated Solvent NESHAP because it applies to all organic solvent cleaning machines using any organic solvent of any concentration, except cold cleaning machines using less than 5% VOC or volatile HAP by weight.

ii. How do the compliance schedules differ?

The Halogenated Solvent NESHAP requires existing sources constructed or reconstructed before November 29, 1993 to be in compliance with their requirements, except for the facility-wide emission limits, by December 2, 1997, and new sources must be in compliance with their requirements, except for the facility-wide emission limits, immediately upon startup or by December 2, 1994, whichever is later. *See* 40 CFR 63.460(c) and (d). The Halogenated Solvent NESHAP requires new sources to comply with the facility-wide emission limits by May 3, 2007 or immediately upon startup, whichever is later, and existing sources must comply by May 3, 2010. *See* 40 CFR 63.460(i). RI Regulation No. 36 requires existing sources constructed or reconstructed before November 29, 1993 to be in compliance by January 1, 1997 and new or reconstructed sources constructed after November 29, 1993 must be in compliance immediately upon startup or by April 8, 1996, whichever is later. RI Regulation No. 36 facility-wide emission limits became effective on October 9, 2008. *See* RI Regulation 36.3 and 36.4.17. RI Regulation No. 36 compliance dates for existing sources are earlier than the Halogenated NESHAP and new sources must already be in compliance or must comply immediately upon startup. Therefore, the RI Regulation No. 36 compliance deadlines are consistent with the deadlines established in the Halogenated Solvent NESHAP.

iii. What provisions apply to continuous web cleaning machines?

EPA amended the Halogenated Solvent NESHAP on December 3, 1999, to include provisions for continuous web cleaning machines. *See* 64 FR 67793. Continuous web cleaning machines are solvent cleaning machines in which parts such as film, coils, wire, and metal strips are cleaned at speeds typically in excess of 11 feet per minute, and EPA determined that these types of cleaning machines warranted additional review following the original promulgation of the Halogenated Solvent NESHAP. RI Regulation No. 36 does not include specific provisions for continuous web cleaning machines. RI DEM informed EPA that there are no continuous web cleaning machines currently operating in Rhode Island and that any new continuous web cleaning operations would be required by Rhode Island Air Pollution Control Regulation No. 9, Air Pollution Control Permits, to obtain a preconstruction permit prior to installation. Under the provisions of subsection 9.3 of Regulation No. 9, a preconstruction permit is issued only if the process is determined to employ Best Available Control Technology (BACT) and is in compliance with all applicable State and Federal requirements. Under the Federal rule substitution requirements in Section 63.93(a), "permits must already be issued to be used under this section." *See* 40 CFR 63.93(a)(4). Because RI DEM's rule does not include specific provisions for continuous web cleaning machines and because EPA can only review permits that are already issued for determining equivalency, EPA cannot rely on any potential future permits issued under RI Air Pollution Control No. 9 to demonstrate equivalency for continuous web cleaning machines. Therefore, EPA is retaining the Federal requirements for continuous web cleaning machines.

iv. How are the requirements for batch cold cleaning machines different?

The Halogenated Solvent NESHAP requires batch cold cleaning machines, except remote-reservoir machines, to employ a tightly-fitting cover, and either: (1) A freeboard ratio of 0.75 or greater or (2) a water layer of a minimum thickness of 1 inch on the surface of the solvent cleaning machine. *See* 40 CFR 63.462(a). RI Regulation No. 36 requires batch cold cleaning machines to be equipped with a cover and a freeboard ratio of greater than or equal to 0.75. *See* RI Regulation 36.5.2 and 36.5.3. RI does not allow the option of a water layer. All other batch cold cleaning requirements are the same. *See* RI Regulation 36.5 and 36.4. RI's batch cold cleaning machine requirements are equivalent to the Halogenated Solvent NESHAP.

v. How are the requirements for batch vapor and in-line cleaning machines different?

The Halogenated Solvent NESHAP requires each cleaning machine to be equipped with either: (1) An idling and downtime mode cover or (2) a reduced room draft. *See* 40 CFR 63.463(a)(1)(i) and (ii). RI Regulation No. 36 does not allow the use of reduced room drafts but does require the use of a cover. *See* RI Regulation 36.6.1 and 36.7.1. This is equivalent to the Halogenated Solvent NESHAP.

The Halogenated Solvent NESHAP requires each cleaning machine to have

an automated parts handling system operated at 11 feet per minute (ft/min) or less. *See* 40 CFR 63.463(a)(3). RI Regulation No. 36 requires an automated parts handling system operated at 10 ft/min. *See* RI Regulation 36.6.3 and 36.7.3. RI Regulation No. 36 is more stringent than the Halogenated Solvent NESHAP.

The Halogenated Solvent NESHAP requires in-line cleaning machines and batch vapor machines with a solvent air interface to operate using either: (1) The control combinations specified in the appropriate Tables or (2) an idling emission limit. *See* 40 CFR 63.463(b) and (c). RI regulation No. 36 does not allow idling emission limits as an option for compliance and specifies fewer control combination options than the Halogenated Solvent NESHAP, but all control combinations allowed by RI Regulation No. 36 are at least as stringent as the Halogenated Solvent NESHAP control combinations. *See* RI Regulation 36.6.6, 36.6.7, 36.7.7, and 36.7.8.

vi. How do the requirements for the alternative standards differ?

The Halogenated Solvent NESHAP allows facilities to meet a 3-month rolling average monthly emission limit as an alternative to the control technology standards for machines with or without a solvent/air interface. *See* 40 CFR 63.464. RI Regulation No. 36 does not allow an alternative emission limit standard for machines with a solvent/air interface. RI Regulation No. 36 does allow an alternative emission limit standard for machines without a solvent/air interface, which is equivalent to the Halogenated Solvent NESHAP. *See* RI Regulation 36.8.

vii. How do the requirements for the facility-wide emission limits differ?

The Halogenated Solvent NESHAP was amended on May 3, 2007 to include new facility-wide emission limits and associated reporting and recordkeeping requirements. For major sources, the facility-wide emission limits apply to all solvent cleaning machines, except solvent cleaning machines used in the manufacture and maintenance of aerospace products, solvent cleaning machines used in the manufacture of narrow tubing and all continuous web cleaning machines. For area sources, the facility-wide emission limits apply to all solvent cleaning machines except cold batch cleaning machines. *See* 40 CFR 63.471. RI Regulation No. 36 includes a monthly halogenated HAP solvent emission limit for all organic solvent cleaning operations, calculated on a 12-month rolling average basis, unless RI approves a greater quantity of HAP emissions in an operating permit. In no case shall emissions exceed the facility-wide limit in 40 CFR 63.471. *See* RI Regulation 36.4.17. The RI facility-wide emission limits are equivalent to or more stringent than the Halogenated Solvent NESHAP.

viii. How are the monitoring requirements different?

The Halogenated Solvent NESHAP requires facilities operating a carbon adsorber to maintain an exhaust concentration of 100 parts per million ("ppm") or less and conduct weekly monitoring using a colorimetric detector tube. *See* 40 CFR 63.463(e)(2)(vii) and 63.466(e). RI Regulation No. 36 requires that the solvent concentration in the carbon adsorber exhaust shall not exceed 25 ppm and requires weekly monitoring with a colorimetric detector tube. RI Regulation No. 36 also requires an initial performance test using EPA Test Method 25 within 60 days of startup of the carbon adsorber. *See* RI Regulation 36.9.5. The RI rule is more stringent than the Halogenated Solvent NESHAP.

ix. How do the reporting requirements differ?

RI Regulation No. 36 includes several differences in reporting requirements. The Halogenated Solvent NESHAP requires new sources to submit an initial notification as soon as practicable before startup. *See* 40 CFR 63.468(b). RI Regulation No. 36 requires new sources to submit the initial notification report 120 days before the startup of the cleaning machine. *See* RI Regulation 36.11.1. The Halogenated Solvent NESHAP requires a compliance report including certain information to be submitted for new sources 150 days after startup. The compliance report must include, among other requirements, the results of the first 3 month average emission calculation for sources complying with the alternative standard. *See* 40 CFR 63.468(c), (d) and (e). RI Regulation No. 36 requires the compliance report be submitted 60 days after startup of the cleaning machine and sources complying with the alternative standard must only submit a calculation of emissions for the first month. RI Regulation No. 36 cannot require a 3-month average calculation because the report is due 60 days after startup. However, the RI regulation does require sources to keep records of each 3-month average calculation and to report this information annually. *See* RI Regulation 36.10.3, 36.11.2 and 36.11.4.

The Halogenated Solvent NESHAP requires certain incidences to be reported as exceedances. *See* 40 CFR 63.463(e). RI Regulation No. 36 includes these requirements, except for the following differences. The Halogenated Solvent NESHAP requires the following incidences to be reported as an exceedance, if the incidence is not corrected within 15 days: (1) Temperature monitoring exceedances; (2) a cover with cracks, holes or other defects; and (3) carbon adsorber monitoring exceedances. *See* 40 CFR 63.463(e)(3)(ii). RI Regulation No. 36 requires each of these incidences to be reported as an exceedance regardless of whether the incidence is corrected within 15 days. *See* RI Regulation 36.9.1 36.9.3, 36.9.4, 36.9.5. The RI Regulation is more stringent for these exceedance report provisions. The Halogenated Solvent NESHAP requires an exceedance report if an idling mode cover is not in place when parts are not in the solvent cleaning machine or if the cover is located above the lip exhaust. *See* 40 CFR 63.463(e)(3)(i). RI does not require an exceedance report for these incidences but the RI rule prohibits these incidences and requires a record to be kept if these incidences occur. *See* RI Regulation 36.10.2(h), 36.6.1, 36.7.1.

The Halogenated Solvent NESHAP includes reporting and recordkeeping requirements associated with the facility-wide emission limits in 40 CFR 63.471. RI does not require all of the reporting and recordkeeping associated with the facility-wide emission limits, so long as the source emits less than 50% of the facility-wide emission limit in 40 CFR 63.471. If a facility emits more than 50% of the facility-wide emission limit in 40 CFR 63.471, it becomes subject to all of the reporting and recordkeeping in 40 CFR 63.471. *See* RI Regulation 36.11.4(b). Specifically, RI does not require sources to maintain a log of additions and deletions from the machine, and fill the machine on the first day of each month to calculate the facility-wide emission limit (except batch vapor machines). But, RI does require sources to keep a record of the amount of perchloroethylene, trichloroethylene, and methylene chloride used each month. *See* RI Regulation 36.10.2(b) and 36.10.4(d). RI does not require all of the information in the initial notification and statement of compliance due to EPA by May 3, 2010 under 40 CFR 63.471. However, RI Regulation No. 36 does require sources to submit an annual report of solvent cleaning emissions by April 15 of each year starting April 15, 2009. *See* RI Regulation 36.11.4(b). Also, RI has required the information in the May 3, 2010 report to be submitted

previously (*e.g.,* date of installation of the machine and controls used). *See* RI Regulation 36.11.1(a) and (b).

Although RI Regulation No. 36 includes several reporting and recordkeeping differences, RI Regulation No. 36 is more stringent than the Halogenated Solvent NESHAP in a number of areas. As discussed above, RI Regulation No. 36 includes more stringent applicability, more stringent monitoring requirements, and the control requirements are at least equivalent to or more stringent than the Halogenated Solvent NESHAP requirements. In addition, certain reporting requirements are more stringent than the Halogenated Solvent NESHAP. Although RI Regulation No. 36 includes some reporting and recordkeeping differences from the Halogenated Solvent NESHAP, EPA has determined that the requirements of RI Regulation No. 36 are, taken as a whole, equivalent to the requirements of the Halogenated Solvent NESHAP.

V. What is EPA's action regarding Rhode Island Regulation No. 36?

After reviewing Rhode Island's request for approval of RI Regulation No. 36, EPA has determined that Rhode Island's regulations meet all of the requirements necessary for partial rule substitution under section 112(l) of the CAA and 40 CFR 63.91 and 63.93. The Rhode Island Regulation No. 36, taken as a whole, is no less stringent than the Halogenated Solvent NESHAP, as applied to all solvent cleaning machines, except continuous web cleaning machines. Therefore, EPA hereby approves Rhode Island's request to implement and enforce Rhode Island Air Pollution Control Regulation No. 36, Control of Emissions from Organic Solvent Cleaning and Rhode Island Air Pollution Control, General Definitions Regulation, in place of the Halogenated Solvent NESHAP for all halogenated solvent cleaning machines in Rhode Island, except continuous web cleaning machines. EPA retains the requirements for continuous web cleaning machines. As of the effective date of this action, RI Regulation No. 36 and RI General Definitions Rule are enforceable by EPA and by citizens under the CAA. Although Rhode Island has primary responsibility to implement and enforce RI Regulation No. 36 and RI General Definitions Rule, EPA retains the authority to enforce any requirement of the rule upon its approval under CAA 112. *See* CAA section 112(l)(7).

VI. Final Action

The EPA is approving the Rhode Island Air Pollution Control Regulation No. 36, Control of Emissions from Organic Solvent Cleaning, and Rhode Island Air Pollution Control General Definitions Regulation as a partial rule substitution for the Halogenated Solvent NESHAP for halogenated solvent cleaning machines in Rhode Island, except continuous web cleaning machines. The EPA retains the requirements for continuous web cleaning machines.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the rule revision should relevant adverse comments be filed. This rule will be effective August 17, 2010 without further notice unless the Agency receives relevant adverse comments by July 19, 2010.

If the EPA receives such comments, then EPA will publish a notice withdrawing the direct final rule and informing the public that the direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 17, 2010 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VII. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit by August 17, 2010. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Regional Administrator, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (ORA01–4), Boston, MA 02109–3912, with a copy to the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Regional Counsel, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (ORA01–4), Boston, MA 02109–3912. Filing a petition for reconsideration by the Administrator of this final rule under CAA section 307(d)(7)(B) does not affect the finality of this rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action approves equivalent State requirements in place of Federal requirements under CAA section 112(l). This type of action is exempt from review under Executive Order ("EO") 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action allows the State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied only to halogenated solvent cleaning machines. Thus, this action does not require any person to submit information.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any

other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards found at 13 CFR 121.201, (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not have a significant impact on a substantial number of small entities because approvals under CAA section 112(l) and 40 CFR 63.93 do not create any new requirements. Such approvals simply allow a State to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action allows the State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied to halogenated solvent cleaning machines. Such approvals simply allow a State to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing. Thus, this action does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action simply allows Rhode Island to implement equivalent alternative requirements to replace a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action allows the State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied only to halogenated solvent cleaning machines. This action will not have substantial direct effects on Tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it approves a State program such that it allows the State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied only to halogenated solvent cleaning machines.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget ("OMB"), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action allows the State of Rhode Island to implement equivalent State requirements *in lieu of* pre-existing Federal requirements as applied only to halogenated solvent cleaning machines. As explained above, the State requirements contain standards that are at least equivalent to the Federal standards; thus, we anticipate only a positive impact from this action.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 17, 2010.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and record keeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: June 8, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

■ 40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding paragraph (d)(9) to read as follows:

§ 63.14 Incorporation by reference.

(d) * * *

(9) Rhode Island Department of Environmental Management regulations at Air Pollution Control Regulation No. 36, Control of Emissions from Organic Solvent Cleaning, effective April 8, 1996, last amended October 9, 2008, and Rhode Island Air Pollution Control, General Definitions Regulation, effective July 19, 2007, last amended October 9, 2008. Incorporation By Reference approved for § 63.99(a)(40)(ii) of subpart E of this part.

* * * * *

Subpart E—[Amended]

■ 3. Section 63.99 is amended by adding paragraph (a)(40) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(40) Rhode Island.

(i) [Reserved]

(ii) Affected area sources within Rhode Island must comply with the Rhode Island Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14) as described in paragraph (a)(40)(ii)(A) of this section:

(A) The material incorporated into the Rhode Island Department of Environmental Management regulations at Air Pollution Control Regulation No. 36, Control of Emissions from Organic Solvent Cleaning, effective April 8, 1996, last amended October 9, 2008, and Rhode Island Air Pollution Control, General Definitions Regulation, effective July 19, 2007, last amended October 9, 2008, pertaining to organic solvent cleaning facilities in the State of Rhode Island jurisdiction, and approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal NESHAP for Halogenated Solvent Cleaning Facilities (subpart T of this part), effective as of May 3, 2007, except for continuous web cleaning machines as defined in § 63.461.

(*1*) Authorities not delegated.

(*i*) Rhode Island is not delegated the Administrator's authority to implement and enforce Rhode Island regulations at Air Pollution Control Regulation No. 36 and Rhode Island General Definitions Regulation in lieu of those provisions of subpart T of this part which apply to continuous web cleaning machines as defined in § 63.461.

(*ii*) [Reserved]

(*2*) [Reserved]

(B) [Reserved]

* * * * *

[FR Doc. 2010–14508 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1065

Engine-Testing Procedures

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 1000 to End, revised as of July 1, 2009, on page 587, in § 1065.340, reinstate paragraph (f)(6)(iii) to read as follows:

§ 1065.340 Diluted exhaust flow (CVS) calibration.

* * * * *

(f) * * *

(6) * * *

(iii) The mean temperature at the venturi inlet, $\bar{T}_{in}$.

* * * * *

[FR Doc. 2010–14886 Filed 6–17–10; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 75, No. 117
Friday, June 18, 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 Parts 1604 and 1651

Uniformed Services Accounts and Death Benefits

AGENCY: Federal Retirement Thrift Investment Board

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to make several changes to its death benefits regulations. In particular, it proposes to expand the requirements necessary in order for a designation of beneficiary form to be valid. This change would also allow participants holding both a uniformed services and civilian account to submit a single designation of beneficiary form which can be used to designate beneficiaries for both accounts. The Agency also proposes to amend its death benefit regulations to allow participants to designate a custodian under the Uniform Transfers to Minors Act as a beneficiary, to permit the Agency to defer to State law when a potential beneficiary is implicated in the death of a participant and is subsequently found not guilty by reason of insanity, and to require a notary to witness disclaimers of death benefits.

DATES: Comments must be received on or before July 19, 2010.

ADDRESSES: Comments may be sent to Thomas K. Emswiler, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Agency's Fax number is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Megan G. Grumbine at (202) 942–1644 or Laurissa Stokes at (202) 942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the 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)).

Uniformed Services Accounts/Death Benefits—Agency's New Designation of Beneficiary Form and Related Requirements

The Agency proposes to amend its regulations to improve the process by which TSP participants designate beneficiaries for their TSP accounts.

In particular, the Agency, which has created a new optical character recognition (OCR) Form TSP–3, Designation of Beneficiary, proposes to expand its death benefits regulations to enumerate additional criteria the Agency requires in order for a designation of beneficiary form to be valid and accepted by the Agency. The Agency intends that this new form and its related requirements will guide participants through the important task of properly designating their account beneficiaries and greatly reduce potential ambiguities involved in the disposition of a participant's account upon his or her death.

Currently, the Agency's guiding statute and regulations provide that a designation of beneficiary form need only be signed, witnessed, and received by the Agency on or before the participant's date of death in order to be valid. See 5 U.S.C. 8424(d), 5 CFR 1651.3(c). However, the Agency often receives forms which meet these threshold requirements but omit critical details such as identifying information for the participant or the beneficiaries. In order to reduce the likelihood of error in processing the designation of beneficiary forms for its approximately 4.3 million participants, the Agency concluded it is necessary to expand the criteria required for a designation of beneficiary form to be valid.

Specifically, the Agency proposes to require that, in addition to being signed, properly witnessed, and received by the Agency on or before a participant's date of death, a designation of beneficiary form must also identify the participant in a manner so that the Agency can locate the participant's TSP account (*e.g.,* provide the participant's full name and the participant's date of birth, TSP account number, or Social Security number), identify primary and contingent beneficiaries in a manner so that the Agency can identify the individual (*e.g.,* provide a beneficiary's Social Security number or date of birth), link each contingent beneficiary to a primary beneficiary, provide shares for primary beneficiaries which equal 100 percent, and contain no substantive alterations.

In addition to ensuring accurate processing and payment, the new regulatory requirements will reduce processing time and save the Agency resources as these requirements allow the Agency to quickly and accurately match the information on the designation of beneficiary form to the proper participant and beneficiaries. Further, by having these additional regulatory requirements in place, if a participant submits a form with an omission or error, the Agency is poised to quickly reject the form and alert the participant via a notification that he or she must submit a new, valid form. These up-front, early rejections and notifications will save the Agency considerable resources as the Agency will no longer be required to conduct as much posthumous research, analysis, and legal review.

Additionally, these new designation requirements (*e.g.,* requiring that each page be free of substantive alterations) ensure that the Agency is not receiving fraudulent or changed forms. Because a deceased participant's TSP account is an important asset to a participant's beneficiaries, the Agency believes these new requirements are critical to ensuring that the participant's wishes are properly realized.

The Agency has attempted to balance its new requirements with customer service. The new OCR Form TSP–3, for example, provides detailed instructions and allows participants with both a uniformed services and civilian account to use one form to designate the same beneficiaries for both accounts.

Further, the Agency proposes to add only those requirements it views as critical. For example, the Agency would not reject an otherwise valid designation if the contingent beneficiary shares do not equal 100 percent. Since the Agency infrequently relies on contingent beneficiary information to pay an

account, and because the Agency has a mechanism by which it can determine the amount attributable to each beneficiary if the shares do not equal 100 percent, the Agency believes it is too onerous to invalidate a Form TSP–3 containing proper primary beneficiary designations solely due to the contingent beneficiary shares not equaling 100 percent.

All designation of beneficiary forms, including older versions of the Form TSP–3, submitted on or after the effective date of this regulation must meet these new regulatory requirements in order to be valid. This change is not retroactive and will not invalidate those forms which the Agency has received prior to the effective date of this regulation. The Agency's new designation of beneficiary form is available at *http://www.tsp.gov.*

Death Benefits—Designating a Custodian Under the Uniform Transfers to Minors Act

The Uniform Transfers to Minors Act (UTMA) is a uniform act drafted and recommended by the National Conference of Commissioners on Uniform State Laws and subsequently enacted by most U.S. states and the District of Columbia. It allows an individual to make a financial transfer to a minor, but also to prevent the minor from having immediate access to the transferred property or funds. The person designated as custodian must manage the property or funds for the minor's benefit until the minor reaches the age of majority as determined by the governing state's law.

The Agency's proposed regulation would allow a participant to designate a custodian under UTMA as the beneficiary of his or her TSP account. To achieve consistent administration, the TSP will require the UTMA custodianship to be established under the laws of the District of Columbia.

Under the laws of District of Columbia, when the minor reaches 18 years of age or dies, a UTMA custodianship will automatically terminate, and the custodial relationship will cease to exist. Accordingly, if the minor reaches 18 years of age before the death benefit becomes payable, payment will be made directly to the minor and not to the designated custodian. An UTMA designation would only be valid if it is designated using the Agency's designation of beneficiary form. The Agency has created a sample UTMA designation which is available at *http://www.tsp.gov.*

Death Benefits—Homicide

Section 1651.12 of Title 5 of the Code of Federal Regulations governs the distribution of death benefits when a potential beneficiary causes the death of a participant. It currently provides that if a beneficiary is convicted of, or pleads guilty to, a crime in connection with the participant's death that would preclude the beneficiary from inheriting under State law, the beneficiary will not be entitled to receive any portion of the participant's account. It further provides that the Agency will follow the State law of the participant's domicile as that law is set forth in a civil court judgment.

As section 1651.12 currently reads, a potential beneficiary may be deprived of his or her entitlement to death benefits only if (1) he or she is convicted of a crime that would bar him or her from inheriting under the laws of the State in which the participant is domiciled at the time of death or (2) he or she is judged guilty in civil court of a crime that would bar him or her from inheriting under the laws of the state in which the participant is domiciled. The language of section 1651.12 is imperfect as applied to a criminal verdict declaring that the potential beneficiary is not guilty, by reason of insanity, of causing the participant's death. This proposed regulation would allow the Agency to defer to state law to determine the effect of a verdict of not guilty by reason of insanity on the potential beneficiary's entitlement to inherit from the deceased participant, notwithstanding that a verdict of not guilty by reason of insanity does not constitute a conviction.

Death Benefits—Notarized Signature for Disclaimers

The beneficiary of a TSP account may disclaim his or her right to receive all or part of a TSP death benefit. A valid disclaimer is irrevocable and the effect of a disclaimer is that the disclaimed share will be paid as though the beneficiary predeceased the participant.

The disclaimer must expressly state that the beneficiary is disclaiming his or her right to receive either all or a stated percentage of the death benefit payable from the TSP account of the named participant and must be: (1) Submitted in writing; (2) signed by the person (or legal representative) disclaiming the benefit; and (3) received before the TSP pays the death benefit. This proposed regulation would require the signature of the person (or legal representative) disclaiming the benefit to be witnessed by a notary. Because the effect of a disclaimer is to preclude an otherwise lawful beneficiary from taking either a portion or the whole amount of a TSP account, this added requirement is necessary to ensure that the Agency is receiving non-fraudulent disclaimers.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

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 section 1532 is not required.

List of Subjects

5 CFR Part 1604

Military personnel, Pensions, Retirement.

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, the Agency proposes to amend 5 CFR chapter VI as follows:

PART 1604—UNIFORMED SERVICES ACCOUNTS

1. The authority citation for part 1604 continues to read as follows:

Authority: 5 U.S.C. 8440e, 8474(b)(5) and (c)(1).

§ 1604.8 [Amended]

2. Amend § 1604.8, by removing the second sentence of paragraph (a).

PART 1651—DEATH BENEFITS

3. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

4. Amend § 1651.3, by adding a fourth sentence to paragraph (b), and revising paragraph (c) to read as follows:

§ 1651.3 Designation of beneficiary.

* * * * *

(b) * * * A participant may designate a custodian under the Uniform Transfers to Minors Act provided that the custodianship is established under the laws of the District of Columbia and that the participant designates the custodianship using the Agency's designation of beneficiary form.

(c) *Validity requirements.* To be valid and accepted by the TSP record keeper, a TSP designation of beneficiary form must:

(1) Be received by the TSP record keeper on or before the date of the participant's death;

(2) Identify the participant in such a manner so that the Agency can locate his or her TSP account;

(3) Be signed and properly dated by the participant and signed and properly dated by two witnesses;

(i) The participant must either sign the form in the presence of the witnesses or acknowledge his or her signature on the form to the witnesses;

(ii) All submitted and attached pages must be signed by the participant, dated by the participant, and witnessed in the same manner (by the same witnesses) as the form itself and must follow the format of the TSP designation of beneficiary form;

(iii) A witness must be age 21 or older; and

(iv) A witness designated as a beneficiary will not be entitled to receive a death benefit payment. If a witness is the only named beneficiary, the designation of the beneficiary is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries pro rata.

(4) Designate primary beneficiary shares which when summed equal 100%;

(5) Contain no substantive alterations (*e.g.,* struck-through shares or scratched-out names of beneficiaries);

(6) Designate each primary and each contingent beneficiary in such a manner so that the Agency can identify the individual or entity; and

(7) Match each contingent beneficiary to a primary beneficiary.

* * * * *

5. Amend § 1651.12, by revising the second sentence to read as follows:

§ 1651.12 Homicide.

* * * If the beneficiary is implicated in the death of the participant and the beneficiary would be precluded from inheriting under State law, the beneficiary will not be entitled to receive any portion of the participant's account. * * *

6. Amend § 1651.17, by revising paragraph (b)(2) to read as follows:

§ 1651.17 Disclaimer of benefits.

* * * * *

(b) * * *

(2) Signed or acknowledged, in the presence of a notary, by the person (or legal representative) disclaiming the benefit; and

* * * * *

[FR Doc. 2010–14741 Filed 6–17–10; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–STD–0005]

RIN 1904–AC15

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Certain Small Diameter, Elliptical Reflector, and Bulged Reflector Incandescent Reflector Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: On May 3, 2010 U.S. Department of Energy (DOE) published a document in the **Federal Register** initiating a rulemaking to evaluate energy conservation standards for certain small diameter, elliptical reflector (ER), and bulged reflector (BR) incandescent reflector lamps. In that document, DOE announced the availability of a framework document and the date of a public meeting. This document announces an extension of the public comment period for submitting comments on the framework document or any other aspect of the rulemaking for certain small diameter, ER, and BR incandescent reflector lamps. The comment period is extended to July 9, 2010.

DATES: DOE will accept comments, data, and information regarding the framework document received no later than July 9, 2010.

ADDRESSES: Any comments submitted must identify the framework document for energy conservation standards for certain small diameter, ER, and BR incandescent reflector lamps, and provide docket number EERE–2010–BT–STD–0005 and/or RIN number 1904–AC15. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: IRL-2010-STD-0005@ee.doe.gov.* Include docket number EERE–2010–BT–STD–0005 and/or RIN: 1904–AC15 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC, 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Anthoney Perkins, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 287–1846. *E-mail: Anthoney.Perkins@hq.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9507. *E-mail: Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On May 3, 2010, DOE published a document in the **Federal Register** announcing a public meeting and the availability of a framework document as a first step in the rulemaking process to consider energy conservation standards for certain ER, BR, and small diameter incandescent reflector lamps. 75 FR 23191. The document provided for the submission of written comments by June 17, 2010 and oral comments were also accepted at a public meeting held on May 26, 2010. Stakeholders have requested an extension of the comment

period to allow additional time for the preparation of their comments. DOE has determined that a brief extension of the public comment period is appropriate to allow stakeholders additional time to submit comments to DOE for consideration as the proposed rule is developed. DOE will consider any comments received by July 9, 2010 and deems any comments received between publication of the **Federal Register** notice and July 9, 2010 to be timely submitted.

Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on June 11, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–14755 Filed 6–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 433 and 435

[Docket No. EE–RM/STD–02–112]

RIN 1904–AC13

Energy Efficiency and Sustainable Design Standards for New Federal Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rulemaking; extension of comment period.

SUMMARY: The U.S. Department of Energy (DOE) published a document in the **Federal Register** on May 28, 2010, concerning a public meeting and availability of the notice of proposed rulemaking (NOPR) regarding the application of sustainable design principals with respect to the siting, design, and construction of new Federal buildings. This notice extends the comment period to August 12, 2010.

DATES: DOE will hold a public meeting in Washington, DC, on Wednesday, July 28, 2010, beginning at 9 a.m. DOE must receive requests to speak at the meeting before 4 p.m., Wednesday, July 14, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Wednesday, July 21, 2010. Written comments on the NOPR are welcome, especially following the public meeting, and should be submitted by Thursday, August 12, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures, requiring a 30-day advance notice. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

FOR FURTHER INFORMATION CONTACT: Cyrus Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, EE–2L, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9138, e-mail: *Cyrus.Nasseri@ee.doe.gov,* or Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5709, e-mail: *Ami.Grace-Tardy@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE published a document in the **Federal Register** on May 28, 2010 (75 FR 29933), concerning a public meeting and availability of the NOPR regarding the application of sustainable design principals with respect to the siting, design, and construction of new Federal buildings. This document extends the comment period by 15 days to August 12, 2010.

The purpose of the July 28, 2010, public meeting is to discuss the NOPR regarding the application of sustainable design principals with respect to the siting, design, and construction of new Federal buildings. For additional information regarding the NOPR and the public meeting, including detailed instructions for the submission of comments and access to the docket to read background documents or comments received, please refer to the May 28, 2010 notice (75 FR 29933). The Department welcomes all interested parties, regardless of whether they participate in the public meeting, to submit written comments regarding matters addressed in the NOPR, as well as any other related issues, by August 12, 2010.

Issued in Washington, DC on June 11, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–14752 Filed 6–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0550; Directorate Identifier 2009–NM–124–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes; Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes; Model CL–600–2D15 (Regional Jet Series 705) Airplanes; and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) 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: Two cases of a crack on a "dry" ADG [air driven generator] (Hamilton Sundstrand part number in the 761339 series), in the aft area of the strut and generator housing assembly, have been reported on CL–600–2B19 aircraft. The same part is also installed on CL–600–2C10, –2D15 and –2D24 aircraft. Investigation determined that the crack was in an area of the strut where the wall thickness of the casting was below specification, due to a manufacturing anomaly in a specific batch of ADGs. Structural failure and departure of the ADG during deployment could possibly result in damage to the aircraft structure. If deployment was activated by a dual engine shutdown, ADG structural failure would also result in loss of hydraulics for the flight controls. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 2, 2010.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced 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.

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

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0550; Directorate Identifier 2009–NM–124–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–27, dated June 8, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Two cases of a crack on a "dry" ADG [air driven generator] (Hamilton Sundstrand part number in the 761339 series), in the aft area of the strut and generator housing assembly, have been reported on CL–600–2B19 aircraft. The same part is also installed on CL–600–2C10, –2D15 and –2D24 aircraft. Investigation determined that the crack was in an area of the strut where the wall thickness of the casting was below specification, due to a manufacturing anomaly in a specific batch of ADGs. Structural failure and departure of the ADG during deployment could possibly result in damage to the aircraft structure. If deployment was activated by a dual engine shutdown, ADG structural failure would also result in loss of hydraulics for the flight controls.
>
> This directive gives instructions to check the part number of the installed ADG and, for ADGs with a part number in the 761339 series, the serial numbers of the ADG and strut and generator housing assembly are also to be checked. If these serial numbers are within specified ranges ***, a one-time fluorescent penetrant inspection of the ADG strut is required [and replacement of the ADG if necessary].
>
> **Note:** For ADGs with serial numbers in the *** specified ranges, subsequent fluorescent penetrant inspections are required after each scheduled in-flight or on-ground functional check of the ADG and also after each unscheduled in-flight ADG deployment. These inspection requirements are not mandated in this directive but are specified in the approved maintenance program.

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

Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–24–120, Revision C, dated April 20, 2009; and Alert Service Bulletin A670BA–24–020, Revision C, dated April 20, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

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 proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1,073 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $91,205, 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2010–0550; Directorate Identifier 2009–NM–124–AD.

Comments Due Date

(a) We must receive comments by August 2, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7305 through 8051 inclusive; Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10260 inclusive; and Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15106 inclusive; certificated in any category.

Subject

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

Reason

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

Two cases of a crack on a "dry" ADG [air driven generator] (Hamilton Sundstrand part number in the 761339 series), in the aft area of the strut and generator housing assembly, have been reported on CL–600–2B19 aircraft. The same part is also installed on CL–600–2C10, –2D15 and –2D24 aircraft. Investigation determined that the crack was in an area of the strut where the wall thickness of the casting was below specification, due to a manufacturing anomaly in a specific batch of ADGs. Structural failure and departure of the ADG during deployment could possibly result in damage to the aircraft structure. If deployment was activated by a dual engine shutdown, ADG structural failure would also result in loss of hydraulics for the flight controls.

This directive gives instructions to check the part number of the installed ADG and, for ADGs with a part number in the 761339 series, the serial numbers of the ADG and strut and generator housing assembly are also to be checked. If these serial numbers are within specified ranges ***, a one-time fluorescent penetrant inspection of the ADG strut is required [and replacement of the ADG if necessary].

Note: For ADGs with serial numbers in the * * * specified ranges, subsequent fluorescent penetrant inspections are required after each scheduled in-flight or on-ground functional check of the ADG and also after each unscheduled in-flight ADG deployment. These inspection requirements are not mandated in this directive but are specified in the approved maintenance program.

Compliance

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

Actions

(g) Do the following actions.

(1) Within 1,000 flight hours after the effective date of this AD or before the first scheduled ADG functional test after the effective date of this AD, whichever occurs first, inspect to determine the part number of the installed ADG. A review of the airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review.

(i) If a Hamilton Sundstrand ADG having part number 1711405 is installed, the strut thickness is within specification and no further action is required by this AD.

(ii) If a Hamilton Sundstrand ADG having a part number in the 761339 series is installed, within 1,000 flight hours after the effective date of this AD or before the first scheduled ADG functional test after the effective date of this AD, whichever occurs first, inspect to determine the serial number of the ADG. A review of the airplane maintenance records is acceptable in lieu of this inspection if the serial number can be conclusively determined from that review.

(A) If the serial number of the ADG is 2000 or higher, the strut wall thickness is within specification and no further action is required by this AD.

(B) If the serial number of the ADG is in the range 0101 through 1999 and symbol "24–3" is marked in the serial number block of the identification plate, the strut wall thickness is within specification, no further action is required by this AD.

(C) If the serial number of the ADG is in the range 0101 through 1999 and the symbol

"24–3" is not marked in the serial block of the identification plate, within 1,000 flight hours after the effective date of this AD or before the first scheduled ADG functional test after the effective date of this AD, whichever occurs first, inspect to determine the serial number of the strut and generator housing assembly. A review of the airplane maintenance records is acceptable in lieu of this inspection if the serial number can be conclusively determined from that review.

(*1*) If the serial number of the strut and generator housing assembly is in the range 0001 through 2503, do a fluorescent penetrant inspection in accordance with paragraph (g)(2) of this AD at the times specified in paragraph (g)(2) of this AD.

(*2*) If the serial number of the strut and generator housing assembly is 2504 or higher, the strut wall thickness is within specification and no further action is required by this AD.

(*3*) If the serial number of the strut and generator housing assembly is not inspected or it is not possible to determine the serial number, do a fluorescent penetrant inspection in accordance with paragraph (g)(2) of this AD at the times specified in paragraph (g)(2) of this AD.

(2) For ADGs having a strut and generator assembly identified in paragraph (g)(1)(ii)(C)(*1*) or (g)(1)(ii)(C)(*3*) of this AD: Within 1,000 flight hours after the effective date of this AD or before the first scheduled ADG functional test after the effective date of this AD, whichever occurs first, do a fluorescent penetrant inspection for cracking of the ADG strut, and if any crack is found, before further flight, replace the ADG with a serviceable ADG, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–24–120, Revision C, dated April 20, 2009 (for Model CL–600–2B19 airplanes); or Bombardier Alert Service Bulletin A670BA–24–020, Revision C, dated April 20, 2009 (for Model CL–600–2C10, CL–600–2D15, and CL–600–2D24 airplanes).

(3) Fluorescent penetrant inspections accomplished before the effective date of this AD in accordance with any applicable service bulletin specified in Table 1 of this AD are considered acceptable for compliance with the corresponding fluorescent penetrant inspection specified in this AD.

TABLE 1—CREDIT SERVICE BULLETINS

Bombardier, Inc. Model—	Service Bulletin—	Revision—	Dated—
CL–600–2B19 airplanes	Bombardier Alert Service Bulletin A601R–24–120	Original	April 20, 2005.
CL–600–2B19 airplanes	Bombardier Alert Service Bulletin A601R–24–120	A	December 1, 2005.
CL–600–2B19 airplanes	Bombardier Alert Service Bulletin A601R–24–120	B	December 7, 2006.
CL–600–2C10 airplanes and CL–600–2D24 airplanes.	Bombardier Alert Service Bulletin A670BA–24–020.	Original	April 20, 2005.
CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Bombardier Alert Service Bulletin A670BA–24–020.	A	May 17, 2005.
CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Bombardier Alert Service Bulletin A670BA–24–020.	B	December 7, 2006.
CL–600–2B19 airplanes; CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Hamilton Sundstrand Service Bulletin ERPS10AG–24–3.	Original	April 14, 2005.
CL–600–2B19 airplanes; CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Hamilton Sundstrand Service Bulletin ERPS10AG–24–3.	1	April 19, 2005.
CL–600–2B19 airplanes; CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Hamilton Sundstrand Service Bulletin ERPS10AG–24–3.	2	November 14, 2006.
Bombardier, Inc. CL–600–2B19 airplanes; CL–600–2C10 airplanes; and CL–600–2D15 and CL–600–2D24 airplanes.	Hamilton Sundstrand Service Bulletin ERPS10AG–24–3.	3	March 12, 2009.

Note 1: For additional guidance on the ADGs specified in paragraphs (g)(1)(ii)(C)(*1*)and (g)(1)(ii)(C)(*3*) of this AD and the repetitive fluorescent penetrant inspections specified as part of the periodic ADG functional check procedure, refer to the applicable tasks identified in Table 2 of this AD. These tasks can be found in Part 2 –Airworthiness Requirements, Appendix A—Certification Maintenance Requirements (CMR) of the Bombardier (Canadair) Regional Jet Maintenance Requirements Manual, and the Bombardier CRJ Series Regional Jet Aircraft Maintenance Manual (AMM).

TABLE 2—GUIDANCE FOR THE PERIODIC ADG FUNCTIONAL CHECK PROCEDURE

Bombardier, Inc. Model—	Task Number (No.)—
CL–600–2B19 airplanes	CMR Task No. C24–20–129–01 and AMM Task No: 24–23–01–720–803.
CL–600–2C10 airplanes	CMR Task No. 24–23–00–102 and AMM Task No. 24–23–01–720–802.
CL–600–2D15 and CL–600–2D24 airplanes.	CMR Task No. 24–23–00–102 and AMM Task No. 24–23–01–720–802.

Note 2: For additional guidance on the ADGs specified in paragraph (g)(1)(ii)(C)(*1*), and the fluorescent penetrant inspection necessary following each future unscheduled in-flight ADG deployment, refer to following task specified in Table 3 of this AD.

TABLE 3—GUIDANCE FOR INSPECTION FOLLOWING UNSCHEDULED IN-FLIGHT ADG DEPLOYMENT

Bombardier, Inc. Model—	AMM Task No.—
CL–600–2B19 airplanes, serial numbers 7305 through 8051 inclusive	05–51–19–210–801
CL–600–2C10 airplanes, serial numbers 10003 through 10260 inclusive	05–51–19–210–801
CL–600–2D15 and CL–600–2D24 airplanes, serial numbers 15001 through 15106 inclusive	05–51–19–210–801

Note 3: In Hamilton Sundstrand Service Bulletin ERPS10AG–24–3, the fluorescent penetrant inspection is referred to as a "Penetrant Check."

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

(4) Special Flight Permits: Special flight permits, as described in section 21.197 and section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2009–27, dated June 8, 2009; Bombardier Alert Service Bulletin A601R–24–120, Revision C, dated April 20, 2009; and Bombardier Alert Service Bulletin A670BA–24–020, Revision C, dated April 20, 2009; for related information.

Issued in Renton, Washington, on June 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14769 Filed 6–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0549; Directorate Identifier 2010–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This proposed AD would require installing fuel level float and pressure switch in-line fuses on the wing forward spars and forward and aft auxiliary fuel tanks, depending on the airplane configuration. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by August 2, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced 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.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone 562–627–5262; fax 562–627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0549; Directorate Identifier 2010–NM–109–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport

Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

An investigation by Boeing has determined that fuel level float switch wires located on the left and right wing forward spars, the center tank forward spar, and the forward and aft auxiliary fuel tanks and pressure switch wires located on the center tank forward spar are routed in the same bundles as power wires. If a short circuit between a fuel level float or pressure switch wire and a power wire occurs, an over-current can cause excessive temperature in the fuel level float or pressure switch wire, which could result in damage and become a potential ignition source.

Relevant Service Information

We have reviewed Boeing Service Bulletin MD80–28–226, dated April 14, 2010. The service bulletin describes procedures for installing fuel level float and pressure switch in-line fuses, including wiring changes, in the following locations:

- On the left, right, and center wing forward spars (Groups 1 through 6).
- On the left, right, and center wing forward spars, and aft auxiliary fuel tank (Groups 7 and 8).
- On the left, right, and center wing forward spars, forward auxiliary fuel tank, and aft auxiliary fuel tank (Groups 9 through 11).

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 640 airplanes of U.S. registry. The following table provides the estimated costs, depending on the airplane configuration, for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installation ...	Between 7 and 17.	$85	Between $817 and $1,725.	Between $1,412 and $3,170.	640	Between $903,680 and $2,028,800,

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas Corporation: Docket No. FAA–2010–0549; Directorate Identifier 2010–NM–109–AD.

Comments Due Date

(a) We must receive comments by August 2, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category; as identified in Boeing Service Bulletin MD80–28–226, dated April 14, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss 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.

Fuse Installation

(g) Within 60 months after the effective date of this AD, install fuel level float and pressure switch in-line fuses, and do applicable wiring changes, in the applicable locations specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. Do the actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD80–28–226, dated April 14, 2010.

(1) For Groups 1 through 6: On the left, right, and center wing forward spars.

(2) For Groups 7 and 8: On the left, right, and center wing forward spars, and aft auxiliary fuel tank.

(3) For Groups 9 through 11: On the left, right, and center wing forward spars, forward auxiliary fuel tank, and aft auxiliary fuel tank.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on June 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14796 Filed 6–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27042; Directorate Identifier 2006–NM–225–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200, –300, and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Model 777–200, –300, and –300ER series airplanes. The original NPRM would have required installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. The original NPRM resulted from fuel system reviews conducted by the manufacturer. This action revises the original NPRM by adding airplanes and adding and removing certain requirements. We are proposing this supplemental NPRM to prevent electrical arcing on the fuel tank boundary structure or inside the fuel tanks, which could result in a fire or explosion.

DATES: We must receive comments on this supplemental NPRM by July 13, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced 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.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2007–27042; Directorate Identifier 2006–NM–225–AD" at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 777–200, –300, and –300ER series airplanes. That original NPRM was published in the **Federal Register** on January 29, 2007 (72 FR 3956). That original NPRM proposed to require installing Teflon sleeving under the clamps of the wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have reviewed Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008 (released after issuance of the original NPRM), which describes procedures for cap sealing certain fasteners in the center fuel tanks that were not sealed during production. We have changed Table 1 of the supplemental NPRM to refer to Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008, as the appropriate source of service information for certain actions.

The original NPRM referred to Boeing Alert Service Bulletin 777–57A0050, dated January 26, 2006, as the appropriate source of service information for installing Teflon sleeving under the clamps of the power feeder wire bundles routed along certain fuel tank boundary structure and for cap sealing selected fasteners of the main and center fuel tanks. We have reviewed Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009. Additional work is necessary for airplanes on which the original issue or Revision 1, dated August 2, 2007, of the service bulletin was done. The additional work includes the following actions, depending on airplane configuration:

- Installing additional Teflon sleeving.
- Cap sealing additional fasteners.

We have changed Table 1 of this supplemental NPRM to include Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009, as the appropriate source of service information to use for accomplishing certain actions. We have also added a new paragraph (h) to this AD to give credit for actions done in accordance with Boeing Alert Service Bulletin 777–57A0050, dated January 26, 2006; or Revision 1, dated August 2, 2007; provided that the additional work specified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009, is also done.

We have also reviewed Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007. The original NPRM referred to Boeing Alert Service Bulletin 777–57A0057, dated August 7, 2006, as the appropriate source of service information for cap sealing certain fasteners in the center fuel tanks that were not sealed during production. Revision 1 removes unnecessary work instructions because Work Packages 2 and 3 were completed prior to airplane delivery (for all affected airplanes). Revision 1 adds a general visual inspection to determine if certain fasteners are cap sealed and applying the cap seal to the fasteners that are not sealed. We have changed Table 1 of this supplemental NPRM to include Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007, as the appropriate source of service information to use for accomplishing certain actions. We have revised paragraph (g) of this supplemental NPRM (paragraph (f) of the original NPRM) to include the inspection and corrective action. We have also added a new paragraph (i) to this supplemental NPRM to give credit for actions done in accordance with Boeing Alert Service Bulletin 777–57A0057, dated August 7, 2006.

Comments

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

Request To Clarify Certain Language in Summary Section and Paragraph (g)

Boeing asks that we clarify certain language in the Summary section and paragraph (f) of the original NPRM to read ". . . Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure." Boeing states that the current language includes the phrase "the wire bundles," which could lead operators to believe that all wire bundles will need sleeving, not just the wire bundles called out in the referenced service information.

We agree that the subject language should be clarified. We have changed the Summary section and paragraph (g) of this supplemental NPRM accordingly.

Request To Clarify Applicability

Boeing asks that the applicability specified in Table 1 of the original NPRM be clarified by noting that Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006, does not apply to Model 777–300ER airplanes. Boeing states that the language in paragraph (c) of the original NPRM, which precedes Table 1, implies that all three service bulletins specified in the table apply to Model 777–300ER airplanes.

We agree with the commenter for the reason provided; we have changed Table 1 of this supplemental NPRM, for clarification, to include the applicable airplane models in relation to the service information.

Request To Add Maintenance Information

Continental Airlines (CAL) asks that we add maintenance information to the original NPRM. CAL states that outside of the original NPRM, it is concerned that not enough attention is being given to ensure the changes in the referenced service information are preserved for the long-term operation of the Model 777 airplane fleet. CAL notes that the original NPRM mandates a one-time change to implement the protection against ignition sources on affected airplanes; subsequent airplanes, including new deliveries entering service, already have the requirement incorporated in production. CAL states that, other than the referenced service information and some generic information in the Model 777 planning data, there is no published "maintenance" document currently available to show each specific requirement as detailed in the referenced service information. CAL adds that information detailed by the service information must be made available in manuals that are routinely used by maintenance personnel. CAL notes that Boeing is reviewing different options for routine maintenance.

We appreciate CALs concern and agree that the long-term operation of the Model 777 airplane fleet should be maintained. At the time the service information referenced by this supplemental NPRM was reviewed, the Instructions for Continued Airworthiness (ICAs) should have been updated to reflect and maintain the configuration in the supplemental NPRM throughout the life of each

modified airplane. We did not recognize this deficiency at the time the service information was issued. However, Boeing is developing a revision to the ICAs that should be available to operators in the fall of 2010 for the required modifications. Operators will be notified when the revision is available. We may consider additional rulemaking when revised ICAs are issued to mandate their incorporation. We have not changed the supplemental NPRM in this regard.

Request To Extend the Compliance Time

The Air Transport Association (ATA) on behalf of its member Delta Air Lines Inc. (Delta) asks that we consider reviewing the compliance time to better align with industry standard tank entry intervals. Delta notes that the modifications will require entry into the main and center fuel tanks; the main fuel tanks are opened at 8-year intervals; and the center tank is opened at 4-year intervals. Delta states that the 60-month compliance time to accomplish corrective action will be acceptable for work required in the center tank, but will force main tank entry earlier than normally scheduled maintenance.

We disagree with extending the proposed compliance time. The commenters did not provide any technical information to substantiate the assertion that extending the compliance time would not affect flight safety. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification. Further, we arrived at the proposed compliance time with consideration of operator and manufacturer input. In consideration of these factors, we determined that the compliance time, as proposed, represents an appropriate interval in which the modification can be done in a timely manner within the fleet, while still maintaining an adequate level of safety. However, under the provisions of paragraph (j)(1) of this AD, we will consider requests for an adjustment to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed the supplemental NPRM in this regard.

Explanation of Changes to This Supplemental NPRM

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

Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces the previous designation as a Delegation Option Authorization (DOA) holder. We have revised paragraph (j)(3) of this AD to add delegation of authority to Boeing Commercial Airplanes ODA to approve an alternative method of compliance for any repair required by this AD.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Explanation of Change to Costs of Compliance

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

Costs of Compliance

There are about 694 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 129 airplanes of U.S. registry. We also estimate that it would take between 278 and 358 work-hours per product to comply with the basic requirements of this proposed AD. Required parts would cost about $2,241 per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of these proposed actions to the U.S. operators to be between $3,337,359 and $4,214,559, or $25,871 and $32,671 per product, depending on airplane configuration.

Currently, there are no affected Group 3 airplanes on the U.S. Register. However, if a Group 3 airplane is imported and placed on the U.S. Register in the future, the required actions would take about 480 work hours, at an average labor rate of $85 per work hour. Required parts would cost about $2,241 per product. Based on these figures, we estimate the cost of this proposed AD for Group 3 airplanes to be $43,041 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2007–27042; Directorate Identifier 2006–NM–225–AD.

Comments Due Date

(a) We must receive comments by July 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the applicable The Boeing Company airplanes; certificated in any category; as identified in the service information specified in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

For Model—	Boeing service information—
777–200, –300, and –300ER airplanes.	Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.
777–200 and –300 airplanes	Alert Service Bulletin 777–57A0051, dated May 15, 2006.
777–200, –300, and –300ER airplanes.	Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007.
777–200, –300, and –300ER airplanes.	Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

Note 1: Although Boeing Alert Service Bulletin 777–57A0050, Revision 2, refers to "Model 777–200ER" airplanes, this is a European designation that does not apply to airplanes of U.S. registry. Therefore, the applicability of this AD will not specify Model 777–200ER airplanes. However, U.S. operators should consider any reference to Model 777–200ER airplanes in Boeing Alert Service Bulletin 777–57A0050, Revision 2, as applicable to Model 777–200 airplanes as designated by the type certificate data sheet.

Subject

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

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent electrical arcing on the fuel tank boundary structure or inside the main and center fuel tanks, which could result in a fire or explosion.

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.

Corrective Actions (Installing Teflon Sleeving, Cap Sealing, One-Time Inspection)

(g) Within 60 months after the effective date of this AD, do the applicable actions specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD.

(1) For airplanes identified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009: Install Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure and cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

(2) For airplanes identified in Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006: Cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006.

(3) For airplanes identified in Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007: Do a general visual inspection to determine if certain fasteners are cap sealed and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007. Do all applicable corrective actions before further flight.

(4) For airplanes identified in Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008: Cap seal the fasteners in the center fuel tanks that were not sealed during production, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

Credit for Actions Done Using Previous Issues of the Service Bulletins

(h) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0050, dated January 26, 2006; or Revision 1, dated August 2, 2007; are acceptable for compliance with the corresponding actions required by paragraph (g)(1) of this AD, provided that the applicable additional work specified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009, is done within the compliance time specified in paragraph (g) of this AD. The additional work must be done in accordance with Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

(i) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0057, dated August 7, 2006, are acceptable for compliance with the actions required by paragraph (g)(3) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle 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: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Issued in Renton, Washington, on June 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14792 Filed 6–17–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Chapter VII

RIN 1029–AC63

Stream Protection Rule; Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; notice of intent to prepare an environmental impact statement.

SUMMARY: On April 30, 2010,[1] we, the Office of Surface Mining Reclamation and Enforcement (OSM), published a Notice of Intent to prepare an environmental impact statement. This new Notice of Intent supersedes the April Notice of Intent, expands the scoping opportunities to include open houses, and outlines possible alternatives to the proposed action. OSM intends to prepare an environmental impact statement (EIS) under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) to analyze the effects of potential rule revisions under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to improve protection of streams from the adverse impacts of surface coal mining operations. We are requesting comments for the purpose of determining the scope of the EIS.

DATES: To ensure consideration, we must receive your electronic or written comments by July 30, 2010.

ADDRESSES: You may submit comments by any of the following methods, although we request that you use electronic mail if possible:

- *Electronic mail:* Send your comments to *sra-eis@osmre.gov.*
- *Mail, hand-delivery, or courier:* Send your comments to Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.
- *Open Houses:* Written and oral comments will be accepted at the Open House sessions, which are discussed in Section V of this Notice.

FOR FURTHER INFORMATION CONTACT: John Craynon, Chief, Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., MS 202–SIB, Washington, DC 20240; Telephone 202–208–2866.

SUPPLEMENTARY INFORMATION:

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I. Why are we publishing a new Notice of Intent?

On April 30, 2010, we published a Notice of Intent to prepare an environmental impact statement for a proposed Stream Protection Rule. We have decided to expand the scoping opportunities to include several open houses in various coal producing areas of the U.S. We have also included possible alternatives under consideration for each element of the proposed action. Finally, we have extended the scoping period to July 30, 2010.

II. Why are we planning to revise our rules?

On December 12, 2008 (73 FR 75814–75885), we published a final rule modifying the circumstances under which mining activities may be conducted in or near perennial or intermittent streams. That rule, which this notice refers to as the 2008 rule, took effect January 12, 2009. A total of nine organizations challenged the validity of the rule in two complaints filed on December 22, 2008, and January 16, 2009 (amended complaint filed February 17, 2009): *Coal River Mountain Watch, et al.* v. *Salazar,* No. 08–2212 (D.DC) ("*Coal River*") and *National Parks Conservation Ass'n* v. *Salazar,* No. 09–115 (D.DC) ("*NPCA*"). Under the terms of a settlement agreement signed by the parties on March 19, 2010, we agreed to use best efforts to sign a proposed rule by February 28, 2011, and a final rule by June 29, 2012. We also agreed to consult with the Fish and Wildlife Service pursuant to the Endangered Species Act, as appropriate, prior to signing the final action. On April 2, 2010, the court granted the parties' motion to hold the judicial proceedings in abeyance.

However, we had already decided to change the rule following the change of Administrations on January 20, 2009. On June 11, 2009, the Secretary of the Department of the Interior, the Administrator of the U.S. Environmental Protection Agency (EPA), and the Acting Assistant Secretary of the Army (Civil Works) entered into a memorandum of understanding[2] (MOU) implementing an interagency action plan designed to significantly reduce the harmful environmental consequences of surface coal mining operations in six Appalachian states, while ensuring that future mining remains consistent with Federal law. Among other things, under the MOU we committed to consider revisions to key provisions of our rules, including the 2008 rule and approximate original contour requirements, to better protect the environment and public health from the impacts of Appalachian surface coal mining.

Consequently, on November 30, 2009, we published an advance notice of proposed rulemaking (ANPR) soliciting comments on ten potential rulemaking alternatives. *See* 74 FR 62664–62668. In addition, consistent with the MOU, we invited the public to identify other rules that we should revise. We also announced our intent to prepare a supplement to the EIS developed in connection with the 2008 rule.

We received approximately 32,750 comments during the 30-day comment period that closed December 30, 2009. After evaluating the comments, we determined that development of a comprehensive stream protection rule (one that is much broader in scope than the 2008 rule) would be the most appropriate and effective method of achieving the goals set forth in the MOU and the ANPR. We believe that this holistic approach will better protect streams and related environmental values. It would not be fair, appropriate, scientifically valid or consistent with the principles of SMCRA to apply the new protections only in central Appalachia, as some commenters on the ANPR advocated. Streams are ecologically significant regardless of the region in which they are located. The broader scope of the stream protection rule means that we will need to prepare a new environmental impact statement rather than the supplement to the 2008 EIS that we originally intended to prepare.

III. What is the proposed Federal action?

The proposed Federal action consists of revisions to various provisions of our rules to improve protection of streams from the impacts of surface coal mining operations nationwide. Principal elements of the proposed action include—

- *Collection of Baseline Data.* Adding more extensive and more specific permit application requirements concerning baseline data on hydrology, geology, and aquatic biology; the determination of the probable hydrologic consequences of mining; and the hydrologic reclamation plan; as well as more specific requirements for the cumulative hydrologic impact assessment.
- *Definition of Material Damage to Hydrologic Balance.* Defining the term "material damage to the hydrologic balance outside the permit area." This term is critically important because, under section 510(b)(3) of SMCRA, the regulatory authority may not approve a permit application unless the proposed

[1] 75 FR 22723 (April 30, 2010).

[2] The MOU can be viewed online at *http://www.osmre.gov/resources/ref/mou/ASCM061109.pdf.*

operation has been designed to prevent material damage to the hydrologic balance outside the permit area. This term includes streams downstream of the mining operation and above underground mines.

• *Mining Activities In or Near Streams.* Revising the regulations governing mining activities in or near streams, including mining through streams.

• *Additional Monitoring Requirements.* Adding more extensive and more specific monitoring requirements for surface water, groundwater, and aquatic biota during mining and reclamation.

• *Corrective Action Thresholds.* Establishing corrective action thresholds.

• *Land Forming and Fill Optimization.* Revising the backfilling and grading rules, excess spoil rules, and approximate original contour restoration requirements to incorporate landform restoration principles and reduce discharges of total dissolved solids.

• *Approximate Original Contour Exceptions.* Limiting variances and exceptions from approximate original contour restoration requirements.

• *Reforestation.* Requiring reforestation of previously wooded areas.

• *Permit Coordination.* Requiring that the regulatory authority coordinate the SMCRA permitting process with Clean Water Act permitting activities to the extent practicable.

• *Financial Assurances for Long-Term Discharges of Pollutants.* Codifying the financial assurance provisions of OSM's March 31, 1997, policy statement [3] on correcting, preventing, and controlling acid/toxic mine drainage and clarifying that those provisions apply to all long-term discharges of pollutants, not just pollutants for which effluent limitations exist.

• *Stream Definitions.* Updating the definitions of perennial, intermittent, and ephemeral streams.

IV. What are the possible alternatives?

We are in the process of developing alternatives for the proposed Federal action. Comments received in response to this notice will assist us in that process.

We will prepare a draft EIS after we complete the initial stages of scoping and identify which rulemaking alternatives will be analyzed in detail. Following release of the draft EIS, we anticipate publishing a notice of proposed rulemaking.

Listed below are some of the possible alternatives, in addition to the No Action Alternative, that we are considering for each element of the proposed action:

• *Additional Requirements for Collection of Baseline Data.* Add requirements that permit applicants provide more specific and comprehensive baseline data addressing factors such as: (1) Duration of sampling needed to demonstrate seasonal variations in hydrology, *e.g.,* 12 months, 24 months, or other duration; (2) Frequency of sampling for various types of baseline data, *e.g.,* monthly, quarterly, annually; (3) Location of sampling, *e.g.,* downstream, upstream, off-permit; (4) Aquatic biological communities subject to sampling; and (5) Chemical, physical, and hydrologic parameters to be sampled.

• *Definition of Material Damage to Hydrologic Balance.* Alternatives for defining the term "material damage" include: (1) Any impairment of a physical, chemical, or biological function of the hydrologic balance; (2) Any quantifiable adverse impact on the quality or quantity of surface or groundwater or the biological condition of a stream that would preclude or diminish use of the water or stream; (3) Any ongoing violation of water quality standards; and (4) Differentiating between short term vs. long term impairment.

• *Mining Activities In or Near Streams.* Alternatives for regulating mining activities in, through, or near streams include: (1) Prohibiting disturbance of streams with a biological community unless the permit applicant demonstrates the ability to restore stream form and function; (2) Prohibiting activities and disturbances in all streams with a biological community, irrespective of the ability of the permit applicant to restore form and function; (3) Prohibiting activities in or near streams; (4) Reinstating the 1983 stream buffer zone rule; and (5) Addressing whether fills should be included or excluded in these restrictions.

• *Additional Monitoring Requirements.* Permittees would be required to provide additional monitoring data based on the following considerations: (1) Duration of monitoring, *e.g.,* through final bond release; (2) Frequency of sampling, *e.g.,* continuous, weekly, monthly, quarterly, annually; (3) Location of sampling, *e.g.,* downstream, upstream, off-permit; (4) Biological components subject to sampling; (5) Sampling parameters, *e.g.,* chemical, physical, hydrologic; and (6) Regular review of monitoring data by regulatory authority, *e.g.,* annually, at mid-term review, at permit renewal.

• *Corrective Action Thresholds.* Alternatives for determining the circumstances under which the permittee must take corrective action to prevent material damage to the hydrologic balance include: (1) Developing numerical water quality thresholds based on biological criteria; (2) Developing action thresholds based on water quality trend analysis; and (3) Defining key parameters for which thresholds will be established.

• *Landforming and Fill Optimization.* Alternatives for evaluating land configuration and handling of excess spoils include: (1) Restoring landforms including slope, aspect, and elevation on both backfilled areas and excess spoil fills; (2) Allowing postmining elevations to exceed premining elevations when necessary to restore premining topographic features; (3) Revising requirements to minimize creation of excess spoil by maximizing the amount of spoil returned to the mined-out area; (4) Revising requirements to minimize excess spoil footprints; and (5) Banning excess fill placement in streams.

• *Approximate Original Contour Exceptions.* Alternatives under consideration include: (1) Modifying requirements to ensure that exceptions from approximate original contour restoration requirements do not result in additional damage to streams with a biological community; (2) Prohibiting "mountain top" mining (would require a statutory change); and (3) Adding requirements to ensure approved postmining land uses are achievable and feasible.

• *Reforestation.* Alternatives under consideration include: (1) Requiring reforestation of mined lands to premining diversity and stocking or some percentage of premining diversity and stocking; (2) Requiring reforestation of all mined lands capable of supporting forested land uses; (3) Requiring reforestation of mined lands to the extent compatible with postmining land use; (4) Requiring reforestation and revegetation of mined lands with native species; and (5) Minimizing forest fragmentation.

• *Permit Coordination.* A provision under consideration includes: (1) Enhancing coordination of SMCRA and Clean Water Act regulatory programs consistent with the 2009 Memorandum of Understanding among DOI, Army Corps of Engineers, and EPA; and (2) Standardizing data collection and

[3] *See* the document entitled "Acid Mine Drainage Policy" at *http://www.osmre.gov/guidance/significant_guidance.shtm.*

management to enhance sharing among regulatory agencies and the public.

• *Long-Term Discharges of Pollutants.* A provision under consideration includes: (1) Incorporating our March 31, 1997 policy statement (see footnote 3 above) into SMCRA regulations and clarifying that those provisions apply to all long-term discharges of pollutants.

• *Stream Definitions.* Alternatives under consideration include: (1) Updating the current definitions of perennial, intermittent, and ephemeral streams to include biological criteria; (2) Retaining the current definitions with the 1-square mile criterion for intermittent streams removed; (3) Adopting the stream definitions used by the Corps of Engineers—"waters of the United States"— in place of stream definitions; and (4) Using a flow-based (hydraulic) definition with no reference to biological condition.

V. How do I submit comments?

Consistent with 43 CFR 46.235, we invite all interested persons, organizations, and agencies to provide comments, suggestions, and any other information relevant to the scope of the EIS, the scope of the proposed Federal action, potential alternatives for the proposed Federal action, and studies and impacts that the EIS should address. *See* **ADDRESSES** for the methods by which we will accept comments.

We also anticipate conducting several open houses in various locations in coal producing regions of the U.S. in July 2010. The following locations are under consideration: Morgantown, WV; Beckley, WV; Hazard, KY; Birmingham, AL; Evansville, IN; Carbondale, IL; Fairfield, TX; Farmington, NM; and Gillette, WY. The open houses will provide an opportunity for the public to review information and provide oral and written comments regarding the scope of the issues to be addressed and identification of the significant issues related to the proposed action and possible alternatives. Information regarding the specific dates and locations will be posted on OSM's Web site, *http://www.osmre.gov,* and in local news media.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments that we receive after the close of the comment period (*see* **DATES**) or sent to an address other than those listed in **ADDRESSES** may not be considered.

If you previously submitted comments in response to the ANPR or the April 30, 2010 Notice of Intent, you do not need to resubmit them. We will consider all ANPR and April 30th comments as part of this EIS scoping process.

VI. How do I request to participate as a cooperating agency?

Consistent with 43 CFR 46.225, we, the lead agency, invite eligible Federal, state, tribal, and local governmental entities to indicate whether they have an interest in being a cooperating agency in the preparation of the EIS. Qualified entities are those with jurisdiction by law, as defined in 40 CFR 1508.15, or special expertise, as defined in 40 CFR 1508.26. Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and make the necessary resources available in a timely manner, as discussed in the document entitled "Factors for Determining Cooperating Agency Status,"[4] which is Attachment 1 to the Council on Environmental Quality's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. We will not be able to provide financial assistance to cooperating agencies. If you previously indicated that you were interested in being a cooperating agency, no further action is required.

If you have an interest in participating as a cooperating agency, please contact the person listed in **FOR FURTHER INFORMATION CONTACT** and identify those aspects of the EIS process in which you are interested in participating. The regulations at 43 CFR 46.230 and Items 4 through 6 in the document discussed in the preceding paragraph list the activities in which cooperating agencies may wish to participate.

Dated: June 10, 2010.

Sterling Rideout,

Assistant Director, Program Support.

[FR Doc. 2010–14727 Filed 6–17–10; 8:45 am]

BILLING CODE 4310–05–P

[4] *See http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0871; FRL–9164–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by Maryland for Transportation Conformity Regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0871 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0871, Cristina Fernandez, Associate Director, Office of Air Planning Programs, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. 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–R03–OAR–2008–0871. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI (or otherwise protected) through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the Rules and Regulations section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 7, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–14765 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0386; FRL–9164–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revision to Emission Limitations for R. Paul Smith Power Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to revised emission limitations for the R. Paul Smith Power Station located in Washington County. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0386 by one of the following methods:

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

B. E-mail: *fernandez.cristina@epa.gov*

C. *Mail:* EPA–R03–OAR–2010–0386, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2010–0386. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

I. Background

On December 15, 2009, the Maryland Department of the Environment (MDE) submitted a revision to the Maryland

SIP. The SIP revision (#09–04) pertains to changes in emission limitations for the R. Paul Smith Power Station in Washington County. This facility had annual nitrogen oxides (NOx), ozone season NOx, and sulfur oxides (SO_2) emission limits that were established under EPA-approved Maryland regulation COMAR 26.11.27—*Emission Limitations for Power Plants,* which was adopted by the State to meet statutory requirements under the Maryland Healthy Air Act (HAA). The HAA allows R. Paul Smith to operate without complying with the emission limitations set forth in this statute if PJM Interconnection, Inc. (PJM) determines that termination of operation of the facility will adversely affect the reliability of electrical service in the PJM region. Subsequent to Maryland's adoption of COMAR 26.11.27 and EPA's approval of the rule into the Maryland SIP, PJM determined that the R. Paul Smith facility is needed to maintain electricity reliability in the State. The HAA requires that if R. Paul Smith units 3 and 4 are allowed to operate without complying with the emissions limitations established in the statute, certain conditions must be met. These conditions require that the facility operate at emissions levels that are lower than the highest level measured at the facility during the calendar years from 2000 through 2004, and that MDE review the operations of the facility, then adopt regulations to establish an alternative emissions requirement for the facility. In accordance with these statutory requirements, MDE revised COMAR 26.11.27 to establish alternative emission limits for these two Electric Generating Units at R. Paul Smith.

II. Summary of SIP Revision

COMAR 26.11.27 is revised to establish new emission limitations for R. Paul Smith Power Station. The NOx annual tonnage limits for R. Paul Smith is revised from 416 tons to 1390 tons starting with the 2009 control period, the NOx ozone season limit is revised from 140 tons to 545 tons starting with the 2009 ozone season, and the SO_2 annual tonnage is revised from 1002 tons to 4590 tons starting with the 2009 control period.

Because the SIP revision increases emissions from this facility, MDE was required to meet section 110(l) of the CAA. Section 110(l) requires that the revision not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of section 110. EPA's analysis confirmed that the SIP revision does not interfere with any section 110(l) requirements. A more detailed discussion of EPA's rationale for approval of this Maryland SIP revision may be found in the technical support document (TSD) for this action.

III. Proposed Action

EPA is proposing to approve the SIP revision submitted by the State of Maryland on December 15, 2009. The SIP revision incorporates revisions to the emission limitations that apply to the R. Paul Smith Power Station in Washington County. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

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

Dated: June 7, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–14779 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0124; FRL–9164–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Limiting Emissions of Volatile Organic Compounds From Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware concerning the control of volatile organic compounds (VOC). The revision amends existing Section 2.0—Consumer Products to Delaware's Regulation 1141 (formerly SIP Regulation No. 41)—Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–

R03–OAR–2010–0124 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0124, Cristina Fernandez, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2010–0124. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available; *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP for amendments to Regulation 1141/SIP Regulation No. 41— Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products. This SIP revision amends existing Section 2.0—Consumer Products by adding the sale, distribution, and manufacturing of 23 new categories of consumer products and product types, which include personal hygiene and grooming, home cleaning, and cleaning of electrical and electronic equipment. This revision is projected to reduce VOC emissions in Delaware by up to 220 tons per year.

The standards and requirements contained in Delaware's consumer products rule are based on the Ozone Transport Commission (OTC) model rule. The OTC consumer products model rule was based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the Ozone Transport Region (OTR). Implementing this rule will result in SIP emission reductions in VOC to support the attainment demonstrations, and reductions in ground-level ozone in other areas of the OTR.

II. Summary of SIP Revision

Regulation 1141 (formerly SIP Regulation No. 41), Section 2.0 establishes applicability to any person who sells, supplies, offers for sale, uses or applies, or manufactures for sale consumer products in the State of Delaware. The rule does not apply to a retailer who sells, supplies, or offers for sale in the State of Delaware, a particular consumer product that does not comply with the VOC standards, provided that retailer demonstrates that the manufacturer or distributor of that product misled that retailer into believing that the product did comply with the VOC standards. The rule sets compliance dates for specific VOC content limits in percent VOCs by weight for consumer products and lists exemptions from the VOC content limits. The rule also contains requirements for the following consumer products: (1) Products requiring dilution, (2) ozone depleting compounds, (3) aerosols adhesives, (4) antiperspirants or deodorants, (5) charcoal lighter materials, and (6) floor wax strippers. Regulation 1141 provides alternative control plans (ACP) by allowing responsible parties the option to voluntarily enter into separate ACP agreements for the consumer products mentioned above. In addition, the rule contains the following: (1) Criteria for innovative products exemptions and requirements for waiver requests, (2) administrative requirements for labeling and reporting, and (3) test methods for demonstrating compliance. Further details of Delaware's regulation revisions can be found in a Technical Support Document prepared for this proposed rulemaking action.

III. Proposed Action

EPA has determined that the revisions made to Regulation 1141 (formerly SIP Regulation No. 41), Section 2.0, entitled "Consumer Products," meet the SIP revision requirements of the CAA and is proposing to approve the amendment to Delaware's consumer products regulations. These revisions will result in the reduction of VOC emissions from consumer products in the State of Delaware. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Delaware's amendment to Section 2.0—Consumer Products of Delaware's Regulation No. 1141 (formerly SIP Regulation No. 41)—Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products, does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 7, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–14775 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2010–0207; A–1–FRL–9163–3]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Air Emission Standards for Halogenated Solvent Cleaning Machines: State of Rhode Island Department of Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under Clean Air Act section 112(l), EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. EPA proposes to approve Rhode Island Department of Environmental Management's ("RI DEM's") request for approval to implement and enforce Air Pollution Control Regulation Number 36, Control of Emissions from Organic Solvent Cleaning ("RI Regulation No. 36") and Rhode Island Air Pollution Control, General Definitions Regulation ("RI General Definitions Rule"), as a partial substitution for the National Emissions Standards for Halogenated Solvent Cleaning ("Halogenated Solvent NESHAP") as it applies to organic solvent cleaning machines in Rhode Island, except for continuous web cleaning machines. This approval would grant RI DEM the authority to implement and enforce RI Regulation No. 36 and the RI General Definitions Rule in place of the Halogenated Solvent NESHAP for organic solvent cleaning machines and would make the Rhode Island Department of Environmental Management's rules referenced above Federally enforceable. Continuous web cleaning machines would remain subject to the Halogenated Solvent NESHAP.

DATES: Written comments must be received on or before July 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2010–0207 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mcdonnell.ida@epa.gov.*
3. *Fax:* (617) 918–0653.
4. *Mail:* "EPA–R01–OAR–2010–0207", Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Air Permits, Toxics and Indoor Programs Unit, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Ida McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments. EPA will forward copies of all submitted comments to the Rhode Island Department of Environmental Management.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1656, fax number (617) 918–0656, e-mail *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State of Rhode Island's Section 112(l) submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will then be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse

comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: June 8, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2010–14509 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R10–RCRA 2010–0251; FRL–9160–7]

Washington: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Washington has applied to EPA for final authorization of certain changes to its hazardous waste management program under the Resource Conservation and Recovery Act, as amended, (RCRA). EPA has reviewed Washington's application and has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization and is proposing to authorize Washington's changes.

DATES: Comments on this proposed rule must be received by July 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R10–RCRA–2010–0251 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Kocourek.Nina@epa.gov.*
- *Mail:* Nina Kocourek, U.S. Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics (AWT–122), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

Instructions: Direct your comments to Docket ID Number EPA–R10–RCRA–2010–0251. 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy. You may view and copy the Washington application, during normal business hours, at the U.S. Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics, Mailstop AWT–122, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, contact: Nina Kocourek, phone number: (206) 553–6502 or at the Washington State Department of Ecology, 300 Desmond Drive, Lacey, Washington 98503, contact: Robert Rieck, phone number (360) 407–6751.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics (AWT–122), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–6502, e-mail: *kocourek.nina@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What decisions have we made in this rule?

We have preliminarily determined that Washington's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Washington final authorization to operate its hazardous waste management program with the changes as described in its revised program application. Washington will have responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders, except in Indian country (18 U.S.C. 1151), and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA, which are more stringent than existing requirements, take effect in authorized States before the State is authorized for these requirements. Thus, EPA will implement those requirements and prohibitions in Washington, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

If Washington is authorized for these changes, a facility in Washington subject to RCRA will have to comply with the authorized State requirements instead of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons will

have to comply with any applicable Federal requirements, such as HSWA regulations issued by EPA for which the State has not received authorization and RCRA requirements that are not supplanted by authorized State-issued requirements. Washington has enforcement responsibilities under its State hazardous waste program for violations of its program, but EPA retains its independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend, terminate, modify or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The proposed action to approve these revisions would not impose additional requirements on the regulated community because the regulations for which Washington will be authorized are already effective under State law and are not changed by the act of authorization.

D. What happens if EPA receives comments on this action?

If EPA receives comments on this proposed action, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Washington previously been authorized for?

Washington initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3782), to implement the State's dangerous waste management program. EPA granted authorization for changes to Washington's program on September 22, 1987, effective on November 23, 1987 (52 FR 35556); August 17, 1990, effective October 16, 1990 (55 FR 33695); November 4, 1994, effective November 4, 1994 (59 FR 55322); February 29, 1996, effective April 29, 1996 (61 FR 7736); September 22, 1998, effective October 22, 1998 (63 FR 50531); October 12, 1999, effective January 11, 2000 (64 FR 55142); April 11, 2002, effective April 11, 2002 (67 FR 17636); April 14, 2006, effective June 13, 2006 (71 FR 19442) and on October 30, 2006 effective December 29, 2006 (71 FR 63253).

F. What changes are we proposing?

On May 18, 2010, Washington submitted a hazardous waste management program revision application seeking authorization of its changes in accordance with 40 CFR 271.21. On May 28, 2010 we determined that Washington's program revision application was complete. We have preliminarily determined that Washington's hazardous waste management program revision satisfies all requirements necessary to qualify for final authorization. Therefore, we propose to grant Washington final authorization for the following program changes as identified in Table 1 and Table 2 below. Note: The RCRA regulations the State is seeking authorization for and are incorporated by reference are those as published in 40 CFR parts 260 through 265, 268, 270, and 279, as of July 1, 2007, unless otherwise noted; and all of the referenced analogous State authorities were legally adopted and effective State rules as of July 31, 2009.

TABLE 1—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL PROGRAM

Regulatory checklist [1]	Federal requirements	Federal Register	Analogous state authority—Washington's administrative code (WAC) (WAC 173–303–* * *)
17S	HSWA Codification Rule—Exposure Information.	50 FR 28702, 7/15/85	800(8); 800(12).
117B [2]	Toxicity Characteristic Amendment.	57 FR 23062, 6/1/92	070(3) except 070(3)(a)(iii) and 070(3)(c).
203 [2]	Recycled used Oil Management Standards; Clarification.	68 FR 44659, 7/30/03	070(8)(c); 515(3) Incorporated by Reference (IBR) 045(1); 515(11) IBR 045(1).
205	NESHAP: Surface Coating of Automobiles and Light-Duty Trucks.	69 FR 22601, 4/26/04	691(1)(g); 400(3)(a).
207 [2] and 207.1 [2]	Uniform Hazardous Waste Manifest Rule and Amendment.	70 FR 10766, 3/4/05 as amended on 6/16/05 at 70 FR 35034.	040 "designated facility" definition; 040 "manifest" definition; 040 "manifest tracking number" definition; 160(2)(a), 160(2)(a)(ii), 160(2)(a)(iii); 180, 180(1), 180(7), 180(7)(a) IBR 045(1), 180(7)(b), 180(7)(b)(i), 180(7)(b)(ii), 180(7)(b)(iii), 180(7)(b)(iv), 180(7)(c), 180(8), 180(8)(a), 180(8)(b); 190(3), 190(3)(b), 190(4); 200, 200(6), 200(6)(a), 200(6)(b); 230 IBR 045(1), 230(2), 230(2)(c), 230(2)(d), 230(2)(e); 180(1) IBR 045(1); 250, 250(1)(a), 250(1)(b), 250(9), 250(9)(a), 250(9)(b), 250(9)(c), 250(9)(d), 250(5), 250(6), 250(6)(a), 250(6)(b), 250(6)(b)(i), 250(6)(b)(ii); 370, 370(1); 370(2), 370(2)(a), 370(2)(b), 370(2)(c), 370(2)(d), 370(2)(e), 370(3), 370(4)(d), 370(8), 370(5), 370(5)(a), 370(5)(a)(i), 370(5)(a)(ii), 370(5)(a)(iii), 370(5)(b), 370(5)(c), 370(5)(d)(i), 370(5)(d)(ii), 370(5)(e), 370(5)(e)(i), 370(5)(e)(ii), 370(5)(e)(iii), 370(5)(e)(iv), 370(5)(e)(v), 370(5)(e)(vi), 370(5)(e)(vii), 370(5)(f), 370(5)(f)(i), 370(5)(f)(ii), 370(5)(f)(iii), 370(5)(f)(iv), 370(5)(f)(v), 370(5)(f)(vi), 370(5)(f)(vii), 370(5)(g); 390(1), 390(1)(a), 390(1)(b), 390(1)(c), 390(1)(d), 390(1)(e), 390(1)(f), 390(1)(g).
209 [2]	Universal Waste Rule: Specific Provisions for Mercury Containing Equipment.	70 FR 45508, 8/5/05	040 "mercury-containing equipment" definition; 040 "universal waste" definition; 077(2); 600(3)(o)(ii); 400(2)(c)(xi)(B); 140(2)(a) IBR 045(1); 800(7)(c)(iii)(B); 573(1)(a)(ii), 573(3)(a), 573(3)(b), 573(3)(b)(i), 573(3)(b)(ii), 573(3)(b)(iii), 573(3)(c)(i), 573(3)(c)(ii); 040 "ampule" definition; 040 "large quantity handler of universal waste" definition; 040 "mercury containing equipment" definition; 040 "small quantity handler of universal waste" definition; 040 "universal waste" definition; 573(9)(b), 573(9)(b)(i), 573(9)(b)(ii), 573(9)(b)(ii)(A), 573(9)(b)(ii)(B), 573(9)(b)(ii)(C), 573(9)(b)(ii)(D), 573(9)(b)(ii)(E), 573(9)(b)(ii)(F), 573(9)(b)(ii)(G), 573(9)(b)(ii)(H), 573(9)(b)(iii), 573(9)(b)(iii)(A), 573(9)(b)(iii)(B), 573(9)(b)(iv)(A), 573(9)(b)(iv)(A)(I), 573(9)(b)(iv)(A)(II), 573(9)(b)(iv)(B), 573(9)(b)(iv)(C), 573(10)(b)(i), 573(10)(b)(ii), 573(19)(b)(iv), 573(19)(b)(v), 573(20)(b), 573(20(b)(i), 573(20)(b)(ii), 573(20)(b)(ii)(A), 573(20)(b)(ii)(B), 573(20)(b)(ii)(C), 573(20)(b)(ii)(D), 573(20)(b)(ii)(E), 573(20)(b)(ii)(F), 573(20)(b)(ii)(G), 573(20)(b)(ii)(H), 573(20)(b)(iii), 573(20)(b)(iii)(A), 573(20)(b)(iii)(B), 573(20)(b)(iv)(A), 573(20)(b)(iv)(A)(I), 573(20)(b)(iv)(A)(II), 573(20)(b)(iv)(B), 573(20)(b)(iv)(C), 573(21)(b)(i), 573(21)(b)(ii).

TABLE 1—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL PROGRAM—Continued

Regulatory hecklist [1]	Federal requirements	Federal Register	Analogous state authority—Washington's administrative code (WAC) (WAC 173–303–* * *)
212	NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II).	70 FR 59402, 10/12/05	110(1), 110(3)(g)(viii); 670(1)(b)(i), 670(1)(b)(v); 400(3)(a) IBR 045(1); 110(1), 110(3), 110(3)(g)(viii); 806 (17), 806(17)(a), 806(17)(a)(i), 806(17)(a)(ii), 806(17)(a)(iii), 806(17)(a)(iv), 806(17)(a)(v), 806(17)(a)(vi), 806(17)(a)(vii), 806(17)(a)(viii), 806(17)(a)(ix), 806(17)(b), 806(4)(f)(v), 806(4)(n), 806(4)(j)(iv)(C), 806(4)(k)(v)(C); 815(2)(b)(iii); 830(4)(j)(i), 830(4)(j)(ii), 830(4)(j)(iii), 830(4)(k), 830(4)(k)(i), 830(4)(k)(i)(A), 830(4)(k)(i)(B), 830(4)(k)(i)(C), 830(4)(k)(i)(D), 830(4)(k)(ii), 830(4)(k)(ii)(A), 830(4)(k)(ii)(B), 830 Appendix L 10; 807 introductory text; 811 IBR 045(1), 841 IBR 045(1).
213 [2]	Burden Reduction Initiative	71 FR 16862, 4/4/06	040 "performance track member facility" definition; 017(5)(b)(ii)(B), 017(5)(b)(ii)(C), 017(5)(b)(ii)(D), 017(5)(b)(ii)(E), 017(5)(b)(ii)(F), 017(5)(b)(ii)(G); 071(3)(w)(iii)(E), 071(3)(s)(ix); 320(2)(c); 330(i); 350(2); 360(2)(j); 380(1), 380(1)(a), 380(1)(b), 380(1)(f), 380(1)(g), 380(1)(i); 645(9)(d), 645(9)(g)(ii), 645(9)(g)(iii), 645(10)(f), 645(10)(g), 645(10)(h)(iii)(A), 645(10)(h)(iii)(B), 645(11)(g); 610(4)(e)(v), 610(6), 610(11); 620(4)(b), 620(6)(b), 620(8)(e); 630(6); 640(2)(a); 640(2)(c)(v)(B), 640(3)(a), 640(3)(c), 640(4)(a)(i), 640(4)(a)(ii), 640(6)(b), 640(6)(b)(ii), 640(6)(b)(i), 640(6)(b)(iii), 640(4)(f), 640(6)(c), 640(6)(d), 640(7)(f); 660(2)(j); 655(8)(b); 140(4)(b)(i), 140(4)(b)(ii), 140(4)(b)(iii), 140(4)(b)(iv), 140(4)(b)(v), 140(4)(b)(v)(A), 140(4)(b)(v)(B); 670(4)(a)(ii), 670(7)(c); 64690 IBR 045(1); 675(2)(a), 675(2)(b), 675(2)(c), 675(4)(a)(iv)(B), 675(4)(g), 675(5)(a); 691(2) IBR 045(1); 695 IBR 045(1); 400(3)(a) IBR 045(1), 400(3)(c)(v)(A), 400(3)(c)(v)(B), 400(3)(c)(v)(D), 400(3)(c)(v)(E), 400(3)(c)(vi)(C), 400(3)(c)(vi)(D), 400(3)(c)(vi)(E), 400(3)(c)(vii)(C), 400(3)(c)(vii)(D), 400(3)(c)(vii)(E), 400(3)(c)(viii)(A), 400(3)(c)(ix)(B), 400(3)(c)(ix)(C), 400(3)(c)(ix)(D), 400(3)(c)(ix)(E), 400(3)(c)(ix)(G), 400(3)(c)(ix)(H), 400(3)(c)(ix)(I), 400(3)(c)(ix)(J), 400(3)(c)(ix)(K), 400(3)(c)(ix)(L), 400(3)(c)(x), 400(3)(c)(xi)(A), 400(3)(c)(xii)(B), 400(3)(a)(xiii), 400(3)(a)(xiii)(B); 140(4)(b)(i), 140(4)(b)(ii), 140(4)(b)(iii), 140(4)(b)(iv), 140(4)(b)(v), 140(4)(b)(v)(A), 140(4)(b)(v)(B); 400(3)(c)(xviii)(A), 400(3)(c)(xviii)(B), 400(3)(c)(xviii)(C), 400(3)(c)(xviii)(D), 400(3)(c)(xviii)(E), 400(3)(c)(xviii)(F), 400(3)(c)(xx)(B), 400(3)(c)(xx)(A), 400(3)(c)(xx)(C), 400(3)(c)(xxii)(A), 400(3)(c)(xxii)(B); 140(2)(c) IBR 045(1), 140(2)(d) IBR 045(1), 140(2)(e) IBR 045(1), 140(2)(a) IBR 045(1), 140(2)(f) IBR 045(1); 806(4)(a), 806(4)(c)(i), 806(4)(l)(iii)(O); 830(1).
214 [2]	Corrections to Errors in the Code of Federal Regulations.	71 FR 40254, 7/14/06	040 "incompatible waste" definition; 040 "personnel or facility personnel" definition; 040 "universal waste" definition; 040 "used oil" definition; 525(2), 525(3) introductory paragraph; 016(5)(a); 070(3); 016(5)(a)(i)(B); 071(3)(aa)(i)(B), 071(3)(aa)(ii), 071(3)(aa)(ii)(A), 071(3)(aa)(ii)(B), 071(3)(aa)(ii)(C), 071(3)(aa)(ii)(D), 071(3)(aa)(ii)(E), 071(3)(aa)(ii)(F), 071(3)(g)(i), 071(3)(r)(ii)(F), 071(3)(r)(iii)(A); 120(3)(b), 120(3)(d), 120(3)(g), 120(3)(f), 120(4)(c); 090(5)(a)(iii), 090(5)(a)(iii)(A), 090(5)(a)(iii)(B), 090(5)(a)(iii)(B)(I), 090(5)(a)(iii)(B)(II), 090(5)(a)(iii)(B)(III), 090(5)(a)(iii)(B)(IV), 090(5)(a)(iv), 090(5)(a)(iv)(A), 090(5)(a)(iv)(B), 090(5)(a)(iv)(C), 090(5)(a)(iv)(D), 090(5)(a) Note 1, 090(5)(a) Note 2, 090(5)(a) Note 3, 090(5)(a) Note 4, 090(8)(b); 9904 Footnote; 081(2)(a), 81(2)(a)(i); 9903 Introductory, 9903; 081(1); 082(4) IBR 045(1); 9905; 200(1)(b)(i), 200(1)(b)(ii), 200(1)(b)(iii), 200(1)(b)(iv), 200(1)(b)(v); 230(1) IBR 045(1); 600(3)(f), 600(5); 280(2); 300(5)(h)(iii)(B); 395(1)(a); 282(3)(g), 282(6)(c)(i)(A); 645(8)(a)(i), 645(8)(a)(i)(A), 645(8)(i)(v), 645(9)(a)(ii), 645(9)(g)(iv)(A), 645(10)(h)(ii); 64610(3); 610(2)(b), 610(3)(a)(ix), 610(6), 610(9), 610(8)(c), 610(10)(b)(i)(B); 620(1)(d)(i), 620(3)(c)(ii), 620(4)(b IBR 045(1), 620(6)(b IBR 045(1), 620(8)(b) IBR 045(1), 620(10) IBR 045(1); 630(7)(a)(i); 640(4)(c)(iv), 630(4)(d)(iv), 640(4)(e)(ii)(B), 640(4)(e)(ii)(C), 640(4)(e)(ii)(E)(I), 640(4)(e)(ii)(E)(II), 640(4)(e)(iii)(A), 640(4)(e)(iii)(B), 640(4)(g)(i)(C), 640(4)(g)(i)(D), 640(4)(g)(ii)(A)(I); 650(2)(j)(i)(B), 650(2)(j)(iii)(B), 650(2)(l)(i), 650(2)(l)(ii)(B), 650(2)(l)(ii)(C), 650(11)(b)(i), 650(4)(a)(ii); 660(2)(a)(ii)(A)(I), 660(3)(a), 630(3)(b), 660(10)(b); 655(8)(a)(vii), 655(8)(d), 655(12)(a); 665(2)(h)(ii), 665(2)(j)(ii)(B), 665(8)(a), 665(8)(b), 665(9)(b)(i); 140(4)(b)(v)(B); 665(11)(a); 670(5)(b); 64660(3)(d)(iii), 64660(3)(d)(iv)(F), 64660(3)(f)(ii)(E); 64680(5); 64690 IBR 045(1); 646910(5)(f); 675(4)(a)(i), 675(4)(a)(iv)(A), 675(4)(a)(v), 675(4)(b), 675(4)(m)(ii), 675(4)(m)(iii); 680(1), 680(2)(a), 680(2)(b)(xi), 680(2)(c)(iv); 690(1)(c), 690(2) IBR 045(1); 691(1)(f), 691(2) IBR 045(1); 692(1)(a), 692(1)(c), 692(2) IBR 045(1); 695 IBR 045(1); 380(2)(c), 380(2)(d); 400(2)(c)(ii); 290(1)(a); 310(2)(b); 330(1)(c)(ii); 400(3)(a) IBR 045(1); 360(2)(b); 400(3)(c)(viii), 400(3)(c)(ix)(G), 400(3)(c)(ix)(K), 400(3)(c)(xviii)(C); 380(2)(c), 380(2)(d); 525(1)(a); 140(2)(a) IBR 045(1); 803(2); 800(2); 802(2); 800(7)(c)(i); 040 "on-site" definition, 040 "publicly owned treatment works (POTW)"; 806(12); 810(13)(a); 803(3)(k)(vii); 806(4)(a); 282(6)(a)(i); 806(4)(a)(xviii)(C), 806(4)(a)(xxvi), 806(4)(d)(vii), 806(4)(e)(ii), 806(4)(e)(viii), 806(4)(g)(viii)(B)(vii)(A), 806(4)(g)(viii)(B)(vii)(B), 806(4)(g)(viii)(B)(vii)(C), 806(4)(g)(viii)(B)(vii)(D), 806(4)(l)(iii)(O); 815(3)(b); 282(2)(i); 830(4)(d)(ii)(A), 830 Appendix I; 805(1)(b), 805(7)(b)(ii); 040 "Universal Waste" definition; 573(10)(a), 573(21)(a); 515(2) IBR 045(1), 515(5)(e), 515(4) IBR 045(1), 515(4) Table 1, 515(8) IBR 045(1), 515(9) IBR 045(1), 515(10) IBR 045(1), 515(11) IBR 045(1).
215 [2]	Cathode Ray Tubes Rule	71 FR 42928, 7/28/06	040 "cathode ray tube" definition; 040 "CRT collector" definition; 040 "CRT glass manufacturer" definition; 040 "CRT processing" definition; 071(3)(oo)(i), 071(3)(oo)(ii), 071(3)(oo)(iii), 071(3)(oo)(iv).

TABLE 1—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL PROGRAM—Continued

Regulatory hecklist [1]	Federal requirements	Federal Register	Analogous state authority—Washington's administrative code (WAC) (WAC 173–303–* * *)
217 [2]	NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments.	73 FR 18970, 4/8/08	670(1), 670(1)(b)(i), 670(1)(b)(iii), 670(1)(b)(v).

[1] Regulatory Checklist is a document that addresses specific changes made to the Federal regulations by one or more related final rules published in the FEDERAL REGISTER. EPA develops these checklists as tools to assist States in developing their authorization application and in documenting specific State regulations analogous to the Federal regulations. For more information on EPA's RCRA State Authorization Guidance see *http://www.epa.gov/epawaste/osw/laws-regs/State/index.htm.*

[2] State rule contains more stringent provisions. For identification of the more stringent State provisions refer to the Docket ID Number EPA–R10–RCRA–2010–0251 for this proposed rule.

TABLE 2—STATE INITIATED CHANGES

State citation—Washington's administrative code (WAC) (WAC 173–303–* * *)	Reason for change	Analogous federal 40 CFR citation
030	Clarification—Add acronyms (PODC, DRE, APTI, MACT, TEQ, CAMU, TU).	260 related.
040	Clarify definition for Closure—update to clarify closure applies to recyclers, some generators and some transporters.	262.10.
040	Compliance Procedure—removed the cited dates and added RCW title.	260 related.
040	Person definition—Updated to match Federal rule	260.10.
040	Staging Pile definition—Updated to match Federal rule.	260.10.
040	Surface Impoundment definition—Change language to reflect Federal definition by deleting the word "dangerous".	260.10.
045	Incorporation by reference updated to July 2007	260–280 related.
070(7)(c)	Clarify that counting exclusion applies to permit-by-rule (PBR), not to treatment by generator activity.	261/5(c) Intro.
070(8)(d)	Citations corrected for used oil burned for energy recovery.	261.5 related.
071(3)(cc)(ii)	Deletion of incorrect NAICS codes—487110, 722310, 425110.	261.4(a)(12)(i), 261.4(a)(12)(ii).
081(1), 081(1)(a) and 082(1)	Clarification on appropriate commercial chemical product waste code.	261.33, 261.31(a).
*083(2)(b)(iii)(A&(B)	Clarification—SW–846 is incorporated by reference at 110(3)(a).	261.35(b)(2)(iii)(A), 261.35(b)(2)(iii)(B).
*090(5)(a)(i) and (6)(a)(i), & (iii)	Clarification—SW–846 test method is incorporated by reference at 110(3) Updates to ASTM and NACE procedures.	261.21(a)(1), 261.22(a)(1), 261.22(a)(2).
090(6)(a)(ii)	Clarify that the NACE test method is the same as SW–846 Method 1110A.	261.22(a)(1) and (2).
110 title	First sentence revised by adding word "analytes"	260.1, 270.6 related.
110(2)(a)(vi), (2)(b)	Clarification on selection of sampling device Reference to AC&D liquid sample removed.	260.11, 261 (Appendix I, Index).
*110(3)(a)	Added "IIIB Update" and "Final Update IV" to SW 846 reference.	260.11(a) through (g), related.
110(3)(c)	Chemical Testing Methods guidance revisions and updates.	Previously authorized as and currently related to 40 CFR 261 Appendix 1—Test Methods.
*110(3)(f)	Clarification—Use test methods in SW–846 Chapter 2 for identifying toxic constituents.	260.11 Appendix III.
110(3)(e) through (h)	Updated referenced test methods to latest revision date.	260.11.
110(3)(g)(x)	Duplicate deleted [see 110(3)(g)(vii)]	260.11(15).
110(5)	Citation correction from "to approve" to "approval for the use of" an equivalent testing method by submitting a petition.	260.21.
110(6)	Clarification—Test method results need to be reported on a dry weight basis.	Technical clarification, consistent with and no less stringent than the Federal program, related to 260.21.

TABLE 2—STATE INITIATED CHANGES—Continued

State citation—Washington's administrative code (WAC) (WAC 173–303–* * *)	Reason for change	Analogous federal 40 CFR citation
110(7)	"Ground-Water Monitoring List" Appendix IX to 40 CFR part 264 is replaced with the version in Appendix 5 of the State's "Chemical Testing Methods for Designating Dangerous Waste, Publication #97–407, June 2009" which is incorporated by reference into the WAC at 173–303–110(1).	264 Appendix IX.
120(4)(c)	Correct second repeated (c)(vii) by renumbering as (c)(ix).	261.6(c)(2).
*140(2)(a)	Clarify that section 110 test methods must be used.	268 related, conforming change to reflect retention of use of SW–846 methods.
140(4)(b)(iv)(B)(I)	ASTM Test method update	264.314(e).
200(1)(b)(ii) & (iii) 200(4)(a)(iv)(A)(II)	Delete "stress of installation" phrase and insert in 640 and 675.	262.34(a)(1)Intro, 262.34(a)(1)(ii), 262.34(a)(1)(iii).
200(1)(b)(iv)	Correct the Federal references by substituting State citations for closure and financial assurance. The word "shall" was changed to "must".	262.34(a)(1)(iv).
270(3)	49 CFR 171.16 reference—updated transporter spill reporting address and method.	263.30(c)(2).
281(4)	Citations corrected from WAC 173–303–840 to WAC 173–303–830.	124.31(a).
*300(5)(f)	Clarify that section 110 test methods must be where specific WAC citations are referenced.	264.13(b)(6), 265.13(b)(6), 264.73(b)(3), 265.73(b)(3), conforming change to reflect retention of use of SW–846 methods.
310(1)	Reworded to be consistent with Federal rule	264.14, 265.14.
*380(1)(c)	Clarify that section 110 test methods must be used where specific 40 CFR citations are referenced.	264.73(b)(3), 265.73(b)(3), conforming change to reflect retention of use of SW–846 methods.
*380(1)(f)	Add "incorporated by reference" for clarity and clarified that section 110 test methods must be used where specific WAC citations are referenced.	264.73(b)(6), 265.73(b)(6), conforming change to reflect retention of use of SW–846 methods.
380(2)(c)	Add "tons (2000 lbs)" to unit of measure Table 1	264 Appendix I (2) Table 1, 265 Appendix I (2) Table 1.
400(2)(c)(xiv) 400(2)(c)(xv)	Language added for equivalence with Federal rule.	265.1(c)(5).
400(3)(c)	Added the word "qualified" to the description of an independent registered professional engineer. This occurs nineteen times in the sub subsection.	265 related—more stringent State requirement.
*400(3)(c)(iii)	Clarify that section 110 test methods must be used where specific 40 CFR 265 subparts are referenced.	265 related, conforming change to reflect retention of use of SW–846 methods.
400(3)(c)(iv) Moved from (3)(c)(x)	Reference regarding Subpart B is changed because the only part of Subpart B that is incorporated by reference is 265.19.	265.19.
400(3)(c)(xiii)(A)	Correction—the word carbonaceous replaces carcinogen.	265.300 Subpart N—Landfills, related.
505(1)(b)(iv)	Citation corrected	266.20.
506(3)(vii)	Deleted CFC recycling exception from closure and financial responsibility requirements.	264.110, 265.110 Subpart G related, 264.140, 265.140 Subpart H related.
510(1)(b)(i)(B)	Correct internal citation	260.30(b) Introduction, 260.30(b)(1), 266.100(b)(1).
*515(3)	Clarify that section 110(3) test methods must be used.	279.10, conforming change to reflect retention of use of SW–846 methods.
*515(4)	Clarify that section 110(3) test methods must be used.	279.11, conforming change to reflect retention of use of SW–846 methods.
*515(8), (9), (10) and (13)(b)	Clarify that section 110(3) test methods must be used.	279.40–47, 279.50–59, 279.60–67, 279.10, conforming change to reflect retention of use of SW–846 methods.
610(3)(a)(ix), (3)(b)(ii)(D), (8)(b)(iv), and (8)(d)(ii)(D).	Citation corrected	264.112 related.
610(6) & (11)	Add "qualified" to PE description	264.115, 264.120—more stringent State requirement.
610(12)(e) 620(1)(e)(ii)	Correction—change "resource reclamation units" to "recycling units".	264.143.
620(4)(d)(iv)	Clarification that corporate guarantors are also subject to a minimum net worth criteria.	264.143.

TABLE 2—STATE INITIATED CHANGES—Continued

State citation—Washington's administrative code (WAC) (WAC 173–303–* * *)	Reason for change	Analogous federal 40 CFR citation
620(4)(c) 620(4)(e)(i) 620(4)(f)	New financial instrument option—"assigned security deposit" for used oil processors and recyclers.	264.143.
620(4)(d)(i)	Clarification that used oil processors may use partially funded trust funds.	264.143.
620(4)(d)(iv)	Clarification that corporate guarantors are also subject to a minimum net worth criteria.	264.143.
620(5)(c), 620(5)(d), 620(7)	Edit—add hyphen to post-closure	264.143.
*640(1)(b)	Provide title for test method Clarification that SW–846 is incorporated by reference.	264.190.
*645(4)(a) and (b) *645(9)(g)(ii), (iii) and (iv)(A) 645(10)(g) 64610(4) 806(4)(a)(xx)(D)(II).	Note that the 40 CFR 264 Appendix IX Ground-Water monitoring list is included as Appendix 5 in the "Chemical Testing Methods for Dangerous Waste, Publication #97–407, June 2009", which is incorporated by reference at WAC 173–303–110(1).	264 Appendix IX.
645(8)(c)	Update reference to Chapter 173–160 WAC	264.97(c).
640(4)(c)(i) & 675(4)(a)(v)	Relocate "stress of installation" phrase from 200	264.573. 264.193.
64660(3)(d)(iv)(F)	Correct "SW846" to read "SW–846"	264.552 related (CAMU).
665(13)	New subsection Added a reference to the liquid waste disposal provision in 140(4)(b).	264.314.
*690 *691	Deleted proposed language requiring use of 110(3)(a) test methods.	264.1030, 264.1050 (Air Emissions for Vents, and Equipment Leaks).
806(2)(a)	Citation corrected	270.10.
*806(4)(f)(iii)(A)(III)	Clarification that equivalent analytical techniques must be approved by ecology.	270.19.
806(8)	Updated permit application requirements for consistency with Federal rule and clarified that facilities must consult with Ecology about submittal of exposure information.	270.10(c).
*807(2)(a)(iii)	Clarification that equivalent analytical techniques must be approved by Ecology.	270.62.
810(11)(c)	Duplicate provision deleted	270.30(j)(2).
810(16)	Citation corrected	270.30(m).
830(4)(b)(vii)	Citation corrected	270.42(b) related.
*910(2)(d)	Clarify that approved equivalent test methods will be incorporated at 110(3).	260.20(a), 260.21(d).
910(3)	Clarify that exemption petitions also go to EPA for Federal listed wastes.	260.22(d)(1)(i).
9901; 9902	Delete obsolete title	260 Appendix I, related.

* These State citations were amended to clarify that SW–846 test methods must be used, or in some cases requiring the use of test methods specifically called out in WAC 173–303–110.

G. Where are the revised State rules different from the Federal rules?

This section does not discuss all the program differences, because in most instances Washington writes its own version of the Federal hazardous waste rules. This section highlights those more notable differences between the revised State rules and the Federal rules. The State regulations that EPA is proposing to authorize are located in Tables 1 and 2 in Section F above, and by viewing the Docket. There are certain portions of the Federal program which are not delegable to the States because of the Federal government's special role in foreign policy matters and because of national concerns that arise with certain decisions. For example, EPA does not delegate import/export functions. Under RCRA regulations found in 40 CFR part 262, EPA will continue to implement requirements for import/export functions. However, the State rules found at WAC 173–303–230 reference EPA's export and import requirements and the State has amended these references to include those changes promulgated in the Federal rule "Corrections to Errors in the Code of Federal Regulation, (71 FR 40254, 7/14/06)".

The State did not adopt the Federal Methods Innovation Rule (70 FR 34537, 6/14/05) which amended a variety of testing and monitoring requirements found in RCRA and removed from the Federal regulations a requirement to use the methods found in "EPA's Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW–846" in conducting various testing and monitoring. The State retained the RCRA-related sampling and analysis requirement to use the testing methods found in "SW–846," and EPA considers these changes to be state-initiated changes within the scope of Ecology's existing authorization that are consistent with and no less stringent than the Federal program. (*Note:* The State does have an existing state-only petition process for deviating from "SW–846" for equivalent testing methods, found at WAC 173–303–110(5) which is not part of its state-only rule and isn't part of the federally-authorized program. In Section F, Table 2, the State citations identified with an asterisk (*) indicate those state provisions where the State clarifies that "SW–846" testing methods must be used.)

We found that the State's definition of "Designated facility" found at WAC 173–303–040 is equivalent to the Federal definition found at 40 CFR 260.10, with the exception of one

broader in scope phrase that is a state-only requirement. The broader in scope phrase which will not be authorized is: "The following are designated facilities only for receipt of State-only waste; they cannot receive federal hazardous waste from off-site: Facilities operating under WAC 173–303–500(2)(c)."

States are allowed to seek authorization for more stringent requirements than the Federal program. EPA has the authority to authorize and enforce those parts of a State's program EPA finds to be more stringent than the Federal program. The State revised its previous federally authorized mercury-containing equipment requirements with the adoption of the Federal Rule for Mercury-Containing Equipment Universal Waste (70 FR 45508, 8/5/06). The State's revised mercury-containing equipment universal waste rule is more stringent than the Federal rule as the State regulates lamps at a lower accumulation limit than the Federal rule. Specifically, the State's definitions of small and large quantity handlers of universal waste found at WAC 173–303–040 are more stringent than the Federal definitions found at 40 CFR 273.9; and the State's large quantity handlers of universal waste notification standards found at WAC 173–303–573(19)(b)(v) are more stringent than the Federal notification standards found at 40 CFR 273.32(b)(5). Additionally, the State adopted some portions of the Federal Burden Reduction Initiative Rule (70 FR 16862, 4/4/06). The State's rule retains many of the Federal requirements that were reduced by the Federal Burden Reduction Initiative Rule, and as a result those requirements retained by the State are more stringent than their Federal counterparts. The State's definitions of "Cathode ray tubes (CRT) and CRT collector" found at WAC 173–303–040 are more stringent than the Federal CRT definitions found at 40 CFR 260.10, because the State defines a CRT to mean all categories of CRTs (intact, used and broken) and requires that all CRTs be managed (WAC 173–303–071(3)(oo)(i)–(iv)) under the same standards used in the federal program for used and broken CRTs (40 CFR 261.39).

H. Who handles permits after this authorization takes effect?

After authorization, Washington will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. If EPA issued permits prior to authorizing Washington for these revisions, these permits would continue in force according to the terms of such permits until the effective date of the State's issuance or denial of a State hazardous waste management permit, at which time, EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue any new permits, permit components, or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Washington is not yet authorized.

I. What is codification and is EPA codifying Washington's hazardous waste program as authorized in this proposed rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. This is done by referencing the authorized State rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, Subpart WW for this authorization of Washington's program revisions until a later date.

J. How does today's action affect Indian Country (18 U.S.C. 1151) in Washington?

EPA's proposed decision to authorize the Washington hazardous waste management program does not include any land that is, or becomes after the date of authorization, "Indian Country," as defined in 18 U.S.C. 1151, with the exception of the non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also referred to as the "1873 Survey Area" or "Survey Area") located in Tacoma, Washington. EPA retains jurisdiction over "Indian Country". Effective October 22, 1998 (63 FR 50531, 9/22/98) the State of Washington was authorized to implement the State's Federally-authorized hazardous waste management program on the non-trust lands within the 1873 Survey Area of the Puyallup Indian Reservation. The authorization did not extend to trust lands within the reservation. EPA retains its authority to implement RCRA on trust lands and over Indians and Indian activities within the 1873 Survey Area.

K. Statutory and Executive Order Reviews

This proposed rule seeks to revise the State of Washington's authorized hazardous waste management program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This proposed rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant", and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources;

complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR are listed in 40 CFR part 9.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because the proposed rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written Statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written Statement is needed section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, today's proposed rule is not subject to the requirements of sections 202 and 203 of the UMRA.

5. Executive Order 13132: Federalism

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule proposes to authorize pre-existing State rules. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it proposes to approve a State program.

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

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use

available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This proposed rule does not affect the level of protection provided to human health or the environment because this rule proposes to authorize pre-existing State rules which are equivalent to, and no less stringent than existing Federal requirements.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 1, 2010.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2010–13851 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

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; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** on June 17, 2010, entitled "Bulk Solid Hazardous Materials: Harmonization With the International Maritime Solid Bulk Cargoes (IMSBC) Code." This correction provides correct information with regard to the preliminary environmental analysis checklist.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail 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: The Coast Guard is correcting a portion of the preamble to the proposed rule discussing the preliminary environmental analysis checklist. The preamble incorrectly refers to section 2.B.2 Figure 2–1, paragraphs 34(c), (d), and (e), of Commandant Instruction M16475.lD. The correct reference is to section 2.B.2 Figure 2–1, paragraphs 34(a) and (d) of the Instruction.

Correction

In the proposed rule "Bulk Solid Hazardous Materials: Harmonization With the International Maritime Solid Bulk Cargoes (IMSBC) Code," which published in the June 17, 2010, issue of the **Federal Register**, make the following correction in the **SUPPLEMENTARY INFORMATION** section. In section VII.M., correct the paragraph following "M. Environment" to read as follows:

"We have analyzed this proposed 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 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. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule involves regulations that are editorial or procedural and the equipping of vessels, and falls under section 2.B.2. Figure 2–1, paragraphs 34(a) and (d) of Commandant Instruction M16475.lD. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule."

Dated: June 15, 2010.

Steve G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2010–14737 Filed 6–16–10; 11:15 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 75, No. 117
Friday, June 18, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 15, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business Cooperative Service

Title: Rural Cooperative Development Grants—7 CFR 4284–F.

OMB Control Number: 0570–0006.

Summary of Collection: The Rural Cooperative Development Grants (RCDG) program is administered through State Rural Development Offices on behalf of the Rural Business Cooperative Service (RBS). The primary objective of the program is to improve the economic condition of rural areas through cooperative development. Grant funds are awarded on a competitive basis using a scoring system that gives preference to applications that demonstrate a proven track record. The applicants, who are non-profit corporations or institutions of higher education, will provide information using various forms and supporting documentation.

Need and Use of the Information: RBS will use the information collected to evaluate the applicant's ability to carry out the purposes of the program. If this information were not collected, RBS would have no basis on which to evaluate the relative merit of each application.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 75.

Frequency of Responses: Record keeping; Reporting: On occasion.

Total Burden Hours: 9,325.

Rural Business Cooperative Service

Title: Annual Survey of Farmer Cooperatives.

OMB Control Number: 0570–0007.

Summary of Collection: The Rural Business Cooperative Service (RBS) was mandated the responsibility to acquire and disseminate information pertaining to agricultural cooperatives under the Cooperative Marketing Act of 1926: 7 U.S.C. 451–457 and Public Law 450. The primary objective of RBS is to promote understanding, use and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The annual survey collects basic statistics on cooperative business volume, net income, members, financial status, employees, and other selected information to support RBS' objective and role. RBS will use a variety of forms to collect information.

Need and Use of the Information: RBS uses the information collected to summarize for program planning, evaluation service work and cooperative analysis and education. The information collected and published in the annual report on farmer cooperatives supports and enhances most of the major functions of RBS. By not collecting this information, the RBS would have difficulties in carrying out its policy on farmer cooperatives.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,504.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,461.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–14782 Filed 6–17–10; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 15, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806

and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Appeals Division

Title: National Appeals Division Customer Service Survey.

OMB Control Number: 0503–0007.

Summary of Collection: The Secretary of Agriculture established the National Appeals Division (NAD) on October 20, 1994, by Secretary's Memorandum 1010–1, pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. The Act consolidated the appellate functions and staff of several USDA agencies and provided for independent hearings and reviews of adverse decisions of Agencies within USDA. Hearing Officers conduct evidentiary hearings on adverse decisions or, when the appellant requests they review the Agency's record of the adverse decision without a hearing. Although NAD maintains a database to track appeal requests, the database contains only information necessary to process the appeal request, such as the name, address, filing results etc. NAD will collect information using a survey.

Need and Use of the Information: NAD plans to use the information collected in the survey to determine who is and who is not aware of its services. NAD also wants to know of the groups who are aware of its services, just exactly how complete this awareness is. NAD also wants to gather current data to measure the appellant's perception of the quality of how easy the determination was to read; how intently the Hearing Officer listened to the appellant; and if the appellant would be willing to have the same Hearing Officer hear a future appeal. This data will be used to either alter current or establish new training for Hearing and Appeals Officers.

Description of Respondents: Individuals or households.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 429.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–14789 Filed 6–17–10; 8:45 am]

BILLING CODE 3410–WY–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Revision of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising one Privacy Act (PA) system of records and deleting two systems of records maintained by the Agricultural Research Service (ARS).

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on July 28, 2010 unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Stasia Hutchison, FOIA/PA Officer, ARS, REE, USDA, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1655; Facsimile (301) 504–1647; Electronic Mail *stasia.hutchison@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the PA, 5 U.S.C. 552a, USDA hereby takes the following action:

I. One system of records is being revised for the following reasons:

1. USDA/ARS–2, Research Medical Records System on Patients and Human Volunteers Participating in Research at the ARS Human Nutrition Research Centers in Grand Forks, Beltsville, and San Francisco, USDA/ARS is being revised. The purpose of this revision to the system of records is to change the system designation from USDA/ARS–2 to USDA/ARS–1; identify changes in the system name, system location, and categories of individuals covered by the system; update the purpose, safeguards, retention and disposal, system manager and address, and record access procedures; modify the routine uses by adding three relating to security breaches, disclosure to National Archives and Records Administration, and disclosure to contractors; and to add the following sections: security classification, agency official responsible for system of records, disclosure to consumer reporting agencies, and exemptions claimed for the system.

II. Two systems are being deleted as follows:

1. USDA/ARS–1, Solicitation of Bids or Proposals for Procurement Contracts, is being deleted as the records no longer meet the requirements for a Privacy Act system of records. USDA/ARS–5, ARS Health and Fitness Center, is being deleted as the records are no longer relevant and necessary to accomplish a purpose of the Agency. The records no longer exist. A Privacy Act Systems Report relating to the proposed changes was sent to the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; and Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives on June 9, 2010.

Signed at Washington, DC, on June 9, 2010.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2010–14714 Filed 6–17–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35, as amended), the Rural Housing Service (RHS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request a revision for a currently approved information collection in support of the program for 7 CFR part 1927–B, Real Estate Title Clearance and Loan Closing.

DATES: Comments on this notice must be received by August 17, 2010.

FOR FURTHER INFORMATION CONTACT: Shantelle C. Gordon, Program Analyst, USDA Rural Housing Service, Single Family Housing, 1400 Independence Avenue, SW., STOP 0783, Washington, DC 20250–0783, *Telephone:* (202) 205–

9567. *Fax:* (202) 720–2232. *E-mail: shantelle.gordon@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for approval. 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 of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the 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. Comments may be sent to:

Title: Real Estate Title Clearance and Loan Closing.

OMB Number: 0575–0147.

Expiration date: October 31, 2010.

Type of request: Revision of a currently approved information collection.

Abstract: Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, farm buildings, and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas. Title clearance is required to assure the Agency(s) that the loan is legally secured and has the required lien priority.

RHS will be collecting information to assure that those participating in this program remain eligible to proceed with loan closing and to ensure that loans made with Federal funds are legally secured. The respondents are individuals or households, businesses and non-profit institutions. The information required is used by the USDA personnel to verify that the required lien position has been obtained. The information is collected at the field office responsible for processing a loan application through loan closing. The information is also used to ensure the program is administered in a manner consistent with legislative and administrative requirements. If not collected, the Agency would be unable to determine if the loan is adequately and legally secured. RHS continually strives to ensure that information collection burden is kept to a minimum.

Estimate of burden: Public burden for this collection of information is estimated to average 0.22 hours per response.

Respondents: Individuals or Households, Businesses, Closing agents/Attorneys and the field office staff.

Estimated number of respondents: 18,410.

Estimated number of responses per respondent: 1.

Estimated number of responses: 60,473.

Estimated total annual burden on respondents: 13,423 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to Jeanne Jacobs, Regulation and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250–0742. 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.

Dated: June 14, 2010.

Magdey Abdallah,

Acting Administrator, Rural Housing Service.

[FR Doc. 2010–14823 Filed 6–17–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Buy American Exception Under the American Recovery and Reinvestment Act of 2009

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) hereby gives notice of a nationwide exception to the Buy American requirements of Section 1605 of the American Recovery and Reinvestment Act of 2009 ("ARRA") under the authority of Section 1605(b)(1) (public interest waiver) for *de minimis* incidental components of eligible publicly owned essential community facilities projects using assistance provided under ARRA. This action permits the use of non-domestic iron, steel and manufactured goods when they occur in *de minimis* incidental components that may otherwise be prohibited under Section 1605(a). As used in this Notice, "*de minimis* incidental components" means those components otherwise prohibited under Section 1605(a) that cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in a project funded in whole or in part with ARRA assistance.

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

ADDRESSES: Send any correspondence regarding this notice to William R. Downs, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0761, Washington, DC 20250–0761.

FOR FURTHER INFORMATION CONTACT: William R. Downs, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0761, Washington, DC 20250–0761, Telephone: 202–720–1499, e-mail: *William.downs@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of ARRA and Section 176.80 of the rules of the Office of Management and Budget (OMB) (2 CFR 176.80), RHS hereby provides notice that it is granting a nationwide exception to Section 1605 the Recovery Act with respect to *de minimis* incidental components of eligible Community Programs projects funded under ARRA. The basis for this waiver is a public interest determination pursuant to Section 1605(b)(1) of ARRA.

I. Background

The American Recovery and Reinvestment Act of 2009 made funding

available to RHS to make direct loans and grants for essential community facilities authorized by Sections 306(a)(1) and (a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1) and (a)(19), respectively). Section 1605(a) of ARRA, the "Buy American" provision, states that "none of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States."

Section 1605(b) of ARRA authorizes the head of a Federal department or agency to waive the Buy American provision by one of the following three determinations: (1) Applying the Buy American provision would be inconsistent with the public interest; (2) the iron, steel, and relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the iron, steel, and manufactured goods produced in the United States will increase the cost of the project by more than 25 percent.

If a determination is made to waive the requirements of Section 1605(a) based on a finding under Section 1605(b), then Section 1605(c) requires the head of the department or agency to publish a detailed justification in the **Federal Register** as to why the provision is being waived. Finally, Section 1605(d) requires that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. Public Interest Finding

RHS has determined that, as applied to Community Programs projects, the application of the Buy American restrictions to *de minimis* situations would be inconsistent with the public interest.

Community Programs projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel and manufactured goods, such as electrical and mechanical equipment, concrete and masonry products, wood and steel framing products, interior and exterior materials and finishes, and specialty equipment as well as other relevant materials to build structures for facilities such as community hospitals and clinics, fire stations, police stations and schools. In bid solicitations for Community Programs projects, these high-cost components are generally described in detail in project-specific technical specifications, and public owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost and, most relevant to this Notice, the country of manufacture of such components.

Every Community Programs project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, construction of the project. During construction, these components (for example, nuts, bolts, fasteners, screws and nails), are incorporated into the physical structure of the project. For many of these incidental components, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable prior to procurement in the normal course of business. More importantly, even if for some of these incidental components the country of manufacture may be known, the miscellaneous character of these components, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the facility or project.

RHS finds that it would be inconsistent with the public interest to apply the Buy American requirement to incidental components when they, in total, comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project. While individual components may have the same function (*e.g.* brackets), the specific manufacturer and configuration may vary from project to project; the analysis and consideration of individual waiver requests for them, including determining whether or not U.S. made products exist; therefore, is expected to be time-consuming and labor intensive far out of proportion to the percentage of total project materials they comprise. Further, since the specific use of these low-cost components can be expected to be widely varied, formulating categorical waivers for specific types of components would be impractical. Because the situations described above, *i.e.,* a high number of low-cost, miscellaneous components, can be effectively addressed by a comprehensive application of a nationwide *de minimis* waiver.

Rural Development reviewed an industry-wide survey regarding these incidental components prepared by an independent contractor on behalf of the Environmental Protection Agency (EPA). The survey results indicated that the percentage of total costs represented by these incidental components is generally not in excess of 5 percent of the total cost of the materials incorporated into a project. Rural Development then took the added step to verify the EPA findings by making similar inquiries to likely Rural Development project construction contractors to identify the approximate scope and cost of incidental components within these projects. The responses received by Rural Development were consistent with the EPA data.

RHS has decades of experience in financing Community Programs projects in rural America and shares the rationale established by previous *de minimis* waivers authored by EPA and Rural Utilities Service, with respect to incidental components used in similar projects. Requiring individual waivers for incidental components would be time prohibitive and overly-burdensome for applicants and RHS. The purpose of ARRA is to stimulate economic recovery by funding current public construction. Therefore, a *de minimis* waiver of incidental components totaling no more than 5 percent of the total cost of the materials used in and incorporated into a project is in the public interest.

III. Waiver

Based on the public interest finding discussed above and pursuant to Section 1605(c), USDA hereby issues a national waiver from the requirements of ARRA Section 1605 for any incidental components of the type described above that comprise in total a *de minimis* amount of the project, specifically, for any such incidental components up to a limit of no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Assistance recipients who elect to use this waiver shall, in consultation with their contractors, determine the items to be covered by this waiver, retain relevant documentation as to those items in their project files, and be able to summarize in reports to RHS, if so requested, the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

In using this waiver, assistance recipients must consider that there may be circumstances where there are multiple types of low-cost components which, when combined with the incidental components described above, may total more than 5 percent. Assistance recipients in such cases will

have to choose which of these incidental components will be covered by the waiver and which will not. Components that the recipient is unable to include within the 5 percent limit of this waiver must comply with the requirements of Section 1605 of ARRA by appropriate means other than reliance on this waiver.

This supplementary information constitutes the "detailed written justification" required by Section 1605(c) of ARRA and Section 176.80 of the Office of Management and Budget's rules for waivers of the Buy American provisions.

Dated: May 6, 2010.

Dallas P. Tonsager,

Under Secretary, Rural Development.

May 11, 2010.

Thomas Vilsack,

Secretary, Department of Agriculture.

[FR Doc. 2010–14812 Filed 6–17–10; 8:45 am]

BILLING CODE 3410–XU–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0092]

Notice of Decision to Issue Permits for the Importation of Fresh False Coriander From Panama Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States of fresh false coriander from Panama. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh false coriander from Panama.

EFFECTIVE DATE: June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–4312.

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. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice[1] in the **Federal Register** on February 9, 2010 (75 FR 6345–6346, Docket No. APHIS–2009–0092), in which we announced the availability, for review and comment, of a pest risk analysis that evaluates the risks associated with the importation into the continental United States of fresh false coriander from Panama. We solicited comments on the notice for 60 days ending on April 12, 2010. We received no comments by that date.

Therefore, in accordance with the regulations in § 319.56-4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of fresh false coriander from Panama subject to the following phytosanitary measures:

- Each shipment of false coriander is subject to inspection upon arrival in the United States and must comply with all applicable provisions of § 319.56–3.
- Each shipment of false coriander must be accompanied by a phytosanitary certificate bearing the following additional declaration: "The false coriander in this consignment has been inspected and found free of *Nysius simulans*."
- The false coriander must be a commercial consignment as defined in 7 CFR 319.56–2.

These conditions will be listed in the Fruits and Vegetables Import Requirements database available at (*http://www.aphis.usda.gov/favir*) . In addition to those specific measures, the fresh false coriander will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

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

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–14791 Filed 6–17–10: 8:45 am]

BILLING CODE 3410–34–S

[1] To view the notice, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2009–0092*) .

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW99

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. This EFP would allow one commercial fishing vessel to fish outside of the limited access scallop days at sea (DAS) program in support of research conducted by the Coonamessett Farm Foundation. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Atlantic sea scallop Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue an

EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before July 6, 2010.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: *DA10–098@noaa.gov*. Include in the subject line "Comments on CFarm flounder bycatch EFP."
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on CFarm flounder bycatch EFP."
- Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, Fisheries Management Specialist, 978–281–9112.

SUPPLEMENTARY INFORMATION: The Coonamessett Farm Foundation has been awarded a research grant through the Commercial Fisheries Research Foundation titled, "Testing of a Low Profile Excluder Dredge for Winter Flounder Bycatch Reduction." The primary objective of this testing is to begin to develop dredge modifications to reduce winter flounder bycatch in the Atlantic sea scallop fishery. A single vessel would conduct ten to twenty 60–minute tows at 4.5 knots with an experimental low profile excluder dredge over a three-day period. Coonamessett Farm would deploy dredge-mounted video cameras to document the interactions between the dredge and any encountered species. Collection of this video data is the only objective of these research tows and no species will be retained or landed. The vessel is expected to catch a minimal amount of scallops (100 lb), winter flounder (100 lb), yellowtail flounder (20 lb), monkfish (50 lb), and little skate (100 lb). All fish would be returned to the sea as quickly as possible to minimize discard mortality. The tows will be conducted in late June or early July 2010, between Montauk Point and Martha's Vineyard at a depth of 30 to 60 m, depending on concentrations of winter flounder.

Coonamessett Farm submitted a complete EFP application on May 14, 2010, requesting exemption allowing one commercial fishing vessel to fish outside of the limited access Atlantic sea scallop DAS regulations found at 50 CFR 648.53(b). Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: June 15, 2010.

James P. Burgess,

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

[FR Doc. 2010–14788 Filed 6–15–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–950]

Wire Decking From the People's Republic of China: Correction to the Final Affirmative Countervailing Duty Determination

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

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

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or John Conniff at (202) 482–4793 or (202) 482–1009, respectively; AD/CVD Operations, Office 3, Operations, Import Administration, Room 4014, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background:

On June 10, 2010, the Department of Commerce (the Department) published in the **Federal Register** the final affirmative countervailing duty determination of wire decking from the People's Republic of China (PRC). *See Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 32902 (June 10, 2010). The Department has discovered typographical errors in the table under the net subsidy *ad valorem* rate of the Suspension of Liquidation section.

The rates for two of the producers and exporters in the net subsidy *ad valorem* rate are incorrect. The correct rates of the producers and exporters should read as follows:

FINAL DETERMINATION MARGIN

Producer/exporter	Net subsidy *ad valorem* rate (percent)
Alida Wire Mesh & Wire Cloth Mfg.	437.11
Jiangdong Xinguang Metal Product Co.	437.11

Accordingly, we correct the final affirmative countervailing duty determination of wire decking from the PRC as noted above.

This amended determination is issued and published in accordance with sections 705(c)(1)(B)(i)(I) and 776 of the Act, as amended.

Dated: June 15, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14801 Filed 6–17–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801]

Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review

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

SUMMARY: The Department of Commerce (the Department) has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), that, after acquisition of SNR Roulements S.A. by NTN Corporation, post-acquisition SNR Roulements S.A. is the successor-in-interest to pre-acquisition SNR Roulements S.A.

EFFECTIVE DATE: June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0410 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 18, 2009, pursuant to a request from SNR Roulements S.A. (SNR), we initiated a changed-circumstances review of the antidumping duty order on ball bearings and parts thereof from France to determine whether post-acquisition SNR was a successor-in-interest to SNR following SNR's acquisition by NTN Corporation (NTN). *See Ball Bearings and Parts Thereof From France: Initiation of Antidumping Duty Changed-Circumstances Review*, 74 FR 47920 (September 18, 2009).

On November 20, 2009, we preliminarily found that post-acquisition SNR is the successor in interest to pre-acquisition SNR. *See Ball*

Bearings and Parts Thereof From France: Preliminary Results of Changed-Circumstances Review, 74 FR 60242 (November 20, 2009). We received case briefs and rebuttal briefs from The Timken Company and NTN/SNR. We did not hold a hearing as none was requested.

Scope of the Order

The products covered by the order are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The order covers all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, *etc.*) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the order. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the order are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the order. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of the order.

Analysis of Comments Received

The issues raised in the case briefs by parties in this review are addressed in the Issues and Decision Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice (Decision Memorandum), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. The Decision Memorandum, which is a public document, is on file in the Central Records Unit, main Department of Commerce building, Room 1117, and is accessible on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Changed-Circumstances Review

For the reasons stated in the preliminary results and in the Decision Memorandum, we continue to find that post-acquisition SNR is the successor-in-interest to pre-acquisition SNR and, as a result, should be accorded the same treatment as pre-acquisition SNR. We will instruct U.S. Customs and Border Protection to collect cash deposits at 13.32 percent, the weighted-average percentage dumping margin we found for pre-acquisition SNR in the most recently completed review. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053, 58054 (October 12, 2007).

Notification

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the 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 sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221.

Dated: June 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

1. Successorship
2. Briefing Schedule
3. Filing of Factual Submissions

[FR Doc. 2010–14795 Filed 6–17–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Preliminary Results of the 2008–2009 Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC"), covering the period May 1, 2008, through April 30, 2009.

We have preliminarily determined that the respondent in this administrative review has made sales in the United States at prices below normal value during the period of review ("POR"). We have also preliminarily determined that two companies for which a review was requested have not been responsive and, thus, have not demonstrated entitlement to a separate rate. As a result, we have preliminarily determined that they are part of the PRC–Wide Entity and have assigned them the PRC–Wide Entity rate. If these preliminary results are adopted in the final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a summary of the argument. We intend to issue the final results no later than

120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

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

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–0414, respectively.

Background

On May 12, 1995, the Department published in the **Federal Register** the antidumping duty order on pure magnesium from the PRC.[1] On May 1, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on pure magnesium from the PRC for the period May 1, 2008, through April 30, 2009.[2] On May 28, 2009, in accordance with 19 CFR 351.213(b)(2), Tianjin Magnesium International, Co. Ltd. ("TMI"), a foreign exporter of the subject merchandise, requested the Department to review its sales of subject merchandise. On May 29, 2009, US Magnesium LLC ("Petitioner") requested that the Department conduct an administrative review of the exports of subject merchandise of TMI, Tianjin Xianghaiqi Resources Import & Export Trade Co., Ltd. ("TXR"), and Pan Asia Magnesium Co., Ltd. ("Pan Asia"). On the same date, Alcoa Inc. and Alumax Mill Products (collectively, "Alcoa"), a domestic interested party, requested a review of TXR. On June 24, 2009, the Department initiated an administrative review of the order on pure magnesium from the PRC for the POR with respect to TMI, TXR and Pan Asia.[3]

On August 3, 2009, Trade Bridge, counsel for TXR and Pan Asia, withdrew its representation for these companies. On August 4, 2009, the Department issued its antidumping duty questionnaire to TMI, TXR, and Pan Asia by FedEx. TXR received and signed for the hard copy of the Department's questionnaire on August 7, 2009, and Pan Asia received and signed for the hard copy of the Department's questionnaire on August 8, 2009.[4] However, neither TXR, nor Pan Asia responded to the Department's antidumping duty questionnaire. On September 1, 2009, TMI timely submitted its Section A questionnaire response ("TMI's AQR"). On September 15, 2009, TMI submitted its Section C questionnaire response ("TMI's CQR") and on September 29, 2009, TMI submitted its D questionnaire response ("TMI's DQR"). On November 10, 2009, Petitioner submitted comments on TMI's AQR, CQR, and DQR. On December 23, 2009, the Department issued its first supplemental questionnaire to TMI. On January 12, 2010, Petitioner requested that the Department conduct verification of TMI in accordance with 19 CFR 351.307(b)(1)(iv). On February 9, 2010, TMI submitted its response to the Department's sections A, C, and D supplemental questionnaire ("TMI's 1st SQR"). On March 31, 2010, the Department issued the second supplemental questionnaire to TMI and the Department received a response on April 12, 2010.

On September 15, 2009, the Department requested that import Administration's Office of Policy provide a list of surrogate countries for this review.[5] On October 13, 2009, the Office of Policy issued its list of surrogate countries.[6] On October 16, 2009, the Department issued a letter to interested parties seeking comments on surrogate country selection and surrogate values ("SV5"). On October 30, 2009, Petitioner and TMI submitted comments on surrogate country selection ("Petitioner's Surrogate Country Selection Letter" and "TMI's Surrogate Country Selection Letter," respectively). On November 12, 2009, Petitioner and TMI submitted SV comments ("Petitioner's SV Comments" and "TMI's SV Comments," respectively). On November 25, 2009, Petitioner submitted rebuttal SV comments. On November 27, 2009, TMI submitted rebuttal SV comments. On December 7, 2009, TMI submitted additional SV comments.

On January 6, 2010, the Department extended the time period for completion of the preliminary results of this review by 120 days until May 31, 2010.[7]

On February 18, 2010, the Department requested that CBP provide entry documentation for certain of TMI's transactions during the POR.[8]

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. As a result, the revised deadline for the preliminary results of this administrative review became June 7, 2010.[9]

Verification

As provided in section 782(i)(3) of the Act, we verified the information from TMI upon which we have relied in making our preliminary results of review from April 19, 2010 to May 6, 2010. The Department's verification report is on the record of this review in the Central Records Unit, Room 1117 of the main Department building.[10] We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Period of Review

The POR is May 1, 2008, through April 30, 2009.

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[1] *See* Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation, 60 FR 25691 (May 12, 1995).

[2] *See* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 74 FR 20278 (May 1, 2009).

[3] *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part. 74 FR 30052 (June 24, 2009).

[4] *See* Memorandum to the file, "Pure Magnesium from the People's Republic of China, Tianjin Xianghaiqi Resources Import and Export Trade Co., Ltd. ("TXR") and Pan Asia Magnesium Co., Ltd. ("Pan Asia"): Transmittal of FEDEX Receipt Documentation," dated May 11, 2010.

[5] *See* Memorandum to Kelly Parkhill, Acting Director, Office of Policy, "Antidumping Duty Administrative Review of Pure Magnesium from the People's Republic of China: Surrogate-Country Selection," dated September 15, 2009.

[6] *See* Memorandum from Kelly Parkhill, Acting Director, Office of Policy, "Request for a list of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Pure Magnesium ("Pure Magnesium") from the People's Republic of China, dated October 13, 2009 ("Surrogate Country List").

[7] *See* Pure Magnesium from the Peoples Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review 75 FR 2108 (January 14, 2010).

[8] *See* Memorandum to Alice Buchanan, Acting Director, AD/CVD/Revenue Policy & Programs, Office of International Trade, U.S. Customs and Border Protection, "Request for U.S. Entry Documents—Pure Magnesium from People's Republic of China—A–570–832," dated February 18, 2010.

[9] *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.

[10] *See* Memorandum to the File "Antidumping Duty Administrative Review of Pure Magnesium From the People's Republic of China: Verification of the Sales and Factors of Production ("FOP") of Tianjin Magnesium Industries ("TMI")," dated June 7, 2010.

Scope of Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra pure" magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as "off-specification pure" magnesium).

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping duty investigations and administrative reviews and continues to do so in this case.[11] The Department has previously examined the PRC's market economy status and determined that NME status should continue for the PRC.[12] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[13] No interested party to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") using a factors of production ("FOP") methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information in a surrogate market-economy country or countries considered to be appropriate by the Department.[14] When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[15] Further, the Department normally values all FOPs in a single surrogate country.[16] The sources of SVs are discussed under the "Normal Value" section below and in the Factor Valuation Memorandum, which is on file in the Central Records Unit, Room 1117 of the main Department building.[17]

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development.[18] In Petitioner's Surrogate Country Selection Letter, Petitioner contends that the Department should continue to select India as the surrogate country for this administrative review, as it has in previous segments of this proceeding. In addition, Petitioner maintains that to the best of its knowledge, there are no magnesium producers currently operating in any of the six countries identified in the Surrogate Country Memorandum.[19] Petitioner states that Southern Magnesium & Chemicals Ltd. ("Southern Magnesium"), which is located in India, has either downsized or ceased its magnesium production operations.[20] Petitioner argues, however, that India is a significant producer of aluminum and the Department has "routinely determined that aluminum is a product comparable to magnesium production."[21] Petitioner states that India has five major producers of aluminum.[22] Additionally, Petitioner contends that the Department determined that zinc is the only other merchandise that the Department has found to be comparable to magnesium,[23] and India is a significant producer of zinc.[24] Finally, Petitioner

[11] *See* 771(18)(C) of the Act; *see, e.g.,* Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336 (December 16, 2008) ("Pure Magnesium 06–07"); and Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009).

[12] *See* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, The People's Republic of China (PRC) Status as a Non-Market Economy (NME), dated May 15, 2006. This document is available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf.*

[13] *See* section 771(18)(C)(i) of the Act.

[14] *See* section 773(c)(1) of the Act.

[15] *See* section 773(c)(4) of the Act.

[16] *See* 19 CFR 351.408(c)(2).

[17] *See* Memorandum to the File, "2008–2009 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results," dated June 7, 2010 ("Factor Valuation Memorandum").

[18] *See* Surrogate Country List.

[19] *See* Petitioner's Surrogate Country Selection Letter, at 3.

[20] *See* 2002 Annual Report of Southern Magnesium, contained in Petitioner's Surrogate Country Selection Letter, at 3 and Exhibit 2.

[21] *See* Petitioner's Surrogate Country Selection Letter, at 4, citing Pure Magnesium 06–07 and accompanying Issues and Decision Memorandum at Comment 6.D.

[22] *See* Petitioner's Surrogate Country Selection Letter, at 4, citing The Mineral Industry of India—2007, at Table 2, U.S. Geological Survey ("USGS"), contained in Exhibit 3; also citing USGS Minerals Yearbook Zinc—2006 at Table 16, contained in Exhibit 4.

[23] *See* Petitioner's Surrogate Country Selection Letter, at 5, citing Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (September 27, 2001), at Comment 1.

[24] *See* Petitioner's Surrogate Country Selection Letter, at 5, citing USGS Minerals Yearbook, Zinc—2007, at Table 2, contained in Exhibit 3. *See also* USGS 2007 Minerals Yearbook, Zinc (Advance Release), at Table 13, contained in Exhibit 4.

contends that India is the best available surrogate country for this proceeding because India is known to have complete, up-to-date, and reliable publicly available information for all raw material FOPs.[25] Petitioner states that India is the only potential surrogate country that can be a source for surrogate financial ratios because India is a significant producer of aluminum and zinc.[26]

In TMI's Surrogate Country Selection Letter, TMI contends that India is the most appropriate surrogate country for the PRC in this review.[27] TMI reiterates the reasons that the Department articulated in its determination to use India as the appropriate surrogate country in the 2006–2007 administrative review of pure magnesium from the PRC: (1) India is a significant producer of comparable merchandise; (2) India is at a level of economic development comparable to the PRC; and (3) the Department has reliable data to use from India.[28] Both Petitioner and TMI submitted Indian sourced data to value FOPs.

After evaluating interested parties' comments, the Department has determined that India is the appropriate surrogate country to use in this review in accordance with section 773(c)(4) of the Act. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise, *i.e.,* aluminum and zinc; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. All the data submitted by both Petitioner and TMI for our consideration as potential SVs and surrogate financial ratios are sourced from India. Finally, on the record of this review, we have usable SV data (including financial data) from India, but no such surrogate data from other potential surrogate country.

Therefore, because India best represents the experience of producers of comparable merchandise operating in a surrogate country, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value TMI's FOPs, when available and appropriate. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301 (c)(3)(ii), interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of the preliminary results of review.[29]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both dejure and defacto governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"), as further developed in Notice of Final Determination of Sales at Less Than Fair Value. Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

Separate Rate Recipients

TMI is the only responsive respondent in this administrative review. TMI reported that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether it can demonstrate the absence of both dejure and defacto government control over export activities. Because neither TXR nor Pan Asia responded to the Department's questionnaire, these companies did not provide separate rate information to demonstrate their eligibility for separate-rate status. As a result, the Department is treating these companies as part of the PRC–Wide Entity.

a. Absence of De Jure Control

The Department considers the following dejure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[30]

The evidence provided by TMI supports a preliminary finding of dejure absence of government control based on the following: (1) An absence of restrictive stipulations associated with its business and export licenses; (2) applicable legislative enactments decentralizing control of companies; and (3) formal measures by the government decentralizing control of companies.[31]

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to defacto government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[32] The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control,

[25] *See* Petitioner's Surrogate Country Selection Letter, at 5–6.

[26] Id.

[27] *See* TMI's Surrogate Country Selection Letter at 1.

[28] *See id.* at 3, citing, Pure Magnesium from the People's Republic of China: Preliminary Results of 2007–2008 Antidumping Duty Administrative Review, 74 FR 27090 (June 8, 2009); Pure Magnesium 06–07; and Pure Magnesium from the People's Republic of China: Final Results of 2004–2005 Antidumping Duty Administrative Review, 71 FR 61019 (October 17, 2006).

[29] In accordance with 19 CFR 351.301(c)(1), for the final determination of this review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301 (c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). See Glycine from the People's Republic of China: Final Results of Antidumping Duly Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[30] Sparklers, 56 FR at 20589.

[31] *See* Foreign Trade Law of the People's Republic of China, contained in TMI's AQR, at Exhibit A–2; see also Regulations of the People's Republic of China on Company Registration contained in TMI's AQR at Exhibit A–5.

[32] *See* Silicon Carbide, 59 FR at 22587; *see* also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

which would preclude the Department from assigning separate rates.

The evidence provided by TMI supports a preliminary finding of defacto absence of government control based on the following: (1) The absence of evidence that the export prices are set by or are subject to the approval of a government agency; [33] (2) the respondent has authority to negotiate and sign contracts and other agreements; [34] (3) the respondent has autonomy from the government in making decisions regarding the selection of management; [35] and (4) the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[36]

Therefore, the evidence placed on the record of this review by TMI demonstrates an absence of dejure and defacto government control with respect to TMI's exports of the merchandise under review, in accordance with the criteria identified in Sparklers and Silicon Carbide. Accordingly, we have determined that TMI has demonstrated its eligibility for a separate rate.

Fair Value Comparisons

To determine whether sales of pure magnesium to the United States by TMI were made at NV, we compared Export Price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we have used EP for TMI's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because Constructed Export Price was not otherwise warranted.

We have based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we have made deductions from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, marine insurance, brokerage and handling expenses incurred in the U.S., U.S. customs duty, freight from the U.S. port to the customer, rebanding, inventory and warehouse handling expenses. TMI neither reported nor claimed other adjustments to EP.[37]

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that TMI provide information regarding the weighted-average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department's calculations are as accurate as possible.[38]

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market-economy currency, the Department may value the factor using the actual price paid for the input.[39] TMI reported that it did not purchase inputs from market-economy suppliers for the production of the subject merchandise.[40]

We calculated NV based on FOPs in accordance with section 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by TMI for materials, energy, labor, by-products, and packing.

TMI stated that it generates three by-products during the production process: magnesium waste, cement clinker and coal tar.[41] TMI requested a by-product offset for all three products. However, TMI failed to establish that the magnesium waste and cement clinker generated during the course of production has commercial value.[42] Therefore, for these preliminary results, we have granted TMI a by-product offset solely for coal tar.[43]

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by TMI for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available Indian SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value TMI's reported FOPs may be found in the Factor Valuation Memorandum.

The Department calculated SVs for the majority of reported FOPs purchased from NME sources using the contemporaneous, weighted-average unit import value derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and

[33] *See* TMI's AQR, at 7; *see* also the contract and the purchase order between TMI and a U.S. Customer contained in TMI's AQR at Exhibit A–6. See also TMI's 1st SQR at 19–22 and Exhibit SA–7a and SA–7b.

[34] *See* TMI's AQR, at 7–8.

[35] *See* TMI's AQR at 8.

[36] *See* TMI's AQR at 9–10.

[37] *See* Memorandum to the File "Analysis Memorandum for the Preliminary Results of the 2008–2009 Administrative Review of Pure Magnesium from the People's Republic of China: Tianjin Magnesium International Co., Ltd. ("TMI")" ("TMI's Analysis Memorandum"), dated June 7, 2010.

[38] *See e.g.,* Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003), and accompanying Issue and Decision Memorandum at Comment 19.

[39] *See* 19 CFR 351.408(c)(1); see also Shakeproof Assembly Components, Div. of Ill. *Tool Works, Inc.* v. *United States, 268 F.3d 1376, 1382–1383* (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[40] *See* TMJ's DQR at D–5.

[41] *Id.* at D–13–15 and Exhibits D–8 through D–10.

[42] *See* TMI's Verification Report, section XVI, "By-Products."

[43] *See* TMI s Analysis Memorandum at 4.

Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas ("WTA"), available at *http://www.gtis.comlwta.htm* ("WTA Indian Import Statistics").[44] WTA Indian Import Statistics were reported in U.S. dollars [45] and are contemporaneous with the POR to calculate SVs for TMI's material inputs. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the period of review, product-specific, and tax-exclusive.[46]

In those instances where the Department could not obtain publicly available information contemporaneous with the POR with which to value FOPs, the Department adjusted the publicly available SVs using the Indian Wholesale Price Index, as published in the International Financial Statistics of the International Monetary Fund.[47]

Furthermore, with regard to Indian import-based SVs, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from Indonesia, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[48] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.[49] Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. In accordance with the foregoing, we have not used prices from these countries in calculating the Indian import-based SVs.

The Department used WTA Indian Import Statistics to calculate SVs for raw materials, packing materials and by-products including ferrosilicon, fluorite powder, sulphur powder, sulfuric acid, magnesium metal waste, magnesium waste, coal tar, plastic bags, steel bands and plastic bands.

For dolomite, we continue to find, as we did in the previous segments of this proceeding, that it is reasonable to conclude that WTA data represent prices of imported dolomite in the high-end, value-added product range while the dolomite used to produce subject merchandise is the high-bulk, low-value commodity.[50] Therefore, as in the 2006–07 administrative review, we have preliminarily determined to use the audited financial statements of Indian producers submitted on the record of this review as the basis of the SV for dolomite.[51] TMI placed the audited financial statements of four companies on the record covering the period April 1, 2008 through March 31, 2009: Madras Cements Ltd. ("Madras Cements"), Tata Sponge Iron Ltd. ("Tata Sponge Iron"), The Bisra Stone Lime Company Ltd. ("Bisra"), and Steel Authority of India, Limited ("SAIL").[52] In examining these financial statements, we have determined that the prices reflected in the financial statements of Madras Cements and Tata Sponge Iron represent the best available information on the record with which to value dolomite. Both of these financial statements are fully legible and generally contemporaneous with the POR. The companies were both profitable and did not receive subsidies that the Department has found to be countervailable and would otherwise taint the prices of materials that it sold or consumed. However, we have determined not to rely on Bisra's financial statements because Bisra was unprofitable. Consequently, we cannot determine whether Bisra's dolomite sales prices represent market prices or were made below market value. Additionally, we have determined not to use SAIL's audited financial statements because SAIL received loans from the Steel Development Fund,[53] which the Department has previously determined are countervailable.[54] Because the dolomite prices recorded on SAIL's financial statements reflect SAIL's consumption of raw materials produced in captive mines,[55] these prices have been tainted by the subsidies reflected on its financial statements.[56] Therefore, we have determined the SV of dolomite based on the simple average of domestic prices for dolomite provided in the audited financial statements of Madras Cements and Tata Sponge Iron.

We valued flux No. 2, which consists of magnesium chloride, potassium chloride and sodium chloride, using data from Chemical Weekly. We consider both Chemical Weekly and WTA Indian Import Statistics to be reliable sources and, as such, the Department has used them in past cases to value chemical component inputs. In the instant case, however, we have determined that Chemical Weekly is the best available information for valuing flux because the quantity of the total imports of magnesium chloride in the WTA Indian Import Statistics is very small and, thus, does not appear to represent commercial quantities.[57]

TMI requested that the Department offset its NV for three by-products generated in the course of the production process: Coal tar, magnesium waste and cement clinker.[58] At verification, TMI established that its producers sold coal tar in arm's length transactions and received payments for those sales.[59] However, none of the parties placed a SV for coal tar on the record of this review. Therefore, for the preliminary results, we will value coal tar using HTS 2706, Tar Distilled From Coal, Lignite Or Peat and Other Minerals,[60] and will ask parties to

[44] *See* Factor Valuation Memorandum.

[45] The import data obtained from the WTA as published by Global Trade Information Services began identifying the original reporting currency for India as the U.S. dollar. See Memorandum to the file, "Indian Import Statistics Currency Denomination in the World Trade Atlas," dated March 29, 2010.

[46] *See, e.g.,* Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

[47] *See* Factor Valuation Memorandum.

[48] *See* Final Results Of Redetermination Pursuant To Court Remand, dated February 25, 2010, *Jinan Yipin Corp., Ltd.* v. *United States, 637 F. Supp. 2d 1183 (CIT 2009). See* also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 70 FR 54007, 54011 (September 13, 2005), unchanged in Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006); and China Nat'l Mach. *Import & Export Corp.* v. *United States, 293 F. Supp. 2d 1334 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004).*

[49] *See* H.R. Rep. No. 100–576 at 590 (1988).

[50] *See* Pure Magnesium 06–07, and accompanying Issues and Decision Memorandum at Comment 1. In addition, see TMI's SV Comments at Exhibits SV–2C and SV–2D, which respectively contain, British Geological Survey (2006): Dolomite and A Review of the Dolomite and Limestone Industry in South Africa Report R43/2003.

[51] *Id.*

[52] *See* TMI's SV Comments at Exhibits SV–2f through SV–2i.

[53] *See* TMI's SV Comments at Exhibit SV–2i, at page 50 and 103.

[54] *See, e.g.,* Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008).

[55] *See* TMI's SV Comments at Exhibit SV–2i, at page 12.

[56] *See* TMI's SV Comments at Exhibit SV–2i, at page 50 and 103.

[57] *See* Factor Valuation Memorandum.

[58] *See* TMI's DQR at D–13 to D–15.

[59] *See* TMI Verification Report at section XVI, "By-Products."

[60] *See* Factor Valuation Memorandum.

comment on the record concerning the appropriate SV for coal tar for the final results. For magnesium waste and cement clinker, TMI reported a three-party arrangement whereby the magnesium producers provide the by-product to a freight provider in return for offsets to the money owed to that freight provider by the magnesium producer for previous services rendered.[61] However, TMI could not demonstrate actual payment received for these by-products and, therefore, failed to establish that its by-products for magnesium waste and cement clinker have commercial value.[62] Specifically, TMI was unable to show receipts that its freight provider received from the purchaser to demonstrate that the by-products of magnesium waste and cement clinker have commercial value. Therefore, the Department has preliminarily determined not to grant TMI a by-product offset for magnesium waste and cement clinker.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), the Department used the PRC regression-based wage rate as reported on Import Administration's Web site.[63] Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by TMI.

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008.[64] These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided.

To value steam coal, we used steam coal prices from the December 12, 2007, CIL's Coal Pricing Circular. *See* CIL: S&M: GM(F): Pricing 1124, dated 12 December 2007).[65] Since TMI reports using non-coking coal with a useful heat value of 5500 kcal/kg,[66] we calculated the SV for steam coal by averaging the prices of grades B and C steam coal from the December 12, 2007, CIL Coal Pricing Circular.[67] We did not inflate this value to the current POR because the steam coal rates represent the rates that were in effect until October 16, 2009,[68] and are, therefore, contemporaneous with the POR. Finally, we have applied an additional fixed surcharge of 165 rupees ("Rs.")/metric ton ("MT") to our calculation of the average of B and C grades of steam coal.

We valued truck freight expenses using an Indian per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm*.[69] The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We did not inflate this rate since it is contemporaneous with the POR.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in Doing Business 2010: India, published by the World Bank.[70]

We valued marine insurance using the price quote retrieved from RJG Consultants, online at *http://www.rjgconsultants.com/163.html,* a market-economy provider of marine insurance.[71] We did not inflate this rate since it is contemporaneous with the POR

19 CFR 351.408(c)(4) directs the Department to value overhead, general, and administrative expenses ("SG&A"), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In this administrative review, Petitioner placed the 2008–2009 financial statements on the record for one Indian producer of aluminum products—National Aluminum Company Limited ("NALCO"), and one producer of zinc products—Hindustan Zinc Limited ("Hindustan Zinc"). TMI placed the 2008–2009 financial statements on the record for five Indian producers of aluminum products: Madras Aluminum Company Ltd. ("MALCO"), HINDALCO Industries Limited ("HINDALCO"), Century Extrusions Ltd. ("Century"), Sudal Industries Ltd. ("Sudal"), and Bhoruka Aluminum ("Bhoruka").

For the following reasons, we have determined not to rely on the 2008–2009 audited financial statements of MALCO, HINDALCO, Hindustan Zinc, NALCO, Century and Bhoruka as surrogate financial statements under 19 CFR 351.408(c)(4). First, we determined not to rely on MALCO's audited financial statements because MALCO suspended production of aluminum and alumina in November 2008, seven months into its fiscal year (and the POR).[72] In addition, since it suspended aluminum and alumina production, it switched the use of its power generation from captive consumption to external sales.[73] As a result, the financial statements do not reflect the cost experience of producing a product comparable to the subject merchandise for five months of the POR.

Second, we have determined not to rely on the financial statements of HfNDALCO, NALCO, and Century because the record indicates that during this period these companies received subsidies the Department has previously determined to be countervailable. Congress indicated that the Department should "avoid using any prices which it had reason to believe or suspect may be dumped or subsidized prices."[74] Consistent with this Congressional directive, the Department's practice is to not use financial statements of a company that we have reason to believe or suspect may have received subsidies, where there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios, because the financial statements of companies receiving actionable subsidies are less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence

[61] *See* TMI Verification Report at section XVI, "By-Products."

[62] *See* TMI Verification Report at section XVI, "By-Products."

[63] *See* "Expected Wages of Selected NME Countries," revised in December 2009, available at *http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html.* The source of these wage-rate data is the Yearbook of Labour Statistics 2007, ILO (Geneva: 2008), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates are from 2006 and 2007.

[64] *See* Factor Valuation Memorandum.

[65] *See* Factor Valuation Memorandum.

[66] TMI's DQR at D–12. See also Annexure X of CIL's Coal Pricing Circular in the Factor Valuation Memorandum (identifying the range of kcal/kg in each grade of coal).

[67] *See* Factor Valuation Memorandum.

[68] *See http://www.coalindia.in/Business.aspx?tab=2.*

[69] See Factor Valuation Memorandum.

[70] *See* Factor Valuation Memorandum.

[71] *See* Factor Valuation Memorandum.

[72] *See* The Madras Aluminum Company Limited, 49th Annual report 2008–09, at 4, contained in TMI's SV Comments at Exhibit SV–11D. MALCO's fiscal year coincides with the POR.

[73] *See id.* at 4.

[74] Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 59091 (1988).

of subsidization.[75] In this case, HINDALCO's 2008–2009 financial statements indicate that HINDALCO received benefits under the Duty Free Import Entitlement Scheme ("EPCG Scheme").[76] Similarly, NALCO's financial statements indicate that NALCO received benefits under the Duty Entitlement Pass Book ("DEPB Premium")[77] and obtained EPCG licenses.[78] Century's audited financial statements demonstrated that it also received benefits under the EPCG Scheme.[79] India's EPCG Scheme and DEPB Premiums each have been found by the Department to provide a countervailable subsidy.[80] Third, we rejected Bhoruka's audited financial statements because they did not show a profit for the 2008–2009 fiscal years.[81] The Department has an established practice of not relying on financial statements that are unprofitable.[82] Fourth, we have determined not to use the 2008–2009 financial statements of Hindustan Zinc because Hindustan Zinc has four captive mines and did not include the cost of materials produced on its income statement.[83]

As a result, we have preliminarily determined to use the 2008–2009 audited financial statements of Sudal as the basis of the financial ratios in this review. Sudal is a secondary aluminum extrusion manufacturer that used, purchased, or imported aluminum metals as raw materials to manufacture aluminum extrusions and fabricated products;[84] Sudal earned a profit;[85] and there is no record evidence to indicate that it received benefits that the Department has determined to be countervailable.[86] Further, its audited financial statements are complete and are sufficiently detailed to disaggregate materials, labor, overhead, and SG&A expenses.[87]

While the Department has not previously determined whether the production process for extruded aluminum is similar to that of pure magnesium for purposes of calculating surrogate financial ratios, we find that it is the best available information on the record. While it is the Department's practice to reject financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available,[88] there is insufficient evidence to conclude in this case that production processes at issue are too dissimilar for purposes of using the Sudal financial statements. Accordingly, we invite parties to provide additional information and explanation on the record concerning the comparability of the manufacturing process for pure magnesium and extruded aluminum products, and to provide additional suitable financial statements from Indian producers of comparable merchandise.

For a complete listing of all the inputs and a detailed discussion about our SV selections, see the Factor Valuation Memorandum.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect as certified by the Federal Reserve Bank on the date of the U.S. sale.

Use of Facts Available and Adverse Facts Available ("AFA")

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

[75] *See* Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 8907 (February 27, 2009), and accompanying Issues and Decision Memorandum at Comment 1; Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("OTR Tires") at Comment 17A; Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) at Comment 2, citing Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

[76] *See* Annual Report 2008–2009, Hindalco Industries Limited, at 91 contained in TMI's SV Comments at Exhibit SV–11E.

[77] *See* 28th Annual Report 2008–2009, National Aluminum Company Limited, at 71 contained in Petitioner's SV Comments at Exhibit 5.

[78] *See id.* at 72.

[79] *See* Century Extrusion Limited, Twenty First Annual Report 2008–2009, at pages 35 and 41, in TMJ's SV Comments at Exhibit SV–11B.

[80] *See e.g.,* Certain Iron-Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 64 FR 61592 (November 12, 1999), unchanged in Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review, 65 FR 31515 (May 18, 2000); *see also http://ia.ita.doc.gov/esel/eselframes.html;* and Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006), and accompanying Issues and Decision Memorandum at "Benchmarks for Loans and Discount Rate."

[81] *See* 29th Annual Report 2008–09, Bhoruka Aluminum Limited, at 31 contained in TMI's SV Comments at Exhibit SV–11C.

[82] *See* OTR Tires at Comment 17A.

[83] *See* Annual Report 2008–09, Hindustan Zinc Limited, at 61, 79 and 93, contained in Petitioner's SV Comments at Exhibit 6.

[84] Annual Report 2008–2009, Sudal Industries Limited, at 33 contained in TMI's SV Comments at Exhibit SV–1 1A.

[85] *See* Annual Report 2008–2009, Sudal Industries Limited, at 19 contained in TMI's SV Comments at Exhibit SV–1 1A. See also Century Extrusions Ltd., at 33 contained in TMI's SV Comments at Exhibit SVI1B.

[86] *See id.*

[87] *See id.* See also the appropriate schedules to the financial statements as indicated on page 33 for Century and page 19 for Sudal.

[88] *See, e.g.,* Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

Application of Total AFA to the PRC-Wide Entity

Because TXR and Pan Asia did not respond to the Department's antidumping duty questionnaire, we preliminarily determine that these companies' withheld information requested by the Department in accordance with sections 776(a)(2)(A) and (B) of the Act. Furthermore, these companies' refusal to participate in the review significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act. Specifically, had TXR and Pan Asia participated in the review, the Department would have determined whether they were entitled to a separate rate and calculated company specific dumping margins for these companies.

Thus, because there is no information on the record demonstrating TXR's or Pan Asia's entitlement to a separate rate in accordance with section 776(a) of the Act, the Department has preliminarily treated these companies as part of the PRC-Wide Entity.

Further, because these parties did not respond to the Department's antidumping questionnaire and are part of the PRC-Wide Entity, the Department is basing the dumping margin of the PRC-Wide Entity on the facts otherwise available on the record. Furthermore, the PRC-Wide Entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[89] Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-Wide Entity.

Selection of AFA Rates

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(l) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner" and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.[90] Specifically, the Department's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).[91] The Court of International Trade and the Court of Appeals for the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[92] Therefore, as AFA, the Department has preliminarily assigned the PRC–Wide Entity a dumping margin of 111.73 percent. This margin is the highest calculated rate for a respondent on the record of any segment of the proceeding.[93]

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.[94] Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[95] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[96] Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[97]

The 111.73 percent AFA rate is the highest calculated rate on the record of any segment of the proceeding.[98] No additional information has been presented in the current review which calls into question the reliability of the information. This rate was calculated for a mandatory respondent in the 06–07 administrative review of pure magnesium and was assigned to TMI as AFA in the last completed segment of the proceeding. Thus, we have determined this information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin

[89] *See Nippon Steel Corporation* v, *United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003),* where the Court of Appeals for the Federal Circuit provided an explanation of the "failure to act to the best of its ability" standard noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown").

[90] *See* Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8911 (February 23, 1998); *see* also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005) and the SAA at 870.

[91] *See* Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930, 15934 (April 8, 2009), unchanged in Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd.* v. *United States, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009)* ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

[92] *See e.g. NSK Ltd.* v. *United States, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004)* (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the investigation); *Kompass Food Trading International* v. *United States, 24 CIT 678, 683–84 (2000)* (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States, 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005)* (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

[93] *See* Pure Magnesium 06–07.

[94] *See* SAA at 870.

[95] *See id.*

[96] *See* Tapered Roller Bearings and Parts Thereof Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

[97] *See* Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 35627, 35629 (June 16, 2003), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra High Voltage Ceramic Station Post Insulators from Japan, 68 FR 62560 (November 5, 2003); and Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183–84 (March 11, 2005).

[98] *See* Pure Magnesium 06–07.

and determine an appropriate margin.[99] Similarly, the Department does not apply a margin that has been discredited.[100] To assess the relevancy of the rate used, the Department compared the transaction-specific margins calculated for TMI in the instant administrative review with the 111.73 percent rate calculated in the 06–07 review of pure magnesium. The Department found that the 111.73 percent margin was within the range of the margins calculated on the record of the instant administrative review. Since the 111.73 percent margin is within the range of transaction-specific margins on the record of this administrative review, the Department has determined that the 111.73 percent margin continues to be relevant for use as an AFA rate for the PRC–Wide Entity in this administrative review.

As the adverse margin is both reliable and relevant, the Department has determined that it has probative value. Accordingly, the Department has determined that this rate meets the corroboration criterion established in section 776(c) of the Act.

Duty Absorption

Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. *See also*, 19 CFR 351.213(j). On July 24, 2009, Petitioner requested that the Department determine whether TMI had absorbed antidumping duties for U.S. sales of pure magnesium made during the POR. Since the instant review was initiated more than four years after publication of the pure magnesium order, this request is untimely and, as such, we have not conducted a duty absorption analysis.

Weighted-Average Dumping Margins

The preliminary weighted-average dumping margin is as follows:

MAGNESIUM METAL FROM THE PRC

Exporter	Weighted-average margin (percentage)
Tianjin Magnesium International Co. Ltd	15.23
PRC-Wide Entity**	111.73

** Pan Asia and TXR are part of this PRC-Wide Entity.

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results.[101] If a hearing is requested, the Department will announce the hearing schedule at a later date. Interested parties may submit case briefs and/or written comments no later than seven days after the release of the verification report issued in this review.[102] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.[103] Further, we request that parties submitting written comments provide the Department with an additional electronic copy of those comments on a CD–ROM. The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in all comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[104] For assessment purposes, we calculated importer- or customer-specific assessment rates for merchandise subject to this review. We calculated an ad valorem rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total entered value associated with those transactions. For duty assessment rates calculated on this basis, we will direct CBP to assess the resulting ad valorem rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- or customer-specific assessment rate is de minimis (*i.e.*, less than 0.50 percent) in accordance with the requirement of 19 CFR 351.106(c)(2), the Department will instruct CBP to assess that importer's or customer's entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For TMI, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or de minimis, zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

[99] *See* Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

[100] *See D & L Supply Co.* v. *United States, 113 F.3d 1220, 1221 (Fed. Cir. 1997)* (ruling that the Department will not use a margin that has been judicially invalidated).

[101] *See* 19 CFR 351.310(c).

[102] *See* 19 CFR 351.309(c)(ii).

[103] *See* 19 CFR 351.309(d).

[104] *See* 19 CFR351.212(b).

antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: June 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14391 Filed 6–17–10; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags from Thailand: Rescission of Antidumping Duty Administrative Review in Part

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

SUMMARY: On September 22, 2009, in response to requests from interested parties, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand. The period of review is August 1, 2008, through July 31, 2009. The Department of Commerce is rescinding this review in part.

EFFECTIVE DATE: June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2009, in response to requests from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (the petitioners) and by Thai Plastic Bags Industries Co., Ltd., the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009). On April 19, 2010, the petitioners withdrew their request for an administrative review of Landblue (Thailand) Co., Ltd. (Landblue).

Rescission of Review in Part

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so." Although we did not receive the petitioners' withdrawal letter within the 90-day time limit, we determine that it is reasonable to accept this letter of withdrawal because we have not expended significant resources in the conduct of this review and because we received no other requests for the review of Landblue. Accordingly, the Department is rescinding this review in part with respect to Landblue pursuant to 19 CFR 351.213(d)(1). The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after the date of publication of this notice.

Notification to Importers

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

We are issuing and publishing this rescission in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 10, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–14799 Filed 6–17–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–839]

Carbazole Violet Pigment 23 from India: Rescission of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2009, the Department published a notice of opportunity to request an administrative review of the countervailing duty order on Carbazole Violet Pigment 23(CVP–23) from India. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 62743 (December 1, 2009). On December 31, 2009, we received a request from Meghmani Pigments requesting an administrative review of the countervailing duty order on CVP–23 from India for the period January 1, 2008 through December 31, 2008. In its request, Meghmani Pigments noted that it was formerly known as Alpanil Industries, Ltd. and that its name change to Meghmani Pigments occurred effective April 9, 2009, a date subsequent to the requested period of review. In accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating an administrative review of the countervailing duty order on CVP- 23 from India. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Initiation of Administrative Review*, 75 FR 4770 (January 29, 2010).

Rescission of Countervailing Duty Administrative Review

The Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation. See 19 CFR 351.213 (d)(1). On

April 28, 2010, Meghmani Pigments submitted a letter withdrawing its request of the review within the 90-day deadline. No other party requested a review of the order. Therefore, the Department is rescinding this administrative review of the countervailing duty order on CVP–23 from India for the period January 1, 2008 through December 31, 2008. The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after the date of publication of this notice.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) of the Department's regulations, which continues to govern business proprietary information in this segments 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.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated:June 11, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc.2010–14797 Filed 6–17–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW69

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that a one-year Letter of Authorization (LOA) has been issued to the Monterey Bay National Marine Sanctuary (MBNMS) to incidentally take, by Level B harassment only, California sea lions (*Zalophus californianus*) and Pacific harbor seals (Phoca vitulina) incidental to professional fireworks displays within the MBNMS.

DATES: This authorization is effective from July 4, 2010, through July 3, 2011.

ADDRESSES: The LOA and supporting documentation are available for review in the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, by contacting one of the individuals listed below (**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 and at the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) upon request, to allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued.

The Secretary shall grant the authorization for incidental taking if NMFS finds, after notice and opportunity for public comment, that the total of such taking during each five-year (or less) period concerned, will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species for subsistence uses. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of California sea lions and Pacific harbor seals, by Level B harassment, incidental to commercial fireworks displays within the Monterey Bay National Marine Sanctuary (MBNMS) became effective on July 4, 2006, and remain in effect until July 3, 2011. For detailed information on this action, please refer to the original **Federal Register** notice (71 FR 40928, July 19, 2006). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during the fireworks displays within the Sanctuary boundaries. This will be the fifth LOA issued pursuant to these regulations.

Summary of Request

On February 26, 2010, NMFS received a request for a LOA pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals incidental to fireworks displays at the MBNMS. Justification for conducting fireworks displays within the MBNMS can be found in the proposed rule (71 FR 25544, May 1, 2006) and the in final rule (71 FR 40928, July 19, 2006).

Summary of Activity and Monitoring Under the Current LOA

In compliance with the 2009 LOA, the MBNMS submitted an annual report on the fireworks displays at MBNMS. A summary of that report follows.

For each display, observers conducted pre-event surveys to document abundance and distribution of local marine mammal populations within the fireworks areas. Following the fireworks display, observers conducted post-event monitoring to record the presence of injured or dead marine mammals, and other wildlife.

Pre-event monitoring of the Cambria Independence Day Fireworks on July 3 found no marine mammals present at the site and a post-event census on July 5 found no injured or dead marine mammals.

On July 3, observers conducted pre-event monitoring in the Pillar Point

Harbor area for the Half Moon Bay Independence Day Firework and recorded five harbor seals and 45 California sea lions. One California sea lion that appeared ill was reported to the Marine Mammal Stranding Center. Observers recall that the post-event monitoring on July 5 revealed that no marine mammals were injured or killed; however, the records of post-event monitoring were lost.

Pre-event monitoring for the Pacific Grove Feast of Lanterns Fireworks display consisted of enumerating all marine mammals within 400 meters of the fireworks launch site (survey area). On July 24, observers reported the presence of seven harbor seals and four California sea lions within the survey area. A post-event monitoring survey found that no marine mammals had been injured or killed.

Finally, pre-event monitoring of the Monte Foundation Fireworks Display on October 2 found approximately 34 California sea lions, approximately 10 harbor seals, and two bottlenose dolphins within the survey area. On October 4, the observers reported that there were no injured or dead marine mammals.

In summary, MBNMS conducted activities as described in the regulations, implemented the required mitigation measures, and conducted the required monitoring. The total number of potentially harassed California sea lions (83) and harbor seals (22) for all fireworks displays was well below the authorized limits as stated in the final rule (71 FR 40928, July 19, 2006).

No injuries or fatalities to marine mammals were reported as resulting from any of the events. Hence, these monitoring results support NMFS' initial findings that fireworks display will result in no more than Level B behavioral harassment of small numbers of California sea lions and harbor seals and that the effects will be limited to short term behavioral changes, including temporary abandonment of haul-out areas to avoid the sights and sounds of commercial fireworks.

Authorization

NMFS has issued an LOA to MBNMS authorizing the Level B harassment of marine mammals incidental to the coastal commercial fireworks display within the Sanctuary. Issuance of this LOA is based on the results of the MBNMS 2009 monitoring report which verify that the total number of potentially harassed sea lions and harbor seals was well below the authorized limits as stated in the final rule (71 FR 40928, July 19, 2006). Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses. No mortality or injury of affected species is anticipated.

Dated: June 14, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–14833 Filed 6–17–10; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 7/19/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 8415–01–579–9622—Multi-Cam Coat
NSN: 8415–01–579–9864—Multi-Cam Coat
NSN: 8415–01–580–0068—Multi-Cam Coat
NSN: 8415–01–580–0075—Multi-Cam Coat
NSN: 8415–01–580–0077—Multi-Cam Coat
NSN: 8415–01–579–9840—Multi-Cam Coat
NSN: 8415–01–579–9843—Multi-Cam Coat
NSN: 8415–01–579–9847—Multi-Cam Coat
NSN: 8415–01–579–9850—Multi-Cam Coat
NSN: 8415–01–579–9852—Multi-Cam Coat
NSN: 8415–01–579–9806—Multi-Cam Coat
NSN: 8415–01–579–9811—Multi-Cam Coat
NSN: 8415–01–579–9814—Multi-Cam Coat
NSN: 8415–01–579–9827—Multi-Cam Coat
NSN: 8415–01–579–9830—Multi-Cam Coat
NSN: 8415–01–579–9833—Multi-Cam Coat
NSN: 8415–01–579–9836—Multi-Cam Coat
NSN: 8415–01–579–9773—Multi-Cam Coat
NSN: 8415–01–579–9776—Multi-Cam Coat
NSN: 8415–01–579–9781—Multi-Cam Coat
NSN: 8415–01–579–9782—Multi-Cam Coat
NSN: 8415–01–579–9784—Multi-Cam Coat
NSN: 8415–01–579–9823—Multi-Cam Coat
NSN: 8415–01–579–9789—Multi-Cam Coat
NSN: 8415–01–579–9794—Multi-Cam Coat
NSN: 8415–01–579–9795—Multi-Cam Coat
NSN: 8415–01–579–9801—Multi-Cam Coat
NSN: 8415–01–579–9753—Multi-Cam Coat
NSN: 8415–01–579–9756—Multi-Cam Coat
NSN: 8415–01–579–9759—Multi-Cam Coat
NSN: 8415–01–579–9762—Multi-Cam Coat
NSN: 8415–01–579–9616—Multi-Cam Coat
NSN: 8415–01–579–9621—Multi-Cam Coat
NSN: 8415–01–579–9747—Multi-Cam Coat
NSN: 8415–01–579–9749—Multi-Cam Coat
NSN: 8415–01–579–9745—Multi-Cam Coat
NSN: 8415–01–579–9752—Multi-Cam Coat

NPAs: Southside Training Employment Placement Services, Inc., Farmville, VA
ReadyOne Industries, Inc., El Paso, TX.

Contracting Activity: DEPT OF THE ARMY, XR W2DF RDECOM ACQ CTR NATICK, MA.
Coverage: C-List for 100% of the requirement of the U.S Army, as aggregated by the Department of the Army Research, Development, & Engineering Command, Natick, MA.
NSN: 8415–01–579–8677—Multi-Cam Trouser
NSN: 8415–01–579–8714—Multi-Cam Trouser
NSN: 8415–01–579–8719—Multi-Cam Trouser
NSN: 8415–01–579–8744—Multi-Cam Trouser
NSN: 8415–01–579–8766—Multi-Cam Trouser
NSN: 8415–01–579–8385—Multi-Cam Trouser
NSN: 8415–01–579–8551—Multi-Cam Trouser
NSN: 8415–01–579–8553—Multi-Cam Trouser
NSN: 8415–01–579–8558—Multi-Cam Trouser
NSN: 8415–01–579–8561—Multi-Cam Trouser
NSN: 8415–01–579–8570—Multi-Cam Trouser
NSN: 8415–01–579–8580—Multi-Cam Trouser
NSN: 8415–01–579–8684—Multi-Cam Trouser
NSN: 8415–01–579–8227—Multi-Cam Trouser
NSN: 8415–01–579–8263—Multi-Cam Trouser
NSN: 8415–01–579–8276—Multi-Cam Trouser
NSN: 8415–01–579–8354—Multi-Cam Trouser
NSN: 8415–01–579–8365—Multi-Cam Trouser
NSN: 8415–01–579–8788—Multi-Cam Trouser
NSN: 8415–01–579–8791—Multi-Cam Trouser
NSN: 8415–01–579–8771—Multi-Cam Trouser
NSN: 8415–01–579–9123—Multi-Cam Trouser
NSN: 8415–01–579–9119—Multi-Cam Trouser
NSN: 8415–01–579–8080—Multi-Cam Trouser
NSN: 8415–01–579–8098—Multi-Cam Trouser
NSN: 8415–01–579–8112—Multi-Cam Trouser
NSN: 8415–01–579–8126—Multi-Cam Trouser
NSN: 8415–01–582–4206—Multi-Cam Trouser
NSN: 8415–01–579–7850—Multi-Cam Trouser
NSN: 8415–01–579–9121—Multi-Cam Trouser
NSN: 8415–01–579–9130—Multi-Cam Trouser
NSN: 8415–01–579–9132—Multi-Cam Trouser
NSN: 8415–01–579–8591—Multi-Cam Trouser
NSN: 8415–01–579–8776—Multi-Cam Trouser
NSN: 8415–01–579–9120—Multi-Cam Trouser
NSN: 8415–01–579–8784—Multi-Cam Trouser
NPAs: ReadyOne Industries, Inc., El Paso, TX, Goodwill Industries of South Florida, Inc., Miami, FL.
Contracting Activity: DEPT OF THE ARMY, XR W2DF RDECOM ACQ CTR NATICK, MA.
Coverage: C-List for 100% of the requirement of the U.S. Army, as aggregated by the Department of the Army Research, Development, & Engineering Command, Natick, MA.
NSN: MR 549—Sponge, Pop-Up, Small.
NPA: Mississippi Industries for the Blind, Jackson, MS.
Contracting Activity: MILITARY RESALE-DEFENSE-COMMISSARY AGENCY FORT LEE, VA.
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

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NSN: 7530–01–364–9484—RED
NSN: 7530–01–364–9502—BLUE
NSN: 7530–01–364–9505—GREEN
NSN: 7530–01–364–9506—ORANGE
NSN: 7530–01–364–9486—YELLOW
NSN: 7530–01–203–1493—LAVENDER
NSN: 7530–01–364–9482—PINK
NSN: 7530–01–364–9483—PURPLE
NSN: 7530–01–364–9485—WHITE
NSN: 7530–01–364–9503—BROWN
NSN: 7530–01–364–9504—GRAY
NPA: L.C. Industries for the Blind, Inc., Durham, NC.
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Scissors and Shears

NSN: 5110–01–241–4371—Shears, Bent Trimmers
NSN: 5110–01–241–4373—Shears, Straight Trimmers
NSN: 5110–01–241–4375—Scissors, Ladies Sewing; Stainless Steel
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.
NSN: 5110–01–241–4376—Scissors, Pocket
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS TOOLS ACQUISITION DIVISION I, KANSAS CITY, MO.

Services

Service Type/Location: Mess Attendant Service, 185th Air Refueling Wing Dining Hall, 2920 Headquarters Avenue, Sioux City, IA.
NPA: Goodwill Community Rehabilitation Services, Inc., Sioux City, IA.
Contracting Activity: DEPT OF THE ARMY, XRAW7M8 USPFO ACTIVITY IA ARNG, JOHNSTON, IA.
Service Type/Location: Custodial Service, National Weather Service, 587 Aero Drive, Buffalo, NY.
NPA: Suburban Adult Services, Inc., Elma, NY.
Contracting Activity: DEPT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NORFOLK, VA.
Service Type/Location: Custodial Service, DCMA Pease Air National Guard Base, 302 Newmarket St., Building 247, Pease ANGB, NH.
NPA: CW Resources, Inc., New Britain, CT.
Contracting Activity: DEFENSE CONTRACT MANAGEMENT AGENCY (DCMA), BOSTON, MA.
Service Type/Location: Administrative Support Service, Welcome Center, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA.
NPA: Richmond Area Association for Retarded Citizens, Richmond, VA.
Contracting Activity: DEFENSE LOGISTICS AGENCY, DEFENSE SUPPLY CENTER RICHMOND, RICHMOND, VA
Service Type/Location: Receiving/Delivery, Supply Store, Warehousing, Mailroom Environmental Protection Agency Complex System, 109 T.W. Alexander Drive, Research Triangle Park, NC
NPA: Employment Source, Inc., Fayetteville, NC
Contracting Activity: ENVIRONMENTAL PROTECTION AGENCY, RTP PROCUREMENT OPERATIONS DIVISION (RTPPOD), RESEARCH TRIANGLE PARK, NC.
Service Type/Location: Custodial Service, Air Traffic Control Tower, Duluth International Airport, 4525 Airport Approach Road, Duluth, MN.
NPA: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN.
Contracting Activity: DEPT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, DES PLAINES, IL.
Service Type/Location: Custodial Service (Basewide), Naval Air Station/Joint Reserve Base (NAS/JRB), New Orleans, LA.
NPA: Goodworks, Inc., Metairie, LA.
Contracting Activity: DEPT OF THE NAVY, NAVAL FACILITIES ENGINEERING CMD, NAVFAC SOUTHEAST, JACKSONVILLE, FL.
Service/Location: Base Supply Center, Scott Air Force Base, IL.
NPA: Associated Industries for the Blind, Milwaukee, WI.
Contracting Activity: 375th CONTRACTING SQUADRON/LGCM, SCOTT AIR FORCE BASE, IL.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–14806 Filed 6–17–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 7/19/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 4/23/2010 (75 FR 21244–21246), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: MR 987—Towel, Super Absorbent, Orange, 20" x 23", 3–Pack
NSN: MR 988—Towel, Super Absorbent, Kitchen Set, Assorted Colors, 15" x 15x", 5–Pack
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Military Resale—Defense Commissary Agency, Fort Lee, VA
Coverage: C–List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.
NSN: 7930–00–NIB–0553—TriBase Multi-Purpose Cleaner, 2 liter, 4/BX
NSN: 7930–00–NIB–0554—TriBase Multi-Purpose Cleaner, 55 gallon drum, 1 DR
NSN: 7930–00–NIB–0555—BioRenewable Glass Cleaner, 2-liter, 4/BX
NSN: 7930–00–NIB–0556—BioRenewable Glass Cleaner, 55 gallon drum, 1 DR
NSN: 7930–00–NIB–0557—Neutral Disinfectant Cleaner, 2-liter, 4/BX
NSN: 7930–00–NIB–0558—Neutral Disinfectant Cleaner, 55 gallon drum, 1 DR
NSN: 7930–00–NIB–0559—BioRenewable Industrial Cleaner, 2 liter, 4/BX
NSN: 7930–00–NIB–0560—BioRenewable Industrial Cleaner, 55 gallon drum, 1 DR
NSN: 4510–00–NIB–0021—Dispensing unit, 4 station, stainless steel, 1 EA
NSN: 4510–00–NIB–0022—Dispensing unit, 3-station, stainless steel, 1 EA
NSN: 8125–00–NIB–0024—Tribase multi-purpose silk screened 8oz bottle, 12/BX
NSN: 8125–00–NIB–0025—Glass cleaner silk screened 8oz bottle, 12/BX
NSN: 8125–00–NIB–0026—Neutral Disinfectant silk screened 8oz bottle, 12/BX
NSN: 8125–00–NIB–0027—Industrial cleaner silk screened 8oz bottle, 12/BX
NSN: 8125–00–NIB–0030—Neutral Disinfectant silk screened 32oz bottle, 12/BX
NSN: 8125–00–NIB–0041—Spray Bottle, BioRenewables Restroom Cleaner, Silk Screened, 8oz, 12/BX
NSN: 8125–00–NIB–0042—Spray Bottle, BioRenewables Restroom Cleaner, Silk Screened, 32oz, 12/BX
NSN: 7930–00–NIB–0612—Cleaner, Restroom, BioRenewables, 55 GL Drum, 1 DR
NSN: 8125–00–NIB–0040—Industrial Cleaner Silk Screened 32oz Bottle, 12/BX
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, PA
Contracting Activity: FEDERAL PRISON SYSTEM, CENTRAL OFFICE, WASHINGTON, DC
Coverage: C-List for 100% of the requirements of the Federal Prison System, Central Office, Washington, DC.

Services

Service Type/Location: Document Destruction Service, Dallas Finance Center—Dept of Homeland Security (ICE), 1460 Prudential Drive, Dallas, TX.
NPA: Expanco, Inc., Fort Worth, TX.
Contracting Activity: DEPT OF HOMELAND SECURITY, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, MISSION SUPPORT—DALLAS OFFICE, DALLAS, TX.
Service Type/Location: Administrative Support Service, Natick Contracting Division (AMSSB–ACN–S), Natick, MA.
NPA: Work, Incorporated, North Quincy, MA.
Contracting Activity: DEPT OF THE ARMY, XR W2DF RDECOM ACQ CTR NATICK, NATICK, MA.
Service Type/Location: Car Wash Service, Customs and Border Protection/Indio Border Station, 83–801 Vin Deo Circle, Indio, CA.
NPA: Sheltering Wings Corp., Blythe, CA.
Contracting Activity: DEPT OF HOMELAND SECURITY, BUREAU OF CUSTOMS AND BORDER PROTECTION, OFFICE OF PROCUREMENT, WASHINGTON, DC.
Service Type/Locations: Janitorial Service, U.S. Border Patrol Station: Camp Grip, Devil's Highway, Yuma, AZ.
Janitorial and Grounds Maintenance Service, U.S. Border Patrol Station: Yuma Annex, 4030 S. Avenue A, Yuma, AZ.
NPA: the EXCEL group, Yuma, AZ.
Contracting Activity: DEPT OF HOMELAND SECURITY, BUREAU OF CUSTOMS AND BORDER PROTECTION, OFFICE OF PROCUREMENT, WASHINGTON, DC

Deletions

On 4/2/2010 (75 FR 16757); 4/9/2010 (75 FR 18164–18165); 4/16/2010 (75 FR 19945–19946); 4/23/2010 (75 FR 21244–21246); and 4/30/2010 (75 FR 22744–22745), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or

other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Scarf, Branch of Service

NSN: 8455–00–916–8398
NPA: Susquehanna Association for the Blind, Lancaster, PA; Blind Industries and Services of Maryland, Baltimore, MD.
Contracting Activity: DEFENSE LOGISTICS AGENCY, DEFENSE SUPPLY CENTER PHILADELPHIA, PHILADELPHIA, PA.

Solvent, Correction Fluid

NSN: 7510–01–333–6241
NPA: Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.

Case, Tent Repair Kit

NSN: 8340–00–270–1334
NPA: Work Services Corporation, Wichita Falls, TX.
Contracting Activity: DEFENSE LOGISTICS AGENCY, DEFENSE SUPPLY CENTER PHILADELPHIA, PHILADELPHIA, PA.

Executive/Personal Time Management System

NSN: 7510–01–545–3709—Calendar Pad, Type I, 2009
NSN: 7530–00–NSH–0095—JR Deluxe Time Management System-Black
NSN: 7530–01–537–7818L—DAYMAX System, JR Version, 2009, Black w/Logo
NSN: 7530–01–537–7819L—DAYMAX System, JR Version, 2009, Navy w/Logo
NSN: 7530–01–537–7821L—DAYMAX System, JR Version, 2009, Burgundy w/Logo
NSN: 7530–01–537–7822L—DAYMAX System, IE, 2009, Black w/Logo
NSN: 7530–01–537–7824L—DAYMAX System, IE, 2009, Navy w/Logo
NSN: 7530–01–537–7823L—DAYMAX System, IE, 2009, Burgundy w/Logo
NSN: 7530–01–537–7825L—DAYMAX System, LE, 2009, Black w/Logo
NSN: 7530–01–537–7826L—DAYMAX System, LE, 2009, Navy w/Logo
NSN: 7530–01–537–7827L—DAYMAX System, LE, 2009, Burgundy w/Logo
NSN: 7530–01–537–7805L—DAYMAX System, GLE, 2009, Black w/Logo
NSN: 7530–01–537–7803L—DAYMAX System, GLE, 2009, Navy w/Logo
NSN: 7530–01–537–7804L—DAYMAX System, GLE, 2009, Burgundy w/Logo
NSN: 7530–01–537–7804—DAYMAX System, GLE, 2009, Burgundy
NSN: 7530–01–537–7803—DAYMAX System, GLE, 2009, Navy
NSN: 7530–01–537–7802—DAYMAX System, DOD Planner, 2009
NSN: 7530–01–537–7806—DAYMAX System, Camouflage Planner, 2009
NSN: 7510–01–537–7808—DAYMAX, IE/LE Month at a View, 2009, 3-hole
NSN: 7510–01–537–7807—DAYMAX, IE/LE Week at a View, 2009, 3-hole
NSN: 7510–01–537–7809—DAYMAX, IE/LE Day at a View, 2009, 3-hole
NSN: 7510–01–537–7815—DAYMAX, GLE Week at a View, 2009, 7-hole
NSN: 7510–01–537–7810—DAYMAX, GLE Day at a View, 2009, 7-hole
NSN: 7510–01–537–7812—DAYMAX, Tabbed Monthly, 2009, 3-hole
NSN: 7510–01–537–7814—DAYMAX, Tabbed Monthly, 2009, 7-hole
NSN: 7530–01–537–7805—DAYMAX System, GLE, 2009, Black
NSN: 7530–01–537–7827—DAYMAX System, LE, 2009, Burgundy
NSN: 7530–01–537–7826—DAYMAX System, LE, 2009, Navy
NSN: 7530–01–537–7825—DAYMAX System, LE, 2009, Black
NSN: 7530–01–537–7823—DAYMAX System, IE, 2009, Burgundy
NSN: 7530–01–537–7824—DAYMAX System, IE, 2009, Navy
NSN: 7530–01–537–7822—DAYMAX System, IE, 2009, Black
NSN: 7530–01–537–7821—DAYMAX System, JR Version, 2009, Burgundy
NSN: 7530–01–537–7819—DAYMAX System, JR Version, 2009, Navy
NSN: 7510–01–545–3773—Calendar Pad, Type II, 2009
NSN: 7530–01–545–3738—Appointment Book Refill, 2009
NSN: 7530–01–537–7802L—DAYMAX System, DOD Planner w/Logo, 2009
NSN: 7530–01–537–7806L—DAYMAX System, Camouflage Planner w/Logo, 2009
NSN: 7530–01–537–7801L—DAYMAX System, Desert, Camouflage Planner w/Logo,
NSN: 7530–01–537–7801—DAYMAX System, Desert, Camouflage Planner, 2009
NSN: 7510–01–537–7813—DAYMAX, GLE Month at a View, 2009, 7-hole
NSN: 7530–01–537–7818—DAYMAX System, JR Version, 2009, Black
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA.
Contracting Activity: GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.

Services

Service Type/Location: Food Service Attendant Service, Whiting Field Naval Air Station, Milton, FL.
NPA: Lakeview Center, Inc.
Contracting Activity: DEPT OF THE NAVY, U.S. FLEET FORCES COMMAND, NORFOLK, VA.

Service Type/Location: Document Image Conversion Service, U.S. Department of Housing & Urban Development, Richard B. Russell Federal Building, Atlanta, GA.
NPA: Tommy Nobis Enterprises, Inc., Marietta, GA.
Contracting Activity: DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF PROCUREMENT & CONTRACTS, WASHINGTON, DC.

Service Type/Location: Grounds Maintenance Service, Lexington Blue Grass Army Depot: Blue Grass Activity, Richmond, KY, Lexington Activity, Avon, KY.
NPA: Opportunity Workshop of Lexington, Inc.
Contracting Activity: DEPT OF THE ARMY, XR W40M NATL REGION CONTRACT OFC, WASHINGTON, DC.

Service Type/Location: Catering Service, San Antonio Detention Center, 8940 Fourwinds Dr., San Antonio, TX.
NPA: Goodwill Industries of San Antonio, San Antonio, TX.
Contracting Activity: DEPT OF HOMELAND SECURITY, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, DETENTION MANAGEMENT—DC OFFICE, WASHINGTON, DC.

Service Type/Location: Janitorial/Custodial Service, TSA Office Space: Newport News International Airport, 900A Bland Boulevard, Newport News, VA.
NPA: Portco, Inc., Portsmouth, VA.
Contracting Activity: GSA/PBS/R03 RICHMOND FO, RICHMOND, VA.

Services/Location: Grounds Maintenance Service, Janitorial/Custodial Service, U.S. Army Reserve Center, 4300 S. Treadway, Abilene, TX.
NPA: Abilene Goodwill Industries, Inc., Abilene, TX.
Contracting Activity: DEPT OF THE ARMY, XR W6BB ACA PRESIDIO OF MONTEREY, PRESIDIO OF MONTEREY, CA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–14807 Filed 6–17–10; 8:45 am]

BILLING CODE 6353–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62266; File No. 265–26]

COMMODITY FUTURES TRADING COMMISSION

Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues

AGENCY: Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC") (each, an "Agency," and collectively, "Agencies").

ACTION: Notice of Meeting of Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues.

SUMMARY: The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues is providing notice that it will hold a public meeting on Tuesday, June 22, 2010, in the Auditorium, Room L–002, at the SEC's main offices, 100 F Street, NE., Washington, DC. The meeting will begin at 1 p.m. (EST) and will be open to the public. The Committee meeting will be webcast on the SEC's Web site at *http://www.sec.gov*. Persons needing special accommodations to take part because of a disability should notify a contact person listed below. The public is invited to submit written statements to the Committee.

The agenda for the meeting includes: (i) 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.

Pursuant to 41 CFR Section 102–3.150(b), the Agencies are providing less than fifteen days notice of the meeting so that Committee members can quickly begin to hear from exchanges and firms regarding the market events of May 6, 2010, and make recommendations related to market structure issues that may have contributed to the volatility, as well as disparate trading conventions and rules across various markets.

DATES: Written statements should be received on or before noon on Friday, June 18, 2010.

ADDRESSES: Because the Agencies will jointly review all comments submitted, interested parties may send comments to either Agency and need not submit responses to both Agencies. Respondents are encouraged to use the title "Joint CFTC–SEC Advisory Committee" to facilitate the organization and distribution of comments between the Agencies. Interested parties are invited to submit responses to:

Securities and Exchange Commission: Written comments may be submitted by the following methods:

Electronic Comments

- Use the SEC's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. 265–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549. All submissions should refer to File No. 265–26.

To help the SEC process and review your comments more efficiently, please use only one method. The SEC staff will post all comments on the SEC's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments will also be available for Web site viewing and printing in the SEC's Public Reference Room, 100 F St., NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from your submissions. You should submit only information that you wish to make available publicly.

Commodity Futures Trading Commission

- Written comments may be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention Office of the Secretary; transmitted by facsimile to the CFTC at (202) 418–5521; or transmitted electronically to *Jointcommittee@cftc.gov*. Reference should be made to "Joint CFTC–SEC Advisory Committee."

FOR FURTHER INFORMATION CONTACT: Ronesha Butler, Special Counsel, at (202) 551–5629, Division of Trading and Markets, or Elizabeth M. Murphy, Committee Management Officer, at (202) 551–5400, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549, or Martin White, Committee Management Officer, at (202) 418–5129, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), James R. Burns and Timothy Karpoff, each Co-Designated Federal Officer of the Committee, acting jointly, have approved publication of this notice.

By the Securities and Exchange Commission.

Elizabeth M. Murphy,

Committee Management Officer.

By the Commodity Futures Trading Commission.

Dated: June 10, 2010.

Martin White,

Committee Management Officer.

[FR Doc. 2010–14564 Filed 6–17–10; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Angela Roberts, at (202) 606–6822, (*aroberts@cns.gov*); (TTY/TDD) at (202) 606–5256 between the hours of 9 a.m. and 4 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice, regarding modification of the Project Progress Report was published in the **Federal Register** on March 12, 2010. This comment period ended on May 12, 2010. A total of 10 responses were received. The summary of comments received is as follows:

(a) Eight comments supported the suggested changes and noted that the proposed revisions will make reporting easier and more streamlined, and will significantly reduce the reporting burden. (b) Two comments encouraged the Corporation to retain the current Progress Report submission schedule of semi-annually to help ensure that Senior Corps grantees provide current data at a higher frequency than annual. The Corporation disagrees with the two commenters. We believe that requiring Progress Reports on an annual basis will provide sufficiently accurate data, while improving efficiency and alleviating the burden on sponsors of Senior Corps grants. Note, however, that we will continue to collect a limited amount of data from Foster Grandparent Program and Senior Companion Program sponsors on a semi-annual basis to track volunteer production on a schedule coinciding with the Federal Financial Report (FFR).

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps (Senior Corps) Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of Senior Corps grants.

Total Respondents: 1,300.

Frequency: Annual

Average Time per Respondent: 4 hours annually.

Estimated Total Burden Hours: 5,400

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None

Description: The Corporation seeks to renew and revise the current OMB approved Progress Report. When revised, the Progress Report will: (a) Modify the reporting frequency by Senior Corps grantees from semi-annual to annual. The one exception to annual reporting is the requirement that Foster Grandparent Program and Senior Companion Program grantees will report on a total of 4 data elements at each 6-month interval to ensure that the Corporation can track and analyze volunteer production rates. For all Senior Corps grantees, submission of the full Progress Report, including narratives, work plan updates, and other elements, will be annual.

The Project Progress Report (PPR) was designed to assure that Senior Corps grantees address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed upon in the granting of the award.

Dated: June 14, 2010.

Angela Roberts,

Acting Director, Senior Corps.

[FR Doc. 2010–14709 Filed 6–17–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2010–OS–0083]

Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense is submitting to OMB for emergency clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). A shortened comment period of twelve days is necessary because the collection of information related to the repeal of "Don't Ask Don't Tell" is needed prior to the submission of recommendations from the Department of Defense to the White House. The initial report on the impact of the repeal of the law on spousal family readiness and perceived unit stability and cohesion is needed by mid-September 2010. As data collection procedures needed to ensure high response rates require a 2 month field period, it is necessary to begin data collection procedures no later than mid-July.

DATES: Consideration will be given to all comments received by June 30, 2010.

Title and OMB Number: Survey for Military Family Members, OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 150,000.

Responses per Respondent: 1.

Annual Responses: 50,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 75,000 hours.

Needs and Uses: The Department of Defense Comprehensive Review Working Group (CRWG) is the working group the Secretary of Defense directed to examine the issues associated with a repeal of the law known as "Don't Ask, Don't Tell." The CRWG is studying what impact, if any, repeal would have on military readiness, military effectiveness, unit cohesion, recruiting, retention, and family readiness. As part of these efforts, the CRWG will also look at how best to manage any impacts during implementation. The survey is an opportunity for the families of service members to share their feelings on the issue with the CRWG and the military's senior leadership. The survey is a critical part of the CRWG's efforts as military families are an essential part of the military community and their reactions to the repeal of "Don't Ask, Don't Tell" could have significant influence on the behavior of their spouses and the impact of repeal on recruiting, retention, and family readiness.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB *Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection, please write to Col. Donna Alberto, DOD Comprehensive Review Working Group, Crystal Mall 2, 1801 S. Bell St., Suite 409, Arlington, VA; or call (703) 602–2917.

Dated: June 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–14746 Filed 6–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2010–OS–0082]

Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense is submitting to OMB for emergency clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department of Defense Comprehensive Review Working Group (CRWG) is the working group the Secretary of Defense directed to examine the issues associated with a repeal of the law known as "Don't Ask, Don't Tell." As part of this study, CRWG has requested that RAND update its report on "Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment." A shortened comment period of 5 days is necessary because the collection of information by RAND to update their report on sexual orientation in the military is needed prior to the submission of CRWG's report to the Secretary of Defense to inform its recommendations to the Secretary. RAND's report, therefore, must be finished by mid-September 2010. As RAND's report requires the collection of data from numerous different sources in a range of locations throughout the country and world, it is necessary to begin data collection procedures as earlier as possible in June, 2010.

DATES: Consideration will be given to all comments received by June 23, 2010.

Title and OMB Number: Police, Fire, Private-Sector Organizations and Colleges/Universities Interviews; OMB Control Number 0704–TBD.

Type of Request: New.

Police and Fire Interviews:

Number of Respondents: 70.

Responses per Respondent: 1.

Annual Responses: 70.

Average Burden per Response: 1 hour.

Annual Burden Hours: 70 hours.

Private-Sector Organizations and Colleges/Universities Interviews:

Number of Respondents: 20.

Responses per Respondent: 1.

Annual Responses: 20.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 20 hours.

Needs and Uses: The Department of Defense Comprehensive Review Working Group (CRWG) is the working group the Secretary of Defense directed to examine the issues associated with a repeal of the law known as "Don't Ask, Don't Tell." The CRWG is studying what impact, if any, repeal would have on military readiness, military effectiveness, unit cohesion, recruiting, retention, and family readiness. As part of these efforts, RAND was asked to update its report on sexual orientation in the military from 1993 and look at how repeal may impact the military. To give the broadest view of the potential impact repeal would have, RAND is talking with and studying a range of state government agencies and institutions, universities, and private companies. By talking to these groups, RAND will be able to give a better understanding of how, based on comparable experiences in other settings, repeal could impact the military. RAND's study is, therefore, an important piece CRWG's report to the Secretary of Defense that will also inform the writing of other sections of the final report.

Affected Public: Business of other for-profit; state, local or tribal government.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843. Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection, please write to Col. Donna Alberto, DoD Comprehensive Review Working Group, Crystal Mall 2, 1801 S. Bell St., Suite 409, Arlington, VA; or call (703) 602–2917.

Dated: June 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–14745 Filed 6–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Military Leadership Diversity Commission (MLDC)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DOD.

ACTION: Meeting notice.

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 Military Leadership Diversity Commission (MLDC) will meet on July 7 and 8, 2010, in Baltimore, MD.

DATES: The meeting will be held on July 7 from 7:30 a.m. to 8 p.m. and on July 8, 2010, from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Mt. Washington Conference Center, 5801 Smith Ave., Suite 1100, Baltimore, MD 21209.

FOR FURTHER INFORMATION CONTACT: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838, 1851 South Bell Street, Suite 532, Arlington, VA. e-mail: *steven.hady@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of the meeting is for the commissioners of the Military Leadership Diversity Commission to continue their efforts to address congressional concerns as outlined in the commission charter.

Agenda

July 7, 2010

7:30 a.m.–7:45 a.m.
DFO opens the meeting.
Commission Chairman opening remarks.
DFO recesses the meeting.

8:45 a.m.–9:45 a.m.
DFO opens the meeting.
Deliberation of decision paper for definition of diversity.
DFO recesses the meeting.

10:45 a.m.–11:45 a.m.
DFO opens the meeting.

Deliberation of decision paper for implementation and accountability.
DFO recesses the meeting.
1:45 p.m.–2:45 p.m.
DFO opens the meeting.
Deliberation of decision paper for metrics.
DFO recesses the meeting.
3:45 p.m.–4:45 p.m.
DFO opens the meeting.
Deliberation of decision paper for legal implications of diversity management.
DFO recesses the meeting.
4:45 p.m.–5 p.m.
DFO opens the meeting.
Public comments.
DFO recesses the meeting.
7 p.m.–8 p.m.
DFO opens the meeting.
Deliberation of decision paper for branching and assignments.
Commission Chairmen closing remarks.
DFO adjourns the meeting.

July 8, 2010

8 a.m.–8:15 a.m.
DFO opens the meeting.
Commission Chairman opening remarks.
DFO recesses the meeting.
9:15 a.m.–10:15 a.m.
DFO opens the meeting.
Deliberation of decision paper for diversity leadership and training.
DFO recesses the meeting.
11:15 a.m.–12:15 a.m.
DFO opens the meeting.
Deliberation of decision paper for promotion.
DFO recesses the meeting.
2:15 p.m.–3:15 p.m.
DFO opens the meeting.
Deliberation of decision paper for retention.
3:15 p.m.–4 p.m.
Public Comments.
Commission Chairman closing remarks.
DFO adjourns the meeting.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meetings on July 7 thru 8, 2010 will be open to the public. Please note that the availability of seating is on a first-come basis.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Military Leadership Diversity Commission about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Military Leadership Diversity Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission, and this individual will ensure that the written statements are provided to the membership for its consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer (*see* **FOR FURTHER INFORMATION CONTACT**) at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the Military Leadership Diversity Commission until its next meeting.

The Designated Federal Officer will review all timely submissions with the Military Leadership Diversity Commission Chairperson and ensure they are provided to all members of the Military Leadership Diversity Commission before the meeting that is the subject of this notice.

Dated: June 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–14713 Filed 6–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of a Final General Conformity Determination and Record of Decision for the Pacific L.A. Marine Terminal LLC Crude Oil Terminal Project, Port of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In November 2008, the Los Angeles Harbor Department (LAHD) and the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division (Corps) published a joint Final Supplemental Environmental Impact Statement and Subsequent Environmental Impact Report (SEIS/SEIR) for the development of a marine oil terminal at Berth 408 on Pier 400 in the Port of Los Angeles, Los Angeles County, California (Project). On February 19, 2010, the Corps published a draft general conformity determination for the Federal action associated with the Project. Comments were received on the draft general conformity determination until March 22, 2010. A general conformity determination was required because Project construction would require Federal action (i.e., issuance of a Corps permit for work and structures in and over navigable waters of the U.S. pursuant to Section 10 of the River and Harbor Act) and not all the Federal action's direct and indirect air emissions would be below specified de minimis thresholds (40 CFR 51.853(b)). On June 1, 2010 and June 3, 2010, the Corps made a final general conformity determination and completed its environmental review and executed the Record of Decision (ROD), respectively, for the Federal action associated with the Project. The Corps considered and responded to all comments received in making the final general conformity determination and executing the ROD.

The public can request copies of the final general conformity determination document or the ROD from the Corps at the address listed below, or can view or download the final general conformity determination document from the Corps' Website (*http://www.spl.usace.army.mil/regulatory/POLA.htm,* scroll down to the link under Pier 400 Crude Oil Marine Terminal Project) or the Port's Web site (*http://www.portoflosangeles.org/environment/public_notices.asp,* scroll down to link under Pacific L.A. Marine Terminal LLC Crude Oil Terminal). In addition, copies of the final general conformity document are available for review during the next 30 days at the following libraries: L.A. Public Library, Central Branch, 630 West 5th Street, Los Angeles, California; L.A. Public Library, San Pedro Branch, 921 South Gaffey Street, San Pedro, California; and L.A. Public Library, Wilmington Branch, 1300 North Avalon, Wilmington, California.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the final general conformity determination or the ROD should be directed to Dr. Spencer D. MacNeil, Senior Project Manager, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 110, Ventura, California 93001, (805) 585–2152.

SUPPLEMENTARY INFORMATION: None.

Dated: June 10, 2010.

David J. Castanon,

Chief, Regulatory Division, Los Angeles District.

[FR Doc. 2010–14776 Filed 6–17–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Final Environmental Impact Statement/ Environmental Impact Report for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Division), in coordination with the California Department of Fish and Game (CDFG), has completed a Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan. The project proponent and landowner, The Newhall Land and Farming Company, requires a long-term Section 404 permit from the Corps of Engineers for permanent impacts to approximately 93.3 acres of waters of the United States, including, 20.5 acres of wetlands, for the construction of various facilities in waters of the United States associated with the development of a new community composed of a broad range of residential, mixed-use and nonresidential land uses in the 12,000-acre project area located in Santa Clarita, Los Angeles County, California. The Corps considered all comments received in preparing the Final EIS/EIR, which is available for a 30-day review. The Final EIS/EIR includes a draft general conformity determination (*see* Section 3.2, Section 4.7 and Appendix D.7), pursuant to Section 176(c) of the Clean Air Act. A general conformity determination is necessary because construction of the proposed project would require Federal action (*i.e.,* issuance of a Corps permit for activities proposed in waters of the U.S.) and not all the Federal action's direct and indirect emissions would be below specified de minimis thresholds (40 CFR 93.153(b)). Pursuant to the general conformity regulations (40 CFR part 93 Subpart B), general conformity determinations do not have to be included in the EIS and can be separately noticed, but the draft general conformity determination for the Federal action associated with the proposed project is being included in the Final EIS/EIR in this case.

The Final EIS/EIR, including the draft general conformity determination and a Draft 404(b)(1) alternatives analysis, is available for public review during the next 30 days at the U.S. Army Corps of Engineers Ventura Office, 2151 Alessandro Drive, Suite 110, Ventura, California; in addition, the Final EIS/EIR, including the draft general conformity determination, is available at the following libraries: County of Los Angeles Newhall Branch, Castaic Branch, Sylmar Branch, Valencia Branch; County of Ventura Fillmore Branch and H.P. Wright Library Branch. The Final EIS/EIR is available at the Corps' Web site: *http://www.spl.usace.army.mil/regulatory/NewhallRanch.htm* (see links under Newhall Ranch) and it is also available via the CDFG's Web page: *http://www.dfg.ca.gov/regions/5/newhall/*. Any comments received by the Corps on the Final EIS/EIR or the included draft general conformity determination during the next 30 days will be considered fully before the Corps makes a final general conformity determination and finalizes the Record of Decision (ROD) for the Federal action associated with the proposed project. The Corps will publish a notice of a final general conformity determination in the **Federal Register** within 30 days of rendering a final decision. The public can request from the Corps copies of the ROD, which includes responses to comments on the Final EIS/EIR, including any on the draft general conformity determination, following publication of a final general conformity determination and upon execution of the ROD.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Final EIS/EIR or the included draft general conformity determination should be directed within the next 30 days to Dr. Aaron O. Allen, Chief, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 110, Ventura, California 93001, (805) 585–2148.

SUPPLEMENTARY INFORMATION: None.

David J. Castanon,

Chief, Regulatory Division, Los Angeles District.

[FR Doc. 2010–14802 Filed 6–17–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2010–0016]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on July 19, 2010, unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6172.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPF, 1800 Air Force Pentagon, Washington, DC 20330–1800.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG E

SYSTEM NAME:

Medical Record System (December 9 2003; 68 FR 68609)

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Full name, Social Security Number (SSN), or Military Service Number, date treatment was provided, name of facility providing treatment, inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities. Documentation includes, but is not limited to: patient's medical history; physical examination; treatment received; supporting documentation such as laboratory and x-ray reports; cover sheets and summaries of hospitalization; diagnoses, procedures or surgery performed; administrative forms which concern medical conditions such as Line of Duty Determinations, physical profiles, and medical recommendations for flying duty. Secondary files are maintained such as patient registers, nominal indices, x-ray and laboratory files, indices and registers."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 55, Medical and Dental Care; and E.O. 9397 (SSN), as amended."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add as last paragraph: "NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "While on active duty, the Health Record of a U.S. military member is maintained at the medical unit at which the person receives treatment.

On separation or retirement, records are forwarded to the Department of Veterans Affairs, Records Management Center in St. Louis, MO or to the appropriate Veterans Affairs Regional Office if a Veterans Affairs claim has been filed.

Records of non-active duty personnel are mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility until 2 years after the end of the calendar year of the last date of treatment and then retired to the National Personnel Record Center (NPRC) or other designated depository, such as, but not limited to, Medical Director, American Red Cross, Washington, DC 20006 for Red Cross personnel. At NPRC all inpatient, outpatient, and APV records are retained for 50 years after date of last document.

In addition, military records sent to the DVA after 1 May 1994 are maintained for 50 years after date of last document."

* * * * *

F044 AF SG E

SYSTEM NAME:

Medical Record System

SYSTEM LOCATION:

Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), medical centers, hospitals and clinics, medical aid stations, National Personnel Record Centers, Air National Guard activities, and Air Force Reserve units. Official mailing addresses are published as an appendix to the Air Force compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons treated in an Air Force medical facility and active duty members for whom primary care is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, Social Security Number (SSN), or Military Service Number, date treatment was provided, name of facility providing treatment, inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities. Documentation includes, but is not limited to: patient's medical history; physical examination; treatment received; supporting documentation such as laboratory and x-ray reports; cover sheets and summaries of hospitalization; diagnoses, procedures or surgery performed; administrative forms which concern medical conditions such as Line of Duty Determinations, physical profiles, and medical recommendations for flying duty. Secondary files are maintained such as patient registers, nominal indices, x-ray and laboratory files, indices and registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 55, Medical and Dental Care; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Used to document, plan, and coordinate the health care of patients; aid in preventative health and communicable disease control programs; determine eligibility and suitability for benefits for various programs; adjudicate claims; evaluate care rendered; teach/compile statistical data; and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from the inpatient, outpatient or APV medical records of retirees and dependents may be disclosed to third party payers for the purpose of collecting reasonable inpatient/outpatient/APV hospital care costs incurred on behalf of retirees or dependents. Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided. Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program. In addition, records may be disclosed to:

(1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans' claims and in providing medical care to members of the Air Force.

(2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by the record system and for the conduct of research studies.

(3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

(4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

(5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

(6) Authorized surveying bodies for professional certification and accreditations.

(7) The individual's organization or government agency as necessary when required by Federal statute, Executive Order or by treaty.

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in 'Notes' below.

NOTE: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By name, Social Security Number (SSN), or by Military Service Number.

SAFEGUARDS:

Records are accessed by commanders of medical centers, hospitals and clinics; by custodian of the record system; and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared by need-to-know. Records are stored in locked rooms and cabinets, and access to automated records is controlled and limited.

RETENTION AND DISPOSAL:

While on active duty, the Health Record of a U.S. military member is maintained at the medical unit at which the person receives treatment.

On separation or retirement, records are forwarded to the Department of Veterans Affairs, Records Management Center in St. Louis, MO or to the appropriate Veterans Affairs Regional Office if a Veterans Affairs claim has been filed.

Records of non-active duty personnel are mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility until 2 years after the end of the calendar year of the last date of treatment and then retired to the National Personnel Record Center (NPRC) or other designated depository, such as, but not limited to, Medical Director, American Red Cross, Washington, DC 20006 for Red Cross personnel. At NPRC all inpatient, outpatient, and APV records are retained for 50 years after date of last document.

In addition, military records sent to the DVA after 1 May 1994 are maintained for 50 years after date of last document.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters United States Air Force.

Chief of Air Force Reserve, Headquarters United States Air Force.

Director of Air National Guard, Headquarters United States Air Force.

Commanders of medical centers, hospitals, clinics, medical aid stations: Commander, Air Force Personnel Center. Official mailing addresses are published as an appendix to the Air Force's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to or visit the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requester must submit full name, Social Security Number (SSN) (or Military Service Number) through whom eligibility for care is established: date (at least year) treatment was provided; name of facility providing treatment; and whether treatment was as inpatient or outpatient.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

Requester must submit full name, Social Security Number (SSN) (or Military Service Number) through whom eligibility for care is established: date (at least year) treatment was provided; name of facility providing treatment; and whether treatment was as inpatient or outpatient.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 1806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians and other patient care providers such as nurses, dietitians, and physicians assistants. Administrative forms are completed by appropriate military or civilian officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–14712 Filed 6–17–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

ZRIN 0710–ZA04

Suspension of Nationwide Permit 21

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is immediately suspending Nationwide Permit (NWP) 21, which authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities, in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. This suspension is an interim measure to protect the aquatic environment while we evaluate modification of NWP 21 or until NWP 21 expires in 2012. While the suspension is in effect, individuals who seek authorization for discharges of dredged or fill material into waters of the United States for surface coal mining projects in the affected region will have to obtain Department of the Army authorization under the Clean Water Act (CWA), through the individual permit process. Individual permits will result in increased public involvement in the permit evaluation process, including an opportunity for public comment on individual projects. NWP 21 activities that have been verified by District Engineers prior to the effective date of this suspension in the affected region continue to be authorized by that NWP until it expires on March 18, 2012, unless the District Engineer takes action to modify, suspend or revoke a particular NWP authorization on a case-by-case basis in accordance with the procedures at 33 CFR 330.5(d). District engineers may not modify previously issued NWP 21 verifications in this region to authorize additional discharges of dredged or fill material into waters of the United States; such discharges must be applied for and evaluated under the individual permit process. This suspension of NWP 21 does not apply to other regions of the United States. The suspension will remain in effect until the Corps takes further action on NWP 21 or until NWP 21 expires on March 18, 2012. The Corps will publish its decision concerning the proposed NWP 21 modification in a future **Federal Register** notice.

DATES: The effective date of the suspension of NWP 21 in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia is June 18, 2010.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (Attn: Ms. Desiree Hann), 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Desiree Hann, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4560.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 2009, the Army, the U.S. Department of the Interior, and the U.S. Environmental Protection Agency signed a Memorandum of Understanding (MOU) that addresses actions to strengthen the environmental review of Appalachian surface coal mining. A copy of this MOU is available at: *http://www.usace.army.mil/CECW/Pages/moumoas.aspx.* The MOU includes an Interagency Action Plan (IAP) that was developed to reduce the adverse environmental impacts of surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, while ensuring that future mining remains consistent with the Clean Water Act (CWA) and the Surface Mining Control and Reclamation Act. One of the action items in the MOU was for the Corps to issue a public notice proposing to modify NWP 21, which authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities, to preclude its use to authorize the discharge of fill material into streams and other waters of the United States for surface coal mining activities in the Appalachian region of those six states, and to seek public comment on the proposed action.

In accordance with the Corps regulations for implementing the Nationwide Permit Program, an interested party may request that the Corps consider changes to existing NWPs, including modification or revocation of any of those NWPs, at any time (see 33 CFR 330.5(b)(1)). Based upon the concerns expressed in the June 11, 2009 MOU and its IAP about the potential for more than minimal individual and cumulative environmental effects of surface coal mining activities in certain states in Appalachia, the Corps agreed to seek public comment on a proposal to modify and suspend NWP 21 in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. That proposal was published in the July 15, 2009, issue of the **Federal Register** (75 FR 34311). All 38 Corps districts also published local public notices to inform citizens of the proposal and their opportunity to provide comments or request public hearings.

Impacts to waters of the United States that typically occur in association with surface coal mining activities include valley fill construction activities (*e.g.,* the placement of rock and soil into headwater streams and their valleys), sediment pond construction, road construction, and slurry impoundment construction. Activities authorized by NWP 21 have impacted thousands of linear feet of ephemeral, intermittent, and perennial streams at numerous mine sites across the region. Compensatory mitigation has been required to ensure NWP 21 activities result in only minimal individual and cumulative adverse environmental effects. This mitigation must be successfully implemented to adequately offset the unavoidable impacts to waters authorized by NWP 21. Since 2002, the Corps has collected information with respect to the technical challenges associated with mitigation required for surface coal mine permits issued in Appalachia. Based on this information, and based on the 2008 mitigation rule, which emphasizes the importance of selecting mitigation sites based on their likelihood to be ecologically successful, we better understand how site selection and project design criteria could be improved to provide ecologically successful compensation to offset unavoidable losses of jurisdictional waters associated with surface coal mining projects.

The July 15, 2009, proposal involved two actions concerning NWP 21. First, the Corps proposed to modify NWP 21 to prohibit its use to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia until it expires on March 18, 2012. Second, the Corps proposed to suspend NWP 21, and to require individual permit reviews in the Appalachian region of these states, until it completes the longer term process of deciding whether to modify NWP 21. The suspension of NWP 21 in these states would provide enhanced protection of aquatic resources while the Corps evaluates the proposal to modify NWP 21 by requiring surface coal mining projects in the affected region to obtain individual permits under the CWA, which would include increased public involvement in the permit review process, and an opportunity for public comment on individual projects.

The Corps regulations governing the issuance, modification, suspension, or revocation of NWPs are found at 33 CFR 330.5. As described in those regulations, suspension is a measure for halting the use of an NWP in the short-term in response to identified concerns about impacts to waters of the United States or other public interest review factors, while modification of an NWP is the

long-term solution for addressing those concerns. The suspension will provide additional protection to the aquatic environment until the Corps makes its decision on the future of NWP 21.

In accordance with the suspension and modification procedures provided in the NWP regulations, the Corps invited public comment, as well as an opportunity to request public hearings. The initial comment period was extended from August 14, 2009 to September 14, 2009 (see 74 FR 40815). In response to requests received from a number of interested parties, the Corps held public hearings in each of the six states proposed to be affected by the suspension and modification of NWP 21. The public hearings were announced in the September 10, 2009, issue of the **Federal Register** (74 FR 46582) and the comment period was extended again to October 26, 2009, to allow written comments to be submitted to supplement the hearing records.

In response to the July 15, 2009, **Federal Register** notice, the Corps received approximately 23,000 written comments, of which approximately 950 were non-form letters expressing support for the suspension of NWP 21 and approximately 750 were non-form letters expressing opposition to the suspension of NWP 21. Comments may be viewed at *http://www.regulations.gov* under docket number COE–2009–0032. Duplicate comments are not posted in the regulations.gov docket.

The public hearings were held in the following cities on October 13–15, 2009: Charleston, West Virginia; Cambridge, Ohio; Pikeville, Kentucky; Knoxville, Tennessee; Pittsburgh, Pennsylvania; and Big Stone Gap, Virginia. Approximately 400 people provided oral testimony at these public hearings, with approximately two-thirds of the testimony in opposition to the proposed action of suspension and one-third in support of the proposed suspension.

In response to the **Federal Register** notice and oral testimony collected at the public hearings, approximately 16,500 commenters expressed support for the proposed suspension and 6,500 objected to the proposed suspension. Most of the commenters supporting the proposed suspension stated that NWP 21 activities have resulted in more than minimal individual and cumulative adverse effects on the aquatic environment, and commented on other public interest review factors. Commenters opposing the proposed suspension said that the current rules governing implementation of NWP 21, including the pre-construction notification (PCN) requirement and stringent review process, provide the Corps with the authority to exercise discretionary authority and require an individual permit if the impacts on the aquatic environment will be more than minimal on an individual or cumulative basis, or if warranted by other public interest review factors. A more detailed summary of the comments is provided in the decision document for the suspension of NWP 21, which is available at the Corps Headquarters "National Notices and Program Initiatives" page at: *http://www.usace.army.mil/CECW/Pages/nnpi.aspx* and the regulations.gov Web site under docket number COE–2009–0032.

The same commenters also provided comments on the proposed modification of NWP 21, but those comments will be summarized and addressed in a separate document at a later time.

Suspension of NWP 21

To make a decision on the proposed suspension, the Corps considered comments, established decision criteria, and evaluated alternatives. This evaluation is provided in the decision memorandum referenced above. The Corps has concerns that continued use of this permit in the Appalachian region of these six states may result in more than minimal individual and cumulative adverse effects to aquatic resources. Under Section 404(e) of the CWA, only those activities that result in no more than minimal individual and cumulative adverse effects to the aquatic environment may be authorized under a NWP. Activities resulting in more than minimal individual and cumulative impacts to the aquatic environment cannot be authorized by NWPs or other general permits. We have determined that suspension of this permit in the Appalachian region of these six states is necessary to ensure that the Corps evaluates these complex activities, through the individual permit process, while it considers whether to modify NWP 21.

NWP 21 is suspended in the following counties of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia:

Kentucky: Adair, Bath, Bell, Boyd, Breathitt, Carter, Casey, Clark, Clay, Clinton, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Garrard, Green, Greenup, Harlan, Hart, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Nicholas, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe.

Ohio: Adams, Ashtabula, Athens, Belmont, Brown, Carroll, Clermont, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Trumbull, Tuscarawas, Vinton, and Washington.

Pennsylvania: Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lawrence, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, and Wyoming.

Tennessee: Anderson, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Claiborne, Clay, Cocke, Coffee, Cumberland, De Kalb, Fentress, Franklin, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Lawrence, Lewis, Loudon, McMinn, Macon, Marion, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Smith, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White.

Virginia: Alleghany, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pulaski, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise/Norton, and Wythe.

West Virginia: All counties.

The above list of counties is based on the Appalachian Regional Commission's list of counties in Appalachia.

This suspension of NWP 21 goes into effect on June 18, 2010. The suspension temporarily prohibits the use of NWP 21 to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities in these Appalachian counties, until the Corps makes a final determination on the proposed modification of NWP 21 or until NWP 21 expires in March 2012. In light of the suspension, project proponents for surface coal mining activities involving discharges of dredged or fill material into waters of the United States will have to obtain Department of the Army authorization under the Clean Water Act, through the individual permit process.

Using the individual permit process for those activities will provide more information for the Corps to consider in making decisions on these permit

applications because of increased public involvement, such as the opportunity to comment on public notices for individual surface coal mining activities in Appalachia. This additional information could help improve not only the Corps analysis of potential individual and cumulative adverse effects of the proposed activity on the aquatic environment, but also on the potential adverse effects on other public interest review factors listed at 33 CFR 320.4(a)(1), such as conservation, aesthetics, economics, land use, recreation, fish and wildlife values, energy needs, and general considerations of property ownership, to the extent that those public interest factors are relevant to waters of the United States subject to CWA jurisdiction and within the Corps Federal control and responsibility.

Concurrent with this **Federal Register** notice, all Corps districts will issue local public notices announcing the suspension of NWP 21 as of the effective date identified above.

Grandfathering of Existing NWP 21 Authorizations

Today's action prohibits District Engineers from issuing NWP 21 verifications in response to PCNs for surface coal mining activities in the Appalachian counties listed above during the period of suspension. In other words, District Engineers cannot continue to process NWP 21 PCNs that are pending as of June 18, 2010 or accept new or revised NWP 21 PCNs for surface coal mining activities in the Appalachian region of those six states unless the suspension is lifted and NWP 21 is reinstated in this region.

Proponents of proposed surface coal mining activities in the Appalachian region of these six states will have to submit applications for individual permits instead of NWP 21 PCNs.

NWP 21 activities that have been verified by District Engineers prior to June 18, 2010 in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, continue to be authorized by that NWP until it expires on March 18, 2012, unless the District Engineer takes action to modify, suspend or revoke a particular NWP authorization on a case-by-case basis in accordance with the procedures at 33 CFR § 330.5(d). District engineers may not modify previously issued NWP 21 verifications to authorize additional discharges of dredged or fill material into waters of the United States in the affected Appalachian counties; such discharges must be applied for and evaluated under the individual permit process.

Environmental Documentation

The decision document for the suspension of NWP 21 is available at the Corps Headquarters "National Notices and Program Initiatives" page at: *http://www.usace.army.mil/CECW/Pages/nnpi.aspx* and the regulations.gov Web site under docket number COE–2009–0032. It is also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW, Washington, DC 20314–1000.

Authority

We are suspending NWP 21 under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

Dated: June 8, 2010.

Approved by:

R.L. Van Antwerp,

Lieutenant General, U.S. Army, Commanding.

[FR Doc. 2010–14778 Filed 6–17–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Updated Record of Decision (ROD) for Revised Army Growth and Force; Structure Realignment Decisions

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability (NOA).

SUMMARY: The Department of the Army announces the availability of an updated ROD for Army Growth and Force Structure Realignment. This ROD explains that the Army has modified previous decisions made in December 2007 to support Army growth and force structure realignment. The Army's decision at the time grew the Army by six Infantry Brigade Combat Teams (IBCTs), eight active component support brigades, and associated growth in smaller combat support and combat service support units required to complement the U.S. Army's overall force structure growth. The decision also relocated two Heavy Brigade Combat Teams (HBCTs) from Europe to the continental United States. This updated ROD details how the Army has modified growth and realignment decisions to better meet operational mission requirements. Specifically, the original decision is being modified by this updated ROD in the following ways:

- Army growth is stopped at 45 active component BCTs instead of 48;
- One IBCT has been established as the 43rd BCT at Fort Carson, CO;
- The 44th BCT has been activated at Fort Bliss, TX; and
- The 45th BCT was established at Fort Stewart, GA, as an IBCT.
- The Army will not stand up new growth IBCTs at Fort Bliss, TX; Fort Stewart, GA; or Fort Carson, CO in 2011 as was originally announced in the 2007 ROD. In place of these BCTs, the Army will establish additional combat support units at locations across the Army to better meet mission requirements and man units for upcoming deployments.
- The Army will convert a Heavy Brigade Combat Team (HBCT) (the 1st Brigade of the 1st Armored Division (1/1 AD)) to a Stryker Brigade Combat Team (SBCT) beginning in 2011 at Fort Bliss, TX. This conversion involves the stationing of approximately 450 additional Soldiers and their equipment at Fort Bliss.
- An HBCT will no longer be returning from Germany to White Sands Missile Range in fiscal year 2013. The stationing of HBCTs currently assigned to Germany will be reassessed in light of the Army's global mission requirements.

These modifications to the original Grow the Army decision will better allow the Army to respond to security threats in an unpredictable global security environment.

ADDRESSES: A request for copy of the ROD can be sent to the Public Affairs Office, U.S. Army Environmental Command, Building E4460, Attention: IMAE–PA, 5179 Hoadley Road, Aberdeen Proving Ground, MD 21010–5401.

FOR FURTHER INFORMATION CONTACT: LTC David Patterson, Media Relations Division, Office of the Chief of Public Affairs, at (703) 697–7592.

SUPPLEMENTARY INFORMATION: In January 2007, the President asked Congress for authority to increase the overall strength of the Army by 74,200 Soldiers over the next five years. This growth was intended to mitigate shortages in units, Soldiers, and time to train that would otherwise inhibit the Army from meeting readiness goals and supporting strategic requirements. The Department of the Army prepared a Programmatic Environmental Impact Statement (PEIS) that evaluated the potential environmental and socioeconomic effects associated with alternatives for Army growth and realignment. In the Final PEIS (published on October 26, 2007), the Army identified Alternative 3 as the preferred alternative. Alternative 3 (adds combat support and combat service support units, as well as Army

BCTs to the Army's force structure) remains the Army's preferred alternative with the modification to the Army's ROD.

The Final PEIS examined major Army installations within the continental United States and their ability to support new unit stationing actions in connection with growth and realignment. The Final PEIS provided the Army senior leader-ship with an assessment of environmental and socioeconomic impacts that would be associated with these actions in addition to the feedback and concerns of the public. This information was considered as part of the decision-making process for decisions contained in the updated ROD (2010).

The conversion of an HBCT to an SBCT at Fort Bliss, TX will create the Army's 7th active component SBCT. The Army's needs are best met by transforming an HBCT at Fort Bliss as this unit will have maximum time to implement conversion to an SBCT and train with new equipment prior to the need to redeploy. In addition, Fort Bliss is capable of providing the SBCT with fully modernized training and garrison infrastructure; and the installation has adequate maneuver space to accommodate the conversion to an SBCT.

The updated ROD determines that Supplemental NEPA documentation is not required because there are no substantial changes or new circumstances in the proposed action causing any significant new environmental concerns. The adjustments to stationing decisions result in small proportional gains to the Soldier populations of affected installations and are not anticipated to cause any new environmental impacts that are not already addressed in the 2007 EIS.

A copy of the updated ROD and Final PEIS are available at *http://aec.army.mil/usaec/nepa/topics00.html.*

Dated: June 11, 2010.

Hew E. Wolfe,

Principal Assistant to the Deputy Assistant Secretary of the Army, Environment, Safety and Occupational Health.

[FR Doc. 2010–14734 Filed 6–17–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 17, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 11, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of English Language Acquisitions

Type of Review: New.

Title: National Professional Development Program: Grantee Performance Report.

Frequency: Semi-Annually.

Affected Public:

Not-for-profit institutions.

State, Local, or Tribal Government (Gov't), State Education Associations (SEAs) or Local Education Associations (LEAs).

Reporting and Recordkeeping Hour Burden:

Responses: 138.

Burden Hours: 6,900.

Abstract: The purpose is to implement a data collection process for a new semi-annual reporting for Government Performance Results Act (GPRA) purposes for the National Professional Development Program. These data are necessary to assess the performance of the National Professional Development in meeting its stated goals and objectives and report to Department of Education's (ED) Budget Service. The National Professional Development (NPD) program provides professional development activities intended to improve instruction for students with Limited English proficiency (LEP) and assists education personnel working with such children to meet high professional standards. The National Professional Development program office is submitting this application to request approval to collect information from NPD grantees. The proposed data collection serves two purposes. First, the data are necessary to assess the performance of the National Professional Development program on Government Performance Results Act (GPRA) measures.

Second, budget information and data on project-specific performance measures are collected from National Professional Development grantees for project-monitoring information.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4335. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–14703 Filed 6–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; High School Graduation Initiative; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.360.

Dates:

Applications Available: June 18, 2010.

Deadline for Notice of Intent to Apply: July 7, 2010.

Deadline for Transmittal of Applications: July 28, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The High School Graduation Initiative (formerly known as the School Dropout Prevention (SDP) program) awards grants to local educational agencies (LEAs) and State educational agencies (SEAs) to support the implementation of effective, sustainable, and coordinated dropout prevention and reentry programs in schools that serve students in grades 6 through 12 and that have event dropout rates that are above the State average event dropout rate or are middle schools that feed students into such schools.[1]

Priorities: This notice includes two priorities. In accordance with 34 CFR 75.105(b)(2)(v), Priority 1 is from the allowable activities specified in the statute (see section 1825(1) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6561d(1))). Priority 2 is from the notice of final priorities, requirements, definitions, and selection criteria for the SDP program, published in the **Federal Register** on July 8, 2005 (70 FR 39499) (2005 SDP program NFP).

Absolute Priorities: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Absolute Priority 1: Effective Early Identification, Prevention, and Intervention Programs.

This priority supports projects that propose to establish, enhance, or expand effective early intervention programs designed to identify at-risk students and prevent such students from dropping out of school and effective programs to identify and encourage youth who have already dropped out of school to reenter school and complete their secondary education (20 U.S.C. 6561d(1)).

Absolute Priority 2: Collaboration with Other Agencies

Under this priority, an applicant must include in its application evidence that other public or private entities will be involved in, or provide financial support for, the implementation of the activities described in the application. Applicants may involve such State agencies as those responsible for administering postsecondary education, Title I of the Workforce Investment Act, Temporary Assistance for Needy Families, Medicaid, the State Children's Health Insurance Program, foster care, juvenile justice, and others. Applicants also may collaborate with business and industry, civic organizations, foundations, and community- and faith-based organizations, among other private-sector entities.

Acceptable evidence of collaboration is a memorandum of understanding or other document signed by the principal officer of each participating agency that identifies (1) how the agency will be involved in the implementation of the project or (2) the financial resources (cash or in-kind) that it will contribute to support the project, or both.

Definitions. In addition to the definitions in the authorizing statute and 34 CFR 77.1, the following definitions also apply to this program. These definitions are from the 2005 SDP program NFP.

High school dropout means an individual who—

(a) Was enrolled in a district in grades nine through 12 at some time during the preceding school year;

(b) Was not enrolled at the beginning of the current school year;

(c) Has not graduated or completed a program of studies by the maximum age established by a State;

(d) Has not transferred to another public school district, a nonpublic school, or a State-approved educational program; and

(e) Has not left school because of death, illness, or a school-approved absence.

State event dropout rate means the dropout rate calculated by dividing the number of high school dropouts (as defined elsewhere in this notice) in the State by the total number of students enrolled in grades 9 through 12 in public schools in the State during the current school year. This calculation is based upon the annual school event dropout rate calculation of the National Center for Education Statistics' Common Core of Data.

School event dropout rate means the dropout rate calculated by dividing the number of high school dropouts (as defined elsewhere in this notice) in a school by the total number of students enrolled in grades 9 through 12 in that school during the current school year.

Program Authority: 20 U.S.C. 6551 *et seq.* and the 2010 Consolidated Appropriations Act, Public Law 111–117.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria for the SDP program, published in the **Federal Register** on July 8, 2005 (70 FR 39499).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $45,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $350,000–$3,000,000.

Estimated Average Size of Awards: $900,000.

Maximum Award: We will reject any application that proposes a budget exceeding $3,000,000 for a single budget period of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:*

(a) SEAs to support activities in—

(i) schools that—

(A) serve students in grades 6 through 12; and

[1] According to the National Center for Education Statistics (NCES), in the 2007–08 school year, the most recent school year for which data are available, the national event dropout rate for public high schools in the 49 reporting States and the District of Columbia was 4.1 percent. The rate ranged from 1.7 percent in Indiana and New Jersey to 7.5 percent in Louisiana. Twenty-six States had event dropout rates for public high schools of 4 percent or less; four States had event dropout rates for public high schools of 6 percent or more (Stillwell, R. (2010). Public School Graduates and Dropouts From the Common Core of Data: School Year 2007–08 (NCES 2010–341)).

(B) have annual school dropout rates that are above the State average annual school dropout rate; or

(ii) middle schools that feed students into schools that serve students in grades 6 through 12 and have annual school dropout rates that are above the State average annual school dropout rate.

(b) LEAS that operate—

(i) schools that—

(A) serve students in grades 6 through 12; and

(B) have annual school dropout rates that are above the State average annual school dropout rate; or

(ii) middle schools that feed students into schools serve students in grades 6 through 12 and that have annual school dropout rates that are above the State average annual school dropout rate.

Note: Applicants must identify the specific schools that will receive project services and provide evidence that, using the most recent available data, those schools serve students in grades 6 through 12, and have annual school dropout rates that are above the State average annual school dropout rate or are middle schools that feed students into schools that serve students in grades 6 through 12 and that have annual school dropout rates that are above the State average annual school dropout rate.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements (*See* section 1823(b)(1)(F) of the ESEA (20 U.S.C. 6561b(b)(1)(F)). This restriction also has the effect of allowing projects to recover indirect costs only on the basis of a restricted indirect cost rate, according to the requirements in 34 CFR 75.563 and 34 CFR 76.564 through 76.569.

IV. Application and Submission Information

1. *Address to Request Application Package:* Theda Zawaiza, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E122, Washington, DC 20202. *Telephone:* (202) 205–3783 or by *e-mail: hsgi@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: July 7, 2010.

We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of entities that intend to apply for funding. Therefore, we strongly encourage each potential applicant to send a notification of its intent to apply for funding to *hsgi@ed.gov* by July 7, 2010. The notification of intent to apply for funding is optional. Applicants that do not supply this e-mail notification may still apply for funding.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section. We further encourage applicants to limit resumes to no more than three pages and all other attachments or appendices to no more than 20 pages.

Our reviewers will not read any pages of your application narrative that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: June 18, 2010.

Notice of Intent to Apply: July 7, 2010.

Deadline for Transmittal of Applications: July 28, 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 of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program 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 program.

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 grants under the High School Graduation Initiative—CFDA Number 84.360 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Theda Zawaiza, U.S. Department of Education, 400 Maryland Avenue, SW., room E3122, Washington, DC 20202. *Fax:* (202) 205–4921.

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 84.360),
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 84.360),
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 following selection criteria will be used to evaluate applications for new grants under this program. The selection criteria for this competition are from 34 CFR 75.210, and, where otherwise noted, the 2005 SDP program NFP, and sections 1823 and 1825 of the ESEA.

Note: The maximum score for a grant application under this program is 100 points. The maximum points assigned to each criterion and sub-criterion are indicated in parentheses.

(a) *Need for the Project.* In determining the need for the proposed project, we will consider the extent to which the proposed project will target secondary schools serving students in grades 6 through 12 that have the highest annual school dropout rates or the middle schools that feed students into those secondary schools (20 U.S.C 6561b(b)(1)(A)(ii)) (10 points).

(b) *Quality of Project Services.*

(1) In determining the quality of the services to be provided by the proposed project, we will consider the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points).

(2) In addition, we will consider the following:

(A) The likely effectiveness, based on research, data, and the needs of the target population, to implement the proposed project, of—

(i) The early intervention programs that the proposed project will implement to identify at-risk students, based on data (20 U.S.C. 6561d(1)(A)); and

(ii) The dropout prevention programs that the proposed project will carry out (20 U.S.C. 6561a(a)(1)(B)) (15 points);

(B) The extent to which the proposed project is likely to be effective, based on research, data, and the needs of the target population, in identifying and assisting youth who have already dropped out of school to reenter school and complete their secondary education (20 U.S.C. 6561d(1)(C)) (25 points);

(C) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (5 points);

(D) The extent to which the activities to be assisted conform with research knowledge about school dropout prevention and reentry (20 U.S.C. 6561b(b)(1)(G)) (10 points); and

(E) The extent to which the services to be provided by the proposed project involve the collaboration and commitment of appropriate partners for maximizing the effectiveness of project services (7 points).

c. *Quality of the Management Plan.* In determining the quality of the management plan for the proposed project, we will consider the following:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including the extent to which the plan clearly defines the roles and responsibilities of each agency and its key personnel and establishes detailed timelines and milestones for accomplishing each of the project tasks (2005 SDP program NFP) (15 points); and

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (3 points).

d. *Quality of Assessment of Project Effectiveness.* In determining the quality of the applicant's plan to assess the project's effectiveness, we consider the extent to which the methods proposed by the applicant are sufficiently rigorous to determine the effectiveness of the project (20 U.S.C. 6561b(b)(1)(A)(iii)) (5 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Projects funded under this competition are encouraged to budget for a two-day meeting for project directors to be held annually in Washington, DC.

4. *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.*

5. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for this program:

(1) For each high school served by the project, the school's graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA, as well as the graduation rates for the following subgroups:

(A) Major racial and ethnic groups;

(B) Students with disabilities;

(C) Students with limited English proficiency; and

(D) Economically disadvantaged students.

Note: The Department will identify each school's graduation rate, as well as the graduation rates for the subgroups identified in this section, using the data that are now reported to the Department by SEAs using the EDEN Submission System (ESS). Grantees will not be required to provide these data.

(2) The number and percentage of students enrolled in grades 9 through 12 in schools or programs served by the project who, during the most recent school year, earned one quarter of the credits necessary to graduate from high school with a regular diploma.

(3)(A) The number and percentage of students served by the project who had not attended school for 60 or more instructional days immediately prior to their participation in the project; and

(B) The average daily attendance of such students while participating in the project.

(4)(A) The number and percentage of students served by the project during the most recent school year who were two or more years behind their expected age and credit accumulation in high school; and

(B) The number and percentage of such students who earned one half or more of the credits they need to graduate with a regular diploma.

(5) For each school served by the project that includes an eighth grade—

(A) The average daily attendance of such school; and

(B) The number and percentage of students enrolled in the eighth grade who enrolled in ninth grade at the start of the next school year.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

VII. Agency Contacts

For Further Information Contact: Theda Zawaiza, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E122, Washington, DC 20202. *Telephone:* (202) 205–3783 or by *e-mail: hsgi@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 either 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 15, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–14732 Filed 6–17–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–362]

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Public Scoping Meetings, and Notice of Floodplains and Wetlands Involvement; Champlain Hudson Power Express, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) and to conduct Public Scoping Meetings; Notice of Floodplains and Wetlands Involvement.

SUMMARY: The Department of Energy (DOE) announces its intention to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE NEPA implementing procedures (10 CFR part 1021) to assess the potential environmental impacts from its proposed Federal action of granting a Presidential permit to Champlain Hudson Power Express, Inc. (Champlain Hudson) to construct, operate, maintain, and connect a new electric transmission line across the U.S.-Canada border in northeastern New York State. The EIS, *Champlain Hudson Power Express Transmission Line Project Environmental Impact Statement* (DOE/EIS–0447), will address potential environmental impacts from the proposed action and the range of reasonable alternatives.

The purpose of this Notice of Intent (NOI) is to inform the public about the proposed action, announce plans to conduct seven public scoping meetings in the vicinity of the proposed transmission line, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope of the EIS. Because the proposed project may involve actions in floodplains and wetlands, in accordance with 10 CFR part 1022, *Compliance with Floodplain and Wetland Environmental Review Requirements,* the draft EIS will include a floodplain and wetland assessment as appropriate, and the final EIS or record of decision will include a floodplain statement of findings.

DATES: DOE invites interested agencies, organizations, Native American tribes, and members of the public to submit comments to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until August 2, 2010. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by August 2, 2010 in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Locations, dates, and start and end times for the public scoping meetings are listed in the **SUPPLEMENTARY INFORMATION** section of this NOI.

Requests to speak at any one or more public scoping meeting(s) should be received by Dr. Jerry Pell at the address indicated below on or before July 6, 2010; requests received by that date will be given priority in the speaking order. However, requests to speak also may be made at the scoping meetings.

ADDRESSES: Comments on the scope of the EIS and requests to be added to the document mailing list should be addressed to: Dr. Jerry Pell, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; by electronic mail to *Jerry.Pell@hq.doe.gov;* or by facsimile to 202–318–7761. For general information on the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; by electronic mail at *askNEPA@hq.doe.gov;* or by facsimile at 202–586–7031.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry Pell at the addresses above, or at 202–586–3362. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom at 202–586–4600, leave a message at 800–472–2756, or at the addresses above.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 10485, as amended by E.O. 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, operated, maintained, or connected at the U.S. international border. The E.O. provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest and after favorable recommendations from the U.S. Departments of State and Defense. In determining consistency with the public interest, DOE considers the potential environmental impacts of the proposed project under NEPA, determines the project's impact on electric reliability (including whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions), and considers any other factors that DOE may find relevant to the public interest. The regulations implementing the E.O. have been codified at 10 CFR parts 205.320–205.329. DOE's issuance of a Presidential permit indicates that there is no Federal objection to the project, but does not mandate that the project be undertaken.

Champlain Hudson applied on January 27, 2010, to DOE's Office of Electricity Delivery and Energy Reliability (OE) for a Presidential permit to construct, operate, maintain, and connect a 2,000-megawatt (MW) high-voltage direct current (HVDC) Voltage Source Converter (VSC) controllable transmission system from the Canadian Province of Quebec to the New York City and Southwestern Connecticut regions. After due consideration of the nature and extent of the proposed project, including evaluation of the "Information Regarding Potential Environmental Impacts" section of the Presidential permit application, DOE has determined that the appropriate level of NEPA review for this project is an EIS.

The proposed Federal action is the granting of the Presidential permit and it is anticipated that the project could significantly affect the quality of the human environment. Because the proposed project may involve actions in floodplains and wetlands, in accordance with 10 CFR part 1022, *Compliance with Floodplain and Wetland Environmental Review Requirements,* the draft EIS will include a floodplain and wetland assessment as appropriate, and the final EIS or record of decision will include a floodplain statement of findings.

DOE invites Tribal governments and Federal, state, and local agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies with respect to the EIS, as defined at 40 CFR 1501.6. Cooperating agencies have certain responsibilities to support the NEPA process, as specified at 40 CFR 1501.6(b). The U.S. Army Corps of Engineers (anticipated), the U.S. Environmental Protection Agency Region 2, and the New York State Departments of Environmental Conservation and Public Service are cooperating agencies with respect to this EIS.

In addition, Champlain Hudson applied to DOE on September 12, 2009, for a Federal loan guarantee for the proposed project in response to a DOE competitive solicitation, "Federal Loan Guarantees for Electric Power Transmission Infrastructure Investment Projects," issued under section 1705, Title XVII, of the Energy Policy Act of 2005 (EPAct). Section 406 of the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") amended EPAct by adding section 1705. This section is designed to address the current economic conditions of the Nation, in part by facilitating the development of eligible renewable and transmission projects that commence construction no later than September 30, 2011. DOE is carrying out an evaluation of the application submitted by Champlain Hudson. Should DOE decide to enter into the negotiation of a possible loan guarantee with Champlain Hudson, DOE would use this EIS to meet its NEPA requirements in making a determination of funding.

Applicant's Proposal

The applicant's proposed VSC controllable transmission system consists of two 1,000–MW HVDC bipoles. A bipole consists of two connected submarine or underground cables, one of which is positively charged, and the other negatively charged. In total, four cables would be laid between Quebec, Canada, and a proposed converter station in Yonkers, NY, where one bipole (two cables) would be terminated. The converter station would change the electrical power from direct current to alternating current. The remaining bipole (two cables) would continue to a proposed converter station in Bridgeport, CT. Champlain Hudson's proposed transmission line would connect renewable sources of power generation in Canada with load centers in and around the New York City and southwestern Connecticut regions.

The project would originate at an HVDC converter station near Hydro-Québec TransÉnergie's 765/315-kilovolt (kV) Hertel substation, located southeast of Montreal, and extend approximately 35 miles to the international border between the United States and Canada, crossing in Lake Champlain to the east of the Town of Champlain, NY. Four cables (two bipoles) would extend south under Lake Champlain for approximately 111 miles entirely within the jurisdictional waters of New York State. At the southern end of Lake Champlain, the cables would exit the

water just north of Lock C12 of the Champlain Canal (Canal) in the town of Whitehall, NY, and would be buried within an existing railroad right-of-way owned by Canadian Pacific Railway (CP) for 1.7 miles. The cables would enter the Canal just south of Lock C12 and continue under the Canal for 5.6 miles to Comstock, NY, and then utilize another CP railroad right-of-way for 0.4 miles to circumvent Lock C11. The cables would re-enter the canal just south of Lock C11 and continue under the Canal for 8.9 miles toward Lock C9 in Kingsbury, NY (there is no Lock C10). North of Lock C9, the cables would exit the Canal and would be buried for 0.5 miles within land owned by the New York State Canal Corporation on the eastern shore of Lock C9. The HVDC cables would re-enter the Canal just south of Lock C9 and continue under the Canal for 2.7 miles toward Lock C8 in Fort Edward, NY.

The Upper Hudson River portion of the Hudson River polychlorinated biphenyl (PCB) site (USEPA Identification Number NYD980763841) stretches from Hudson Falls, NY, to the Federal Dam at Troy, NY. To avoid installing and burying HVDC cables within this area, the proposed Project route would exit the Canal north of Lock C8 near Durham Basin, where an existing CP railroad right-of-way is located immediately adjacent to the west of the Canal. Upon exiting the canal, the four cables would be buried for approximately 46.1 miles within the CP railroad bypass route to the west of the Hudson River, traversing the municipalities of Moreau, Northumberland, Wilton, Greenfield, Saratoga Springs, Milton, Ballston, Clifton Park, Glenville, and Schenectady, NY. In the town of Rotterdam, NY, the buried route would transfer to the CSX Railroad (CSX) right-of-way and proceed south for approximately 23.7 miles through the municipalities of Guilderland, New Scotland, Voorheesville, and Bethlehem. The proposed Project route would then exit the railroad right-of-way and enter the Hudson River at the town of Coeymans, NY (about 14 miles south of Albany). In general, when a railroad right-of-way intersects with a waterway, the applicant's preference would be to attach the cables to the bridge structure, particularly for longer crossings such as the bridge over the Mohawk River in Schenectady, NY. If the cables could not be attached to the bridge due to engineering concerns or owner preference, an option would be for the applicant to employ horizontal directional drilling to install high-density polyethylene (HDPE) casings for the cables to use under the waterway.

Upon entering the Hudson River, the four cables would be buried for 118 miles until they reach the City of Yonkers, NY. Two of the four HVDC cables (one bipole) would terminate at the proposed converter station located in Yonkers for a total length of approximately 319 miles from the U.S. border with Canada to Yonkers, NY. The remaining two cables would continue for approximately 66 miles under the Hudson River, Spuyten Duyvil Creek, the Harlem River, and the East River into Long Island Sound before terminating at a converter station near 1 W Avenue in Bridgeport, CT, for at total length of approximately 384.4 miles from the U.S. border with Canada to Bridgeport. This route is discussed below as being Route A, the applicant's preferred alternative.

The Champlain Hudson Presidential permit application, including associated maps and drawings, can be viewed or downloaded in its entirety from the DOE program Web site at *http://www.oe.energy.gov/permits_pending.htm* (see PP–362), or on the project EIS Web site at *http://CHPExpressEIS.org.* Also available at these same locations is the March 5, 2010, **Federal Register** Notice of Receipt of Application (75 FR 10229).

Agency Purpose and Need, Proposed Action, and Alternatives

The DOE proposed Federal action is the granting of a Presidential permit to Champlain Hudson to construct, operate, maintain, and connect a new electric transmission line across the U.S.-Canada border in northeastern New York State. The EIS, *Champlain Hudson Power Express Transmission Line Project Environmental Impact Statement* (DOE/EIS–0447), will address potential environmental impacts from the proposed action and the range of reasonable alternatives. The purpose and need for DOE's action is to decide whether to grant Champlain Hudson said Presidential permit. It should be noted, however, that although the potential environmental impacts are important, they are not the only criteria that form the basis for the final permitting decision. If granted, the Presidential permit would authorize only that portion of the line that would be constructed, operated, and maintained wholly within the United States.

Three action alternatives (routes) for constructing the proposed transmission line inside the United States have been identified by the applicant, and they differ little in total length: 384.5 miles for Route A, 384.2 miles for Route B, and 385.7 miles for Route C. The lines differ, however, in the amount of the line that is submerged or buried underground. Route A, the Champlain Hudson preferred alternative, has approximately 72.4 miles buried underground. Route B has approximately 89.4 miles buried underground, and Route C has about 68.0 miles buried underground. The remaining distances of all routes are submerged. Maps showing all three alternative routes may be found at *http://CHPExpressEIS.org/maps*.

All three routes cross the U.S.-Canada border in Lake Champlain at Rouses Point, NY (which is about five miles east of the Town of Champlain, NY), 35 miles from where they would begin southeast of Montreal, Canada. Route A, the applicant's preferred alternative, is described in detail above.

The Route B alternative is the same as Route A, except that after exiting the water just north of Lock C12 of the Champlain Canal (Canal) in the town of Whitehall, NY, Route B would continue within an existing railroad right-of-way owned by Canadian Pacific Railway (CP) for 19.5 miles through the municipalities of Comstock, Fort Ann, and Kingsbury. Route B would overlap with Route A where Route A exits the Champlain Canal north of Lock C8 near Durham Basin.

Route C is the same as Route A except for a 6.3 mile segment from north of Lock C8 near Durham Basin, where Route A exits the Champlain Canal (Canal) to travel south about 4.8 miles within the CP railroad right-of-way. At the point where Route A would exit the canal, Route C instead would continue under the Canal for 2.9 miles toward Lock C8 in Fort Edward, NY. North of Lock C8, the cables would exit the Canal and would be buried for 0.4 miles within land owned by the New York State Canal Corporation on the eastern shore of Lock C8. The HVDC cables would re-enter the Canal just south of Lock C8 and continue under the Canal for 2.1 miles towards Lock C7, also located in Fort Edward, NY. North of Lock C7, the cables would exit the eastern side of the canal and be buried for 0.2 miles within land owned by the New York State Canal Corporation before entering the Hudson River to the south of Rogers Island, where the Hudson River flows parallel to the Champlain Canal. The four cables would be buried under the Hudson River, and Route C would travel in a northern direction under the river to the west of Rogers Island for 0.7 miles before reaching the CP railroad bridge

that extends roughly southwest over the Hudson River from Fort Edward, NY toward Moreau, NY. The cables would exit the water on the west side of the Hudson River and Route C would overlap with Route A at the same point where Route A would transition from being attached to the bridge structure to being buried within the railroad right-of-way in the town of Moreau. This alternative assumes that PCB dredging activities associated with the Hudson River Dredging Project planned for the area around Rogers Island are completed by 2013. (The northern tip of Rogers Island is about one-quarter of a mile west of Fort Edward. Overall, the Island is just less than one mile in length.)

Champlain Hudson is also considering two alternative substations identified as feasible points of interconnection in New York, regardless of the alternative route: The Gowanus 345-kV substation, located in New York County, and the Astoria (Polleti) 345-kV substation, located in Queens County. An alternative site under consideration for the DC–AC converter station in Queens County is land adjacent to the Astoria substation. In Connecticut, 60 Main Street in Bridgeport has been identified as a possible alternative site for the converter station.

Under the No Action alternative, DOE would deny Champlain Hudson's application for a Presidential permit for the proposed international electric transmission line.

Identification of Environmental Issues

The EIS will examine public health and safety effects and environmental impacts in the U.S. from the proposed HVDC transmission facilities. This notice is intended to inform agencies and the public of the proposed project, and to solicit comments and suggestions for consideration in the preparation of the EIS. To help the public frame its comments, the following is a preliminary list of several potential environmental issues in the U.S. that DOE and Champlain Hudson have tentatively identified for analysis, including:

1. *Impacts on protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats:* The EIS will consider the effects of the construction and operation of the project on essential fish habitats and species, including the shortnose sturgeon (Federally listed endangered species), leatherback sea turtle (Federally listed endangered species), loggerhead sea turtle (Federal listed threatened species), green sea turtle (Federal listed threatened species), and Atlantic sturgeon (Federally listed candidate species as of October 17, 2006).

2. *Impacts on aquatic biological resources:* The EIS will consider the effects of the construction and operation of the project on shellfish, benthic communities, finfish, and commercial and recreational fisheries, and the potential for introduction of invasive species.

3. *Impacts on floodplains and wetlands:* The EIS will consider the effects of the construction and operation of the project on wetlands and on freshwater, tidal, and estuarine floodplains. The portions of all three alternative routes that utilize the CP railroad right-of-way would cross Federal Emergency Management Agency-mapped floodplains associated with the Champlain Canal and the Hudson River. The routes cross the Mohawk River within the City of Schenectady, but an option under consideration is the possible suspension of the cables from the railroad bridge, such that they would not be buried within the floodplain. The underground connection to the Yonkers and Bridgeport converter stations utilized by all three route alternatives would cross bordering floodplain at the landfall locations. Portions of the Sherman Creek East substation site and the underground connection to the substation are located in floodplain associated with the Harlem River in New York City. Limited wetland delineations and available New York State mapping resources indicate that less than 15 acres of wetlands would be temporarily impacted within the construction corridor along the underground portions of Routes A, B, and C.

4. *Impacts on cultural or historic resources:* The EIS will consider the effects of the construction and operation of the project on shipwrecks and National Historic Landmarks; e.g., the proposed transmission cable route travels through the boundary of the Crown Point and Fort Ticonderoga National Historic Landmarks. The project facilities would also be located within National Heritage Areas and New York State Heritage Areas, including the Mohawk Valley Heritage Corridor and the RiverSpark (Hudson-Mohawk) Heritage Area.

5. *Impacts on human health and safety:* The EIS will consider the nature and effects of electric and magnetic fields that may be generated by the construction and operation of the project.

6. *Impacts on air quality:* The EIS will consider the effects of the construction and operation of the project on air quality, including the emission and effects of greenhouse gases such as carbon dioxide.

7. *Impacts on soil:* The EIS will consider the effects of the construction and operation of the project on the loss or disturbance of soils.

8. *Impacts on water quality:* The EIS will consider the effects of the installation and operation of the transmission cables on water quality due to potential re-suspension of sediments and contaminants, including PCBs in the Hudson River.

9. *Impacts to land use:* The EIS will consider the effects of the installation and operation of the project on land uses, including agricultural lands, parks, and public lands.

10. *Visual impacts:* The EIS will consider the effects of the installation and operation of the project on visual resources of any above-ground components of the project, including near the locations of the two converter stations.

11. *Noise impacts:* The EIS will consider the effects of the installation and operation of the project on noise levels near the locations of the two DC-to-AC converter stations.

12. *Socioeconomic impacts:* This EIS will consider impacts on community services.

13. *Environmental justice:* The EIS will include consideration of any disproportionately high and adverse impacts on minority and low-income populations.

This list is not intended to be all inclusive or to imply any predetermination of impacts. DOE invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

Scoping Process

Interested parties are invited to participate in the scoping process, both to help define the environmental issues to be analyzed and to identify the range of reasonable alternatives. Both oral and written comments will be considered and given equal weight by DOE, regardless of how submitted. Public scoping meetings will be held at the locations, dates, and times as indicated below:

1. *Bridgeport, CT:* Bridgeport City Hall, 45 Lyon Terrace, Bridgeport, CT 06604; 7–9 p.m., Thursday, July 8, 2010.

2. *New York City, NY:* U.S. Environmental Protection Agency, 290 Broadway, Room 27A (27th floor, conference room A), New York, NY 10007; 2–4 p.m., Friday, July 9, 2010. It is important to note that this is a secure building: all carried items, *e.g.,*

handbags and backpacks, will be X-rayed and visitors will pass through a metal detector.

3. *Yonkers, NY:* Royal Regency Hotel, 165 Tuckahoe Road, Yonkers, NY 10710; 7–9 p.m., Monday, July 12, 2010.

4. *Kingston, NY:* Holiday Inn Kingston NY, 503 Washington Avenue, Kingston, NY 12401; 7–9 p.m., Tuesday, July 13, 2010.

5. *Albany, NY:* The Holiday Inn Albany at Wolf Road, 205 Wolf Road, Albany, NY 12205; 7–9 p.m., Wednesday, July 14, 2010.

6. *Glens Falls, NY:* Ramada Glens Falls/Lake George Area, 1 Abby Lane (exit 19 off I–87), Queensbury, NY 12804; 7–9 p.m., Thursday, July 15, 2010.

7. *Plattsburgh, NY:* Plattsburgh North Country Chamber of Commerce, 7061 State Route 9, Plattsburgh, NY 12901; 7–9 p.m., Friday, July 16, 2010.

The scoping meetings will be structured in two parts: First, an informal discussion "workshop" period that will not be recorded; and, second, the formal taking of comments with transcription by a court stenographer. The meetings will provide interested parties the opportunity to view proposed project exhibits, ask questions, and make comments. Applicant, DOE, and any cooperating agency representatives will be available to answer questions and provide additional information to attendees to the extent that additional information is available at this early stage of the proceedings.

Persons submitting comments during the scoping process, whether orally or in writing, will receive either paper or electronic copies of the Draft EIS, according to their preference. Persons who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the document for review and comment when it is issued should notify Dr. Jerry Pell as provided above, with their paper-or-electronic preference.

EIS Preparation and Schedule

In preparing the Draft EIS, DOE will consider comments received during the scoping period. As noted above, comments can be submitted by various means, and will be given the same consideration. They can be submitted to Dr. Jerry Pell either electronically or by paper copy; if the latter, consider using a delivery service because materials submitted by regular mail are subject to security screening, which both causes extended delay and potential damage to the contents. (Warped and unusable CD or DVD discs are common.) Additionally, comments can be submitted through the project Web site established for preparation of the EIS, at *http://CHPExpressEIS.org.* This site will also serve as a repository for all public documents and the central location for announcements. Individuals may subscribe to the "mail list" feature on the project Web site in order to receive future announcements and news releases.

DOE will summarize all comments received in a "Scoping Report" that will be available on the project Web site and distributed either electronically to all parties of record for whom we have an e-mail address, or by mailing paper copies upon request.

Issued in Washington, DC, on June 14, 2010.

Patricia A. Hoffman,

Principal Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–14760 Filed 6–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of Meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on June 29, 2010, at the headquarters of the IEA in Paris, France, in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on June 29; and on June 30 in connection with a joint SEQ/SOM Workshop on the Release of Industry Stocks on June 30 and a meeting of the SEQ on June 30 and continuing on July 1.

DATES: June 29–July 1, 2010.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on June 29, 2010, beginning at 9:30 a.m. and continuing on June 30 at 8:30 a.m.; and on June 30, commencing at 2:30 p.m. and continuing on July 1, 2010, at 9:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on June 29, which is scheduled to be held at the headquarters of the IEA commencing at 9:30 a.m., and a joint SEQ/SOM Workshop on the Release of Industry Stocks, which is scheduled to be held at the same location beginning at 9 a.m. on June 30. The IAB will also hold a preparatory meeting among company representatives at the same location at 8:30 a.m. on June 30. The agenda for this preparatory meeting is to discuss the SEQ/SOM meeting and to review the agendas of the SEQ/SOM workshop and the 130th SEQ meeting, to be held on June 30–July 1.

The agenda of the joint SEQ/SOM meeting on June 29 is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the March 2010 Joint Meeting.
3. The 2011–2012 Program of Work for the SOM and SEQ.
   —Priority Setting Exercise.
   —Governing Board Brainstorming.
4. The Medium-Term Oil Market Report.
5. Report on the International Energy Forum.
6. Update on the Medium-Term Gas Market Report.
7. Other Business.

The agenda of the SEQ/SOM workshop on June 30 is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Introduction by the IEA Secretariat.
2. Introduction by the Chairman.
3. Session 1—Industry Stockholding Obligation.
   —How do we assure the availability of such stocks in a crisis? How are industry emergency stocks related to minimum operating requirements?
4. Session 2—The Government Measures to Make Industry Obligatory Stockholding Available to the Market.
   —What other measures are available besides lowering the obligation for industry to hold stocks? Does the lowering of the obligation need to be more focused than just a uniform reduction across all companies, for all fuels? What is the minimum

duration necessary for the reduction to be effective? Is there a way to measure the effectiveness of lowering the stockholding obligation?

5. Session 3—Bilateral Stockholding and Tickets.
   —Does location matter? How can stockholding ticket contracts be an effective part of a collective action? Do ticketed volumes need to be purchased/delivered to be effective, or is the cancellation of ticket contracts enough to "free up" the oil for market use?
6. Wrap-up and Conclusions.

The agenda of the SEQ meeting on June 30 is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the 129th Meeting.
3. Status of Compliance with IEP Stockholding Commitments.
4. Emergency Response Review Program.
   —Schedule of Emergency Response Reviews.
   —Emergency Response Review of Greece.
   —Questionnaire Response of Denmark.
   —Questionnaire Response of Norway.
5. Emergency Policy for Natural Gas.
   —Proposed Questionnaire on Gas Security.
   —The Use of Oil Stocks During Gas Disruptions (Draft Governing Board Decision).
6. Emergency Response Exercise 5 (ERE 5).
   —Report on the Data Exercise of the Exercise in Capitals.
   —Update on Preparations for ERE 5.
7. Cooperation with Non-Member Countries During Supply Disruptions.
   —Report from the Working Group.
8. Emergency Response Measures.
   —Fuel Switching.
   —Maximum Drawdown Capability of Public Stocks.
   —Report on the Workshop on Industry Stocks (June 29).
   —Energy Security Indicators Model.
9. Policy and Other Developments in Member Countries.
   —Belgium.
   —Japan.
   —United States.
10. Activities with International Organizations and Non-Member Countries.
   —Thailand: Emergency Response Assessment (September).
   —Chile (July 7–9).
   —Update on APEC Energy Working Group.
   —Indonesia: Workshop June 16–17.
   —1st Energy Community Workshop on Emergency Oil Stocks (Zagreb, May 27–28).
   —Presentation of the NMC Web site.
11. Report from the Industry Advisory Board.
12. Documents for Information.
   —Emergency Reserve Situation of IEA Member Countries on April 1, 2010.
   —Base Period Final Consumption: 2Q 2009–1Q 2010.
   —Updated Emergency Contacts List.
13. Other Business.
   —Tentative Schedule of Meetings for 2010:
   —November 16 (morning)—SOM Meeting (Possible Joint Session).
   —November 16 (afternoon)—Training Session ERE 5.
   —November 17–18—ERE 5.
   —November 19—131st Meeting of the SEQ.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC on June 14, 2010.

Diana D. Clark,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 2010–14753 Filed 6–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13795–000]

Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Mahoning Hydropower, LLC

June 10, 2010.

On May 25, 2010, Mahoning Hydropower, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mahoningside Hydroelectric Project No. 13795, to be located at the existing Warren-Summit Street Dam on the Mahoning River, in the City of Warren in Trumbull County, Ohio. The Warren-Summit Street Dam is owned and operated by the City of Warren.

The proposed project would consist of: (1) The existing low head gravity dam 12 feet in height, with an approximate spillway crest length of 175 feet; (2) two new tubular S–Type propeller turbine-generator units with a combined capacity of 310 kilowatts; (3) a new powerhouse to be located near the right abutment of the existing filter house; (4) a new tailrace; (5) a new 350 foot-long, 600-Volt alternating current, transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 1,800 megawatt-hours.

Applicant Contact: Anthony J. Marra III, 11365 Normandy Lane, Auburn Township, OH 44023, (440) 804–6627.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Website (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly recommends electronic filing, documents may also be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project, including a copy of the application can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13795) in the docket number field to

access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14721 Filed 6–17–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–016]

Energy Conservation Program for Consumer Products: Notice of Petition for Waiver of LG Electronics, Inc. (LG) From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the LG petition for waiver (hereafter, "petition") from parts of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. Today's notice also grants an interim waiver of the test procedures applicable to residential refrigerator-freezers. Through this document, DOE is soliciting comments with respect to the LG petition.

DATES: DOE will accept comments, data, and information with respect to the LG petition until, but no later than July 19, 2010.

ADDRESSES: You may submit comments, identified by case number RF–016, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov* Include either the case number [Case No. RF–016], and/or "LG Petition" in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 430.27(d). The contact information for the petitioner is: John I. Taylor, Vice President, Government Relations and Communications, LG Electronics USA, Inc., 1776 K Street, NW., Washington, DC 20006. E-mail: *john.taylor@lge.com.*

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver; and (4) prior DOE rulemakings regarding refrigerators. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Betsy Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (10 CFR

430.27(a)(2); 430.27(g)) An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner, and may be extended for an additionally 180 days, if necessary. (10 CFR 430.27(h))

II. Petition for Waiver of Test Procedure

On April 20, 2010, LG filed a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. LG is designing new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls that detect a broad range of temperature and humidity conditions, and respond by activating adaptive heaters, as needed, to evaporate excess moisture. LG's technology is similar to that used by General Electric Company (GE), Whirlpool Corporation (Whirlpool), Electrolux, Haier and Samsung Electronics America, Inc. (Samsung). The GE, Whirlpool and Electrolux waivers were granted February 27, 2008 (73 FR 10425), May 5, 2009 (74 FR 20695), and December 15, 2009 (74 FR 66338), respectively. DOE granted an interim waiver to Haier on March 11, 2010 (75 FR 11522) and to Samsung on April 16, 2010 (75 FR 1959).

In its petition, LG seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure takes neither ambient humidity nor adaptive technology into account. Therefore, LG states that the test procedure does not accurately measure the energy consumption of LG's new refrigerators and refrigerator-freezers that feature variable anti-sweat heater controls and adaptive heaters. Consequently, LG has submitted to DOE for approval an alternate test procedure that would allow it to correctly calculate the energy consumption of this new product line. LG's alternate test procedure is the same in all relevant particulars as that prescribed for other manufacturers for refrigerators and refrigerator-freezers that are equipped with the same type of technology. The alternate test procedure applicable to these products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the decision and order that DOE published in the **Federal Register** on February 27, 2008. 73 FR 10425. DOE believes that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

III. Application for Interim Waiver

LG also requests an interim waiver from the existing DOE test procedure. Under 10 CFR 430.27(b)(2), each application for interim waiver "shall demonstrate likely success of the petition for waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the application for interim waiver." An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g))

DOE determined that LG's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship LG might experience absent a favorable determination on its application for interim waiver. However, DOE understands that absent an interim waiver, LG's products would not otherwise be tested and rated for energy consumption on a comparable basis with equivalent products for which DOE previously granted waivers, and would be required to represent a higher energy consumption for essentially the same product. Furthermore, it appears likely that LG's Petition for Waiver will be granted, and it is desirable for public policy reasons to grant LG immediate relief pending a determination on the petition for waiver. As stated above, DOE has already granted similar waivers to GE, Whirlpool, and Electrolux, as well as interim waivers to Haier and Samsung, because the test procedure does not accurately represent the energy consumption of refrigerator-freezers containing relative humidity sensors and adaptive control anti-sweat heaters. The rationale for granting these waivers is equally applicable to LG, which has products containing similar relative humidity sensors and anti-sweat heaters. DOE has also concluded that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

For the reasons stated above, DOE grants LG's application for interim waiver from testing of its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters. Therefore, *it is ordered that:*

The application for interim waiver filed by LG is hereby granted for LG's refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters, subject to the specifications and conditions below.

1. LG shall not be required to test or rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters based on the test procedure under 10 CFR part 430 subpart B, appendix A1.

2. LG shall be required to test and rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters according to the alternate test procedure as set forth in section IV, "Alternate Test Procedure."

The interim waiver applies to the following basic model groups:

Type	Sales model	Brand
3D (3 door) Basic	LFC2#7##**	LG
3D Water Dispenser only	LFD2#8##**	LG
3D Ice Water Dispenser	LFX2#9##LG	LG
4D Basic	LMC2#7##**	LG
4D Water Dispenser only	LMD2#8##**	LG
4D Ice-Water Dispenser	LMX2#9##**	LG
3D Ice-Water Dispenser	LSFX213ST	Viking
4D Ice-Water Dispenser	LSMX214ST	Viking
All	795.#####.###	Kenmore
2D SXS	LSC23944**	LG
3D Basic	LFC20745**	LG
3D Basic	7831#	Kenmore
3D Basic	LFC23760**	LG

Type	Sales model	Brand
3D Basic	LFC23770**	LG
3D Dispenser	LFD23860**	LG
3D Dispenser	7835#	Kenmore
3D Ice and Water	7841#	Kenmore
3D Ice and Water	LFX23965**	LG
All	501.#####	Kenmore
2D SXS	LRSC26923**	LG
2D SXS	LRSC26925**	LG
2D SXS	5101#	Kenmore
2D SXS	5102#	Kenmore
2D SXS	5103#	Kenmore
2D SXS	LSC27914**	LG
2D SXS	LSC27934**	LG
2D SXS	5107#	Kenmore
2D SXS	5108#	Kenmore
2D SXS	5109#	Kenmore
2D SXS	5131#	Kenmore
2D SXS	5132#	Kenmore
2D SXS	5137#	Kenmore
2D SXS	LSC23924**	LG
2D SXS	LSC23954**	LG
3D Basic	LFC20760**	LG
3D Basic	7130#	Kenmore
3D Basic	7830#	Kenmore
3D Basic	LFC23760**	LG
3D Basic	LFC23770**	LG
3D Dispenser	7834#	Kenmore
3D Dispenser	7835#	Kenmore
3D Ice and Water	7840#	Kenmore
3D Ice and Water	LFX23961**	LG
All	795.#####.###	Kenmore

This interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

For the duration of the interim waiver, LG shall be required to use the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A1, except that, for the LG products listed above only:

(A) The following definition is added at the end of Section 1:

1.13 "Variable anti-sweat heater control" means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3. except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be "off" during one test and "on" during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the result of the second test will be derived from the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the "on" position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

$E_{ON} = E + (\text{Correction Factor})$

where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the "off" position.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

where:

Anti-sweat Heater Power = A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
+ A10 * (Heater Watts at 95%RH)

where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F.

System-loss Factor = 1.3.

V. Summary and Request for Comments

Through today's notice, DOE grants LG an interim waiver from the specified portions of the test procedure applicable to LG's new line of refrigerators and refrigerator-freezers with variable anti-sweat heater controls and adaptive

heaters, and announces receipt of LG's petition for waiver from certain parts of the test procedure that apply to basic models of refrigerators and refrigerator-freezers with variable anti-sweat heater controls and adaptive heaters manufactured by LG. DOE is publishing LG's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of LG's specified refrigerators and refrigerator-freezers with adaptive anti-sweat heaters. DOE is interested in receiving comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on June 11, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

April 20, 2010
The Honorable Catherine Zoi
Assistant Secretary, Energy Efficiency and Renewable Energy
United States Department of Energy
Mail Station EE–10
Forrestal Building
1000 Independence Avenue, SW
Washington, DC 20585

Re: Petition for Waiver and Application for Interim Waiver, *Refrigerator-Freezers with Adaptive Anti-Sweat Heater Technology*

Dear Assistant Secretary Zoi:

LG Electronics, Inc. (LG) respectfully submits this Petition for Waiver and Application for Interim Waiver, pursuant to 10 CFR § 430.27, for LG refrigerator-freezers with adaptive anti-sweat heater technology.

The applicable Department of Energy (DOE) test procedure does not provide an appropriate method for testing and rating refrigerator-freezers with this technology. DOE has recognized this in granting waiver relief to other manufacturers, including Electrolux, General Electric, LG, Samsung, and Whirlpool.

LG is a manufacturer of digital appliances, as well as mobile communications, digital displays, and digital media products. Its appliances include refrigerators, refrigerator-freezers, air-conditioners, washing machines, clothes dryers, air cleaners, ovens, microwave ovens, dishwashers, and vacuum cleaners and are sold worldwide, including in the United States. LG's U.S. operations are LG Electronics USA, Inc., with headquarters at 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632 (tel. 201–816–2000). Its worldwide headquarters are located at LG Twin Towers 20, Yoido-dong, Youngdungpo-gu Seoul, Korea 150–721; (tel. 011–82–2–3777–1114); URL: *http://www.LGE.com.* LG's principal brands include LG® and OEM brands, including GE® and Kenmore®. LG's appliances are produced in Korea and Mexico.

LG's refrigerator-freezers with adaptive anti-sweat heater technology are beneficial products. They react according to different ambient conditions such as temperature and humidity. A list of models is set forth in Appendix A hereto.

A waiver and interim waiver for adaptive anti-sweat heater technology is warranted. The test procedure under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6291 et seq., namely 10 C.F.R. Pt. 430, Subpt. B, App. Al, as applied to refrigerator-freezers with this technology will yield different test results depending on the relative ambient relative humidity in the test chamber. The test procedure does not specify a value for the relative ambient humidity in the test chamber. Thus, the test procedure evaluates the LG basic models in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data, and/or the basic models contain one or more design characteristics that prevent testing of the basic models according to the prescribed test procedures. In such circumstances DOE "will grant" waiver relief. 10 C.F.R. §§ 430.27(l).

LG's adaptive anti-sweat heater technology is similar to that of Electrolux, General Electric, LG, Samsung, and Whirlpool for refrigerator-freezers that have been the subject of waiver relief.[1] As with such companies for which waiver relief has been granted, LG should be required to test and rate the product lines containing this technology (see Appendix A hereto) according to an alternative test procedure rather than be required to test or rate on the basis of the test procedure under 10 C.F.R. Part 430, Subpart B, Appendix A1. The alternative test procedure provides for the test to be run with the anti-sweat heater switch in the "off" position and then, because the test chamber is not humidity-controlled, there would be added to that result the kilowatt hours per day derived by calculating the energy used when the anti-sweat heater is in the "on" position. The alternative is set forth in detail in Appendix B hereto.

The waiver should continue until a test procedure can be developed and adopted by DOE that will provide a fair and accurate assessment of this technology's energy consumption and efficiency levels. LG believes that the alternative test procedure in this petition does provide a fair and accurate assessment.

LG also requests immediate relief by grant of an interim waiver. Grant of an interim waiver is fully justified:

— The petition for waiver is likely to be granted, as evidenced not only by its merits, but also because DOE has granted waiver relief to other manufacturers. The rationale for granting relief to them applies equally to LG. And, it is in the public interest for comparable products to be tested in a comparable manner.

— Without waiver relief, LG will suffer economic hardship. LG would be placed in an untenable situation: refrigerator-freezers with this technology would be subject to a set of Regulations that clearly should not apply to such a product. Without such relief, LG's products would not be tested and rated for energy consumption on a comparable basis with comparable products for which DOE previously granted waivers. LG would be required to represent a higher energy consumption than would be the case with waiver relief.

— Significant investment has already been made in refrigerator-freezers with this technology. Lack of relief would not allow LG to recoup this investment and would deny LG anticipated sales revenue. This does not take into account significant losses in goodwill and brand acceptance.

— The basic purpose of EPCA is to foster purchase of energy-efficient products, not hinder such purchases. LG refrigerator-freezers with this technology are beneficial and in the public interest. To encourage and foster the availability of these products is in the public interest. Standards programs should not be used as a means to block

[1] See, 75 Fed. Reg. 19959 (April 16, 2010) (Samsung; grant of interim waiver); id. 13120 (March 18, 2010) (Samsung; grant of waiver); id. 11530 (March 11, 2010) (Electrolux; grant of waiver); id. 11522 (March 11, 2010) (LG; grant of interim waiver); id. 4539 (Jan. 28, 2010) (Electrolux; grant of interim waiver); 74 Fed. Reg. 66338 (Dec. 15, 2009) (Electrolux; grant of waiver); id. 66340 (Dec. 15, 2009) (Samsung; grant of interim waiver); id. 26853 (June 4, 2009) Electrolux; grant of interim waiver); id. 20695 (May 5, 2009) (Whirlpool; grant of waiver); 73 Fed. Reg. 10425 (Feb. 27, 2008) (General Electric; grant of waiver).

innovative, improved designs.[2] DOE's rules should accommodate and encourage such a product.

— Granting the interim waiver and waiver would also eliminate a non-tariff trade barrier.

— Grant of relief would also help enhance economic development and employment, including not only LG Electronics USA's operations in New Jersey, Illinois and Alabama, but also at major national retailers and regional dealers that carry LG products. Furthermore, continued employment creation and ongoing investments in its marketing, sales and servicing activities will be fostered by approval of the interim waiver. Conversely, denial of the requested relief would harm the company and would be anticompetitive.

CONCLUSION

LG respectfully requests that DOE grant a waiver and interim waiver from existing test procedures for LG refrigerator-freezers with adaptive anti-sweat heater technology until such time as a representative test procedure is developed and adopted by DOE for such products. In the meantime, the alternative test procedure set forth herein is appropriate.

We would be pleased to discuss this request with DOE and provide further information as needed.

We hereby certify that all manufacturers of domestically marketed units of the same product type have been notified by letter of this petition and application, copies of which letters are set forth in Appendix C hereto.

Sincerely,
John I. Taylor
Vice President
Government Relations and Communications
LG Electronics USA, Inc.
1776 K Street, NW
Washington, DC 20006
Phone: 202–719–3490
Fax: 847–941–8177
Email: *john.taylor@lge.com*
Of counsel:
John A. Hodges
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Phone: 202–719–7000
Fax: 202–719–7049
Email: *jhodges@wileyrein.com*

APPENDIX A

The waiver requested by LG should apply to the following model series of LG refrigerator-freezers, which include LG, Kenmore®, and Viking® brands. Please note that the actual model numbers will vary to account for such factors as year of manufacture, product color, or other features. Nonetheless, they will always include anti-sweat technology whose energy impact is calculated in accordance with this petition.

(In the chart below, "#" represents a number; "*" represents a letter.)

Type	Sales Model	Brand
3D (3 door) Basic	LFC2#7##**	LG
3D Water Dispenser only	LFD2#8##**	LG
3D Ice Water Dispenser	LFX2#9##LG	LG
4D Basic	LMC2#7##**	LG
4D Water Dispenser only	LMD2#8##**	LG
4D Ice-Water Dispenser	LMX2#9##**	LG
3D Ice-Water Dispenser	LSFX213ST	Viking
4D Ice-Water Dispenser	LSMX214ST	Viking
All	795.#####.###	Kenmore
2D SXS	LSC23944**	LG
3D Basic	LFC20745**	LG
3D Basic	7831#	Kenmore
3D Basic	LFC23760**	LG
3D Basic	LFC23770**	LG
3D Dispenser	LFD23860**	LG
3D Dispenser	7835#	Kenmore
3D Ice and Water	7841#	Kenmore
3D Ice and Water	LFX23965**	LG
All	501.#####	Kenmore
2D SXS	LRSC26923**	LG
2D SXS	LRSC26925**	LG
2D SXS	5101#	Kenmore
2D SXS	5102#	Kenmore
2D SXS	5103#	Kenmore
2D SXS	LSC27914**	LG
2D SXS	LSC27934**	LG
2D SXS	5107#	Kenmore
2D SXS	5108#	Kenmore
2D SXS	5109#	Kenmore
2D SXS	5131#	Kenmore
2D SXS	5132#	Kenmore
2D SXS	5137#	Kenmore
2D SXS	LSC23924**	LG
2D SXS	LSC23954**	LG
3D Basic	LFC20760**	LG
3D Basic	7130#	Kenmore
3D Basic	7830#	Kenmore
3D Basic	LFC23760**	LG
3D Basic	LFC23770**	LG
3D Dispenser	7834#	Kenmore
3D Dispenser	7835#	Kenmore

[2] See FTC Advisory Opinion No. 457, TRRP 1718.20 (1971 Transfer Binder); 49 Fed. Reg. 32213 (Aug. 13, 1984); 52 Fed. Reg. 49141, 49147–48 (Dec. 30, 1987).

Type	Sales Model	Brand
3D Ice and Water	7840#	Kenmore
3D Ice and Water	LFX23961**	LG
All	795.#####.###	Kenmore

APPENDIX B

As requested in this petition, LG should be required to test the products for which a waiver is requested according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR Part 430, Appendix A1, except that, for the LG products: (A) The following definition is added at the end of Section 1:

1.13 "Variable anti-sweat heater control" means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3. except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be "off" during one test and "on" during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the "on" test will be the result of the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the "on" position (E[on]), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E[ON] = E + (Heater Contribution) [note: called "correction factor" by General Electric]

where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the "off" position.

Heater Contribution n1 = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power = A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
v+ A10 * (Heater Watts at 95%RH)

where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 [degrees] F ambient, and DOE reference temperatures of fresh food average temperature of 45 [degrees] F and freezer average temperature of 5 [degrees] F.

System-loss Factor = 1.3

[FR Doc. 2010–14758 Filed 6–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–024]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Daikin AC (Americas), Inc. (Daikin) From the Department of Energy Residential Central Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) decision and order in Case No. CAC–024. DOE grants a waiver to Daikin from the existing DOE test procedure applicable to residential central air conditioners and heat pumps. The waiver request is specific to the Daikin Altherma air-to-water heat pump with integrated domestic water heating. The test method for central air conditioners and heat pumps contained in 10 CFR part 430, subpart B, appendix M does not include any provisions to account for the operational characteristics of an air-to-water heat pump, or any central air-conditioning heat pump with an integrated domestic hot water component. As a condition of this waiver, Daikin must test and rate its Altherma heat pump products according to the alternate test procedure set forth in this notice.

DATES: This decision and order is effective June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 287–6111. E-mail: *mailto:Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. In this decision and order, DOE grants Daikin a waiver from the applicable residential central air conditioner and heat pump test procedures at 10 CFR part 430, subpart B, appendix M. The waiver applies to certain basic models of the Daikin Altherma system, which consists of an air-to-water heat pump that provides hydronic heating and cooling as well as domestic hot water functions. Daikin must test and rate such products using the alternate test procedure described in this notice. Further, today's decision requires that Daikin may not make any representations concerning the energy efficiency of these products unless such product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and such representations fairly disclose the results of such testing. (42 U.S.C. 6314(d)) Distributors, retailers, and private labelers are held to the same

standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

Issued in Washington, DC, on June 11, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Daikin AC (Americas), Inc. (Daikin) (Case No. CAC–024).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III, which provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part A of Title III includes definitions, test procedures, labeling provisions, energy conservation standards for covered products, and the authority to require information and reports from manufacturers. Further, EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Today's notice involves residential central air conditioning and heat pump products covered under Part A. The test procedure for residential central air conditioners and heat pumps is contained in 10 CFR part 430, subpart B, appendix M.

DOE's regulations for covered products allow a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products, when (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied; if it appears likely that the petition for waiver will be granted; and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On August 27, 2009, Daikin filed a petition for waiver from the test procedures at 10 CFR part 430, subpart B, appendix M, which are applicable to residential central air conditioners and heat pumps, and an application for interim waiver. The Daikin Altherma system consists of an air-to-water heat pump that provides hydronic space heating and cooling as well as domestic hot water functions. It operates either as a split system with the compressor unit outdoors and the hydronic components in an indoors unit, or as a single package configuration in which all system components are combined in a single outdoor unit. In both the single package and the split system configurations, the system can include a domestic hot water supply tank that is located indoors. On December 15, 2009, DOE granted Daikin an interim waiver and published Daikin's petition for waiver. 74 FR 66319. DOE received one comment on the Daikin petition; discussion of and DOE's response to this comment are set forth below.

Assertions and Determinations

Daikin's Petition for Waiver

The test method for central air conditioners and heat pumps contained in 10 CFR subpart B, appendix M does not include any provisions to account for the operational characteristics of an air-to-water heat pump, or a central air-conditioning heat pump with an integrated domestic hot water component. The applicable DOE test method does not account for the Daikin Altherma system's energy performance because the test method does not accurately evaluate the integrated domestic hot water and space conditioning performance, nor does it have any provisions for air-to-water heat pumps. Daikin has proposed using the European standards that are used for testing and rating the Altherma products in Europe. These standards use an energy efficiency ratio (EER) to measure the full load performance of the cooling subsystem; a coefficient of performance (COP) to measure the full load performance of the heating subsystem; and a Seasonal Performance Factor (SPF) to measure the seasonal performance of the combined heating and hot water subsystems. Daikin did not petition to include the performance of the combined cooling and hot water functions in the waiver, nor the stand-alone water heater performance.

The rating parameters EER and COP, although not well-known to the average consumer, are the steady-state efficiency parameters of the DOE test procedure in Appendix M, and are well-known to the domestic HVAC industry. This is not true of the combined performance parameter SPF, defined in European test standard 15316–4–2, "Heating systems in buildings—Method for calculation of system energy requirements and system efficiencies—Part 4–2: Space heating generation systems, heat pump systems," and referenced by Daikin in its petition. SPF is entirely unknown in the U.S., and would be of no value to the U.S. consumer in making purchasing decisions. What would be of value to the consumer is a representation of the Altherma's operating cost. Daikin did not include a discussion of operating cost in its petition for waiver. The European test standard 15316–4–2 does include a methodology for calculating operating cost. However, the methodology includes input parameters, such as meteorological data, design temperatures, and many others that would need to be specified in order to calculate the Altherma's operating cost, and all of these parameters would need to be specified by Daikin and approved by DOE before DOE could allow Daikin to represent the Altherma's operating cost.

There are no domestic test procedures for testing air-to-water heat pumps for space conditioning only, or for integrated space-conditioning and water heater performance. DOE has previously granted waivers to Carrier (55 FR 13607 (April 11, 1990)) and Nordyne (61 FR 11395 (March 20, 1996)) for comparable heat pumps with integrated domestic water heating, but those products were air-to-air, not air-to-water, heat pumps. Daikin did not discuss testing or rating the Altherma products as a water heater only; however, we note that in mild weather, when no space heating or cooling is demanded, the Altherma will function as a heat pump water heater.

One comment on Daikin's petition was received from Carrier Corporation

(Carrier). Carrier asserted that the Altherma should be rated for heating seasonal performance factor (HSPF) and seasonal energy efficiency ratio (SEER), but acknowledged that neither rating could be produced using existing DOE test procedures. Carrier commented that the test procedures should be revised to allow such ratings. However, the purpose of waivers is to address situations in which test procedures do not allow testing and rating until such time as the procedures are revised. Carrier commented that the Altherma should be tested and rated as a water heater with the DOE water heater test procedure. However, Carrier apparently misunderstands the Altherma DHW operation, as it claims the Altherma would function as an electric resistance water heater. Carrier also urged the use of ASHRAE 124–2007, "Methods of Testing for Rating Combination Space-Heating and Water-Heating Appliances," for rating the Altherma as a combined central air-conditioning heat pump and water heater. However, that test procedure does not apply to air-to-water heat pumps and is not incorporated into any DOE test procedure. Carrier commented that the rating tolerances in the relevant European test procedures are different from DOE's tolerances, and that DOE's tolerances should apply. DOE concurs with that comment.

As mentioned above, the Altherma can function as a stand-alone water heater, and will function as such in mild weather when no heating or cooling is demanded. Daikin's petition did not discuss the Altherma's performance as a stand-alone water heater, nor how it would be tested and rated in that mode. If Daikin wants to characterize the Altherma's performance as a stand-alone water heater, Daikin must test and rate it according to the DOE test procedure in 10 CFR part 430, subpart B, appendix E, or petition for a waiver if the Altherma cannot be so tested.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Daikin Petition for Waiver. The FTC staff did not have any objections to issuing a waiver to Daikin.

Conclusion

After careful consideration of all the materials submitted by Daikin, the comment submitted by Carrier, and consultation with the FTC staff, it is ordered that:

(1) Daikin shall not be required to test or rate its Altherma heat pump products on the basis of the currently applicable test procedure under 10 CFR part 430 subpart B, appendix M.

(2) Daikin shall be required to test and rate its Altherma heat pump products according to the alternate test procedure as set forth in paragraph (3) below:

Type	Description	U.S. model name	E.U. equivalent model name
Split Altherma	OD Unit (Split, 3-Ton or 11kW)	ERLQ036BAVJU	ERLQ011BAV3
	OD Unit (Split, 4-Ton or 14kW)	ERLQ048BAVJU	ERLQ014BAV3
	OD Unit (Split, 4.5-Ton or 16kW)	ERLQ054BAVJU	ERLQ016BAV3
Monobloc Altherma	OD Unit (Heat Only, 3-Ton or 11kW)	EDLQ036BA6VJU	EDLQ011BA6V3
	OD Unit (Heat Only, 4-Ton or 14kW)	EDLQ048BA6VJU	EDLQ014BA6V3
	OD Unit (Heat Only, 4.5-Ton or 16kW)	EDLQ054BA6VJU	EDLQ016BA6V3
	OD Unit (Heat Pump, 3-Ton or 11kW)	EBLQ036BA6VJU	EBLQ011BA6V3
	OD Unit (Heat Pump, 4-Ton or 14kW)	EBLQ048BA6VJU	EBLQ014BA6V3
	OD Unit (Heat Pump, 4.5-Ton or 16kW)	EBLQ054BA6VJU	EBLQ016BA6V3
Hydrobox	HB (Heating Only, BUH 3kW)	EKHBH054BA3VJU	EKHBH016BA3V3
	HB (Heating Only, BUH 6kW)	EKHBH054BA6VJU	EKHBH016BA6V3
	HB (Heat Pump, BUH 3kW)	EKHBX054BA3VJU	EKHBX016BA3V3
	HB (Heat Pump, BUH 6kW)	EKHBX054BA6VJU	EKHBX016BA6V3
DHW	Hot Water Tank (50 Gallon or 200L)	EKHWS050BA3VJU	EKHWS200B3V3
	Hot Water Tank (80 Gallon or 300L)	EKHWS080BA3VJU	EKHWS300B3V3
Options	Digital I/O PCB	EKRP1HBAAU	EKRP1HBAA
	Solar Pump Kit	EKSOLHWBAVJU	EKSOLHAV1
	Wired Room Thermostat	EKRTWA	EKRTWA
	Condensate Kit	EKHBDP	EKHBDP

(3) *Alternate Test Procedure*

Daikin shall be required to test the basic models of Altherma products that are explicitly listed above according to:

a. Full Load Performance and Efficiency—The Daikin Altherma shall be tested and rated according to European Standard EN 14511, "Air conditioners, liquid chilling packages and heat pumps with electrically driven compressors for space heating and cooling," except that the test operating and test condition tolerances in Tables 7, 13 and 15 of the DOE test procedure in 10 CFR part 430, subpart B, Appendix M shall apply. Daikin shall rate the Altherma full load heating and cooling performance (not including the DHW contribution) using coefficient of performance (COP) and energy efficiency ratio (EER).

b. The European Standard EN 14511 applies only to testing for COP and EER and does not supersede any DOE requirements in 10 CFR 430.24.

(4) Representations. Daikin may make representations about the energy use of its Altherma heat pump products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above, and such representations fairly disclose the results of such testing. Daikin may not make representations of annual operating cost, or any parameters other than COP and EER for the Altherma's space heating and space cooling functions, respectively.

(5) This waiver shall remain in effect from the date this order is issued, consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics.

Issued in Washington, DC, on June 11, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–14756 Filed 6–17–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–000]

Improving Market and Planning Efficiency Through Improved Software; Notice of Agenda and Procedures for Staff Technical Conference

June 10, 2010.

This notice establishes the agenda and procedures for the staff technical conference to be held on June 23 and June 24, 2010 to discuss issues related to enhanced optimal power flow models and software. The technical conference will be held from 9 a.m. to 5 p.m. e.d.t. on June 23, 2010, and from 9 a.m. to 3:30 p.m. e.d.t. on June 24, 2010 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room. All interested persons are invited to attend, and registration is not required.

The agenda for this conference is attached. The presentations will be technical in nature, and the session times shown on the agenda include approximately 10 minutes for questions or discussion after each presentation. Equipment will be available for computer presentations. Presenters who wish to include comments, presentations, or handouts in the record for this proceeding should file their comments with the Commission. Comments may either be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.*

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For further information about this conference, please contact:

Tom Dautel (Technical Information), Office of Energy Policy and Innovation, (202) 502–6196, *Thomas.Dautel@ferc.gov.*

Eric Krall (Technical Information), Office of Energy Policy and Innovation, (202) 502–6214, *Eric.Krall@ferc.gov.*

Kimberly D. Bose,

Secretary.

Agenda for AD10–12 Staff Technical Conference on Enhanced Power Flow Models

Federal Energy Regulatory Commission

Wednesday, June 23, 2010

9 a.m. Welcome and introduction, Richard O'Neill, FERC.
9:20 a.m. Session A.
- Rick Gonzales, New York ISO, Voltage and Reactive Management.
- Slava Maslennikov, ISO New England, Enhancement of Dispatch by Utilization of Adaptive Transmission Rates.

10:30 a.m. Break.
10:45 a.m. Session B.
- Andy Ott, PJM, Development of Enhanced Generation/Demand Response Control Algorithm.
- Vladimir Brandwajn and Show Chang, ABB, Optimal Power Flow in Energy Markets: Current Practices and Future Directions.

Noon Lunch.
1:15 p.m. Session C.
- David Sun, Alstom, Challenges with Practical Usage of Large-Scale Optimal Power Flow.
- Herminio Pinto, Nexant, AC Optimal Power Flow for Day-Ahead Reactive Planning.

2:25 p.m. Break.
2:40 p.m. Session D.
- Marija Ilic, Carnegie Mellon University and NETSS, Inc., Jeffrey Lang, Massachusetts Institute of Technology, NETSSWorks Software: An Extended AC Optimal Power Flow (AC XOPF) for Managing Available System Resources.

3:40 p.m. Break.
3:50 p.m. Session E.
- Malcolm Metcalfe, Sempa Power Systems, Low-Cost Fast Regulation with Load-Based Regulation Services Network.
- Franz Franchetti, Carnegie Mellon University, Trends in High-Performance Computing for Power Grid Applications.

5 p.m. Day 1 Conclusion, Richard O'Neill, FERC.

Thursday, June 24, 2010

9 a.m. Day 2 Welcome, Richard O'Neill, FERC.
9:20 a.m. Session F.
- Marija Ilic, Carnegie Mellon University and NETSS, Inc., AC Optimal Power Flow and Smart Grids.
- Cong Liu, Argonne National Laboratory, Large-Scale Power Grid Simulation.

10:30 a.m. Break.
10:45 a.m. Session G.
- Sven Leyffer, Argonne National Laboratory, AC Networks and Mixed-Discrete Global Optimization.
- Srinivas Musunuri, AREVA T&D, Enhanced LP–Based Optimal Power Flow for Transmission Operations.

Noon Lunch.
1:15 p.m. Session H.
- Ray Zimmerman, Cornell University, SuperOPF Framework.
- Sandy Aivaliotis, The Valley Group, Dynamic Line Ratings.

2:25 p.m. Break.
2:40 p.m. Session I.
- Herminio Pinto, Nexant, Security-Constrained Economic Dispatch with Post-Contingency Corrective Actions.

3:15 p.m. Day 2 Conclusion, Richard O'Neill, FERC.

[FR Doc. 2010–14720 Filed 6–17–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OAR–2010–0255–201017; FRL–9163–9]

Adequacy Status of the Kentucky Portion of the Huntington-Ashland Tri-State Area 1997 Annual $PM_{2.5}$ Attainment Demonstration Insignificance Finding for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has made an insignificance finding through the transportation conformity adequacy process for directly emitted fine particulate matter ($PM_{2.5}$) and nitrogen oxides (NO_X) emissions as contained in the 1997 $PM_{2.5}$ attainment demonstration for the Kentucky portion of the tri-state Huntington-Ashland nonattainment area. The tri-state Huntington-Ashland 1997 annual $PM_{2.5}$ nonattainment area is comprised of Boyd County, Kentucky; Cabell and Wayne Counties, West Virginia; Lawrence and Scioto Counties, Ohio;

and the partial Counties of Lawrence in Kentucky; Mason in West Virginia; and Adams and Gallia in Ohio. On December 5, 2008, the Commonwealth of Kentucky, through the Division of Air Quality (DAQ), submitted an attainment demonstration for the 1997 annual $PM_{2.5}$ standard for the Kentucky portion of the tri-state Huntington-Ashland area (hereafter referred to as the Ashland Area). As a result of EPA's insignificance finding, the Ashland Area is no longer required to perform regional emissions analyses for either directly emitted $PM_{2.5}$ or NO_X as part of future $PM_{2.5}$ conformity determinations for the 1997 annual $PM_{2.5}$ air quality standard. This finding only relates to the Kentucky portion of the tri-state Huntington-Ashland 1997 $PM_{2.5}$ nonattainment area. In a letter dated October 23, 2009, EPA informed the State of Ohio that regional mobile emissions of direct $PM_{2.5}$ and NO_X are insignificant for transportation conformity purposes as well. That insignificance finding took effect on December 22, 2009. EPA will review the adequacy of the West Virginia submittal in a separate action.

DATES: This insignificance finding for direct $PM_{2.5}$ and NO_X is effective July 6, 2010.

FOR FURTHER INFORMATION CONTACT: Dianna Smith, Environmental Scientist, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Air Quality Modeling and Transportation Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Ms. Smith can also be reached by telephone at (404) 562–9207, or via electronic mail at *smith.dianna@epa.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

SUPPLEMENTARY INFORMATION: This notice is simply an announcement of a finding that EPA has already made. EPA sent a letter to DAQ on March 23, 2010, stating that regional direct $PM_{2.5}$ and NO_X emissions are insignificant from mobile sources as provided in the Kentucky portion of the 1997 annual $PM_{2.5}$ attainment demonstration for the tri-state Huntington-Ashland area. The Commonwealth of Kentucky submitted the 1997 annual $PM_{2.5}$ attainment demonstration for the Ashland Area on December 5, 2008. Ohio and West Virginia provided separate submittals for their portion of this Area and EPA is addressing these submissions in actions separate from today's action. EPA posted the availability of the insignificance finding for the Ashland Area on EPA's Web site on September 8, 2009, as part of the adequacy process, for the purpose of soliciting comments. The comment period for Kentucky's submission ran from September 8, 2009, through October 8, 2009. During EPA's adequacy comment period for Kentucky's submission, no comments were received on the insignificance finding for the Ashland Area. Through this notice, EPA is informing the public of the insignificance finding for direct $PM_{2.5}$ and NO_X for the purpose of implementing transportation conformity in the Ashland Area for the 1997 $PM_{2.5}$ standard. EPA's findings have also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule requires that transportation plans, programs and projects conform to State air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. On March 2, 1999, the District of Columbia Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate.

The criteria by which EPA determines whether a SIP's motor vehicle budget is adequate for transportation conformity purposes are outlined in 40 Code of Federal Regulations (CFR) 93.118(e)(4). The Transportation Conformity Rule in 40 CFR 93.109(k) states that a regional emissions analysis is no longer necessary if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor. A finding of insignificance does not change the requirement for a regional analysis for other pollutants/precursors; the area's obligation to meet other transportation conformity requirements (*i.e.,* other than the regional emissions analysis); and does not change the requirement for hot-spot analysis. (*See* 73 FR 4419, January 24, 2008.) Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the attainment demonstration plan for the Ashland Area. Even if EPA finds the insignificance finding for direct $PM_{2.5}$ and NO_X adequate, the attainment demonstration plan could later be disapproved.

Transportation partners should note this insignificance finding in future transportation conformity determinations. Additionally, while this insignificance finding waives the requirements for regional emissions analyses for direct $PM_{2.5}$ and NO_X for the Ashland Area for the 1997 $PM_{2.5}$ standard, as mentioned above, it does not waive other conformity requirements for the 1997 $PM_{2.5}$ standard for the Ashland Area, nor does it waive transportation conformity requirements for other pollutants/precursors for which the Area may be designated nonattainment or redesignated to attainment with a maintenance plan.

EPA has described the process for determining the adequacy of submitted SIP budgets in a May 14, 1999, memorandum entitled "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA has followed this guidance in making this adequacy determination. This guidance is incorporated into EPA's July 1, 2004, final rulemaking entitled "Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (69 FR 40004).

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

Dated: June 9, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–14774 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OAR–2010–0260–201019; FRL–9164–1]

Adequacy Status of the Alabama Portion (Jackson County) of the Chattanooga, Tennessee Tri-State Area 1997 Annual $PM_{2.5}$ Attainment Demonstration Insignificance Finding for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has made an insignificance finding through the transportation conformity adequacy

process for directly emitted fine particulate matter ($PM_{2.5}$) and nitrogen oxides (NO_X) emissions as contained in the 1997 $PM_{2.5}$ attainment demonstration for the Alabama portion of the tri-state Chattanooga, Tennessee nonattainment area (hereafter referred to as the "Jackson County Area"). On October 14, 2009, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted an attainment demonstration plan for the 1997 annual $PM_{2.5}$ standard for Jackson County, Alabama as part of the tri-state Chattanooga 1997 $PM_{2.5}$ nonattainment area. The tri-state Chattanooga 1997 annual $PM_{2.5}$ nonattainment area is comprised of a portion of Jackson County, Alabama; Catoosa and Walker Counties, Georgia; and Hamilton County, Tennessee. As a result of EPA's finding, the portion of Jackson County within the tri-state Chattanooga 1997 $PM_{2.5}$ nonattainment area is no longer required to perform a regional emissions analysis for either directly emitted $PM_{2.5}$ or NO_X as part of future $PM_{2.5}$ conformity determinations for the 1997 annual $PM_{2.5}$ standard. This finding only relates to the Alabama portion of this Area, and does not relieve the Georgia or Tennessee portions of the tri-state 1997 $PM_{2.5}$ nonattainment area from the requirement of performing the regional emissions analyses for direct $PM_{2.5}$ and NO_X. EPA will review the adequacy of the Georgia and Tennessee submittals with regard to the motor vehicle emission budgets or insignificance findings (if any and if appropriate) in separate actions.

DATES: This insignificance finding for direct $PM_{2.5}$ and NO_X is effective July 6, 2010.

FOR FURTHER INFORMATION CONTACT: Dianna Smith, Environmental Scientist, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Air Quality Modeling and Transportation Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Ms. Smith can also be reached by telephone at (404) 562–9207, or via electronic mail at *smith.dianna@epa.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*

SUPPLEMENTARY INFORMATION: This notice is simply an announcement of a finding that EPA has already made. EPA Region 4 sent a letter to ADEM on March 25, 2010, stating that regional mobile source emissions of direct $PM_{2.5}$ and NO_X emissions are insignificant as provided in the Alabama portion of the 1997 annual $PM_{2.5}$ attainment demonstration for the Jackson County Area submitted on October 14, 2009. EPA posted the availability of the insignificance finding on EPA's Web site on February 16, 2010, as part of the adequacy process, for the purpose of soliciting comments. The comment period ran from February 16, 2010, through March 18, 2010. During EPA's adequacy comment period, no comments were received on the insignificance finding for the Jackson County Area. Through this notice, EPA is informing the public of the insignificance finding for direct $PM_{2.5}$ and NO_X for the purpose of implementing transportation conformity in the Jackson County Area for the 1997 $PM_{2.5}$ standard. EPA's findings have also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. On March 2, 1999, the District of Columbia Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate.

The criteria by which EPA determines whether a SIP's motor vehicle emissions budget is adequate for transportation conformity purposes are outlined in 40 Code of Federal Regulations (CFR) 93.118(e)(4). The Transportation Conformity Rule in 40 CFR 93.109(k) states that a regional emissions analysis is no longer necessary if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor. A finding of insignificance does not change the requirement for a regional analysis for other pollutants/precursors and does not change the requirement for hot-spot analysis. (*See* 73 FR 4419, January 24, 2008.) Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the attainment demonstration plan for the Jackson County Area. Even if EPA finds the insignificance determination adequate, the attainment demonstration plan could later be disapproved.

Transportation partners should note this insignificance finding in future transportation conformity determinations. Additionally, while this insignificance finding waives the requirements for regional emissions analyses for direct $PM_{2.5}$ and NO_X for the Jackson County Area for the 1997 $PM_{2.5}$ standard, as mentioned above, it does not waive other conformity requirements for the 1997 $PM_{2.5}$ standard for the Jackson County Area, nor does it waive transportation conformity requirements for other pollutants/precursors for which the Area may be designated nonattainment or redesignated to attainment with a maintenance plan.

EPA has described the process for determining the adequacy of submitted SIP budgets (which also applies to insignificance determinations) in a May 14, 1999, memorandum entitled "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA has followed this guidance in making this adequacy determination. This guidance is incorporated into EPA's July 1, 2004, final rulemaking entitled "Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (69 FR 40004).

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

Dated: June 8, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–14770 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9163–6]

Draft FY 2011–2015 EPA Strategic Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability, request for public comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the *Draft FY 2011–2015 EPA Strategic Plan (Strategic Plan)* for public review and comment, as part of the periodic update required by the Government Performance and Results Act (GPRA). The Agency's final

Strategic Plan will be submitted to Congress by September 30, 2010. The *Strategic Plan* provides the Agency's long-term direction and strategies to improve environmental and human health over the next five years. For this notice, the EPA is seeking comment from individual citizens, states, tribes, local government, industry, the academic community, non-governmental organizations, and all other interested parties. The Agency is particularly interested in feedback addressing the goal narratives, cross-cutting fundamental strategies, and strategic measures, with a focus on new directions and strategies.

DATES: Comments must be received on or before July 30, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2010–0486, by one of the following methods (electronic submission preferred):

Electronic: Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Fax: ATTN: Vivian Daub, Director, Planning Staff, Fax number: (202) 564–1808.

Mail: ATTN: Vivian Daub, Director, Planning Staff.

Office of Planning, Analysis, and Accountability (Mail Code 2723A), Office of the Chief Financial Officer, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

Important: Please allow a minimum of two weeks from date postmarked to allow ample time for receipt.

FOR FURTHER INFORMATION CONTACT: Vivian Daub, Director, Planning Staff, Office of Planning, Analysis, and Accountability, Office of the Chief Financial Officer *Strategic_Plan@epa.gov.*

Instructions: EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

SUPPLEMENTARY INFORMATION:

Background

The GPRA holds federal agencies accountable for using resources wisely and achieving program results. Specifically, GPRA requires agencies to develop: *Strategic Plans,* which include a mission statement and set out long-term goals, objectives, and strategic measures over a five-year time horizon; *Annual Performance Plans,* which provide annual performance measures toward achieving the goals and objectives set forth in the *Strategic Plan;* and, *Performance and Accountability Reports,* which evaluate an agency's success in achieving the annual performance measures.

The *Draft FY 2011–2015 EPA Strategic Plan* reflects the Administrator's priorities for advancing environmental protection. The *Plan* presents five strategic goals to accelerate protection of the environment and human health and five cross-cutting fundamental strategies for changing the way the Agency works. The five strategic goals are: Taking Action on Climate Change and Improving Air Quality, Protecting America's Waters, Cleaning Up Our Communities, Ensuring the Safety of Chemicals and Preventing Pollution, and Enforcing Environmental Laws. The five cross-cutting fundamental strategies are: Expanding the conversation on environmentalism; working for environmental justice and children's health; advancing science, research, and technological innovation; strengthening state, tribal, and international partnerships; and strengthening EPA's workforce and capabilities. The *Plan* also identifies a suite of strategic measures by which the Agency will hold itself accountable.

Dated: June 3, 2010.

Maryann Froehlich,

Deputy Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. 2010–14649 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8990–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 06/07/2010 Through 06/11/2010.

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100217, Draft Supplement, USFS, MT, Young Dodge Project, Proposed Timber Harvest and Associate Activities, Updated Information on the First 3 Alternatives, Prescribed Burning, Road and Recreation Management, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT, Comment Period Ends: 08/02/2010, Contact: Ron Komac 406–296–2536.

EIS No. 20100218, Final EIS, BR, CA, North Bay Water Recycling Program (NBWRP), (Formerly North San Pablo Bay Restoration and Reuse Project), Proposed to Promote the Expanded Beneficial Use of Recycled Water, North Marin Water District, Napa County, CA, Wait Period Ends: 07/19/

2010, Contact: David White 916–978–5074.

EIS No. 20100219, Draft Supplement, USFS, WY, Upper Green River Area Rangeland Project, Updated Information to the Analyze the Effects of Domestic Livestock Grazing in the Upper Green River Area, Bridger-Teton Forest, Sublette, Teton and Fremont Counties, WY, Comment Period Ends: 08/02/2010, Contact: Dave Booth 307–367–4326.

EIS No. 20100220, Final Supplement, FSA, 00, PROGRAMMATIC—Conservation Reserve Program (CRP), Implement Certain Changes to the CRP as Enacted by Congress in the 2008 Farm Bill, in the United States, Wait Period Ends: 07/19/2010, Contact: Matthew T. Ponish 202–720–6853.

EIS No. 20100221, Draft EIS, NPS, IL, Lincoln Home National Historic Site, General Management Plan, Implementation, Sangamon County, Springfield, IL, Comment Period Ends: 08/16/2010, Contact: Nick Chevance 402–661–1844.

EIS No. 20100222, Draft EIS, USFS, OR, Mill Creek Allotment Management Plans Project, Reauthorization of Grazing Permit on Five Grazing Allotments, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR, Comment Period Ends: 08/02/2010, Contact: Marcy Anderson 541–416–6463.

EIS No. 20100223, Draft EIS, GSA, CA, Calexico West Land Port of Entry in Calexico, Expansion of the Reconfiguration, Implementation, CA, Comment Period Ends: 08/16/2010, Contact: Greg Smith 619–557–6169.

EIS No. 20100224, Final EIS, USACE, CA, Newhall Ranch Resource Management and Development Plan (RMDP) and the Spineflower Conservation Plan (SCP), Implementation, Portion of Santa Clara River Valley, Los Angeles County, CA, Wait Period Ends: 07/19/2010, Contact: Dr. Aaron O. Allen 805–585–2148.

Amended Notices

EIS No. 20100208, Final EIS, USA, VA, Fort Monroe US Army Garrison Base Realignment and Closure (BRAC) 2005 Disposal and Reuse of Surplus Nonreverting Property, Fort Monroe, VA, Wait Period Ends: 07/12/2010, Contact: Bob Ross 703–602–2878.

Revision to FR Notice Published 06/11/2010: Correction to document status from draft to final.

Dated: June 15, 2010.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–14767 Filed 6–17–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 14, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 17, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0853.

Title: Certification by Administrative Authority to Billed Entity Compliance with the Children's Internet Protection Act/ Receipt of Service Confirmation; and Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form.

Form Nos.: FCC Forms 479, 486 and 500.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 45,000 respondents; 45,000 responses.

Estimated Time Per Response: 1 – 1.5 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151 – 154, 201 – 205, 218 – 220, 254, 303(r), 403 and 405.

Total Annual Burden: 62,500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection after this comment period in order to obtain the full three year clearance from the Office of Management and Budget (OMB). The Commission is requesting an extension (no change in the reporting, recordkeeping and/or third party disclosure requirements). There is no change in the Commission's burden estimates since this was submitted to the OMB in 2006.

The purpose of this collection is to ensure that schools and libraries that are eligible to receive discounted Internet

access and internal connections have in place certain Internet safety policies. Libraries receiving Internet access and internal connection services supported by the schools and libraries support mechanism must certify, by completing the FCC Form 486, Receipt of Service Confirmation, the respondents are indicating they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure. Respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service discounts must file FCC Form 486 in order to start the payment process. In addition, all members of a consortium must submit signed certifications to the Billed Entity (using FCC Form 479, Certification by Administrative Authority to Billed Entity Compliance with the Children's Internet Protection Act (CIPA) of each consortium, in language consistent with that adopted on the FCC Form 486. FCC Form 500, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form is used on conjunction with the FCC Form 486 to adjust funding commitments and/or modify the dates for receipt of service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–14786 Filed 6–17–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

June 15, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 17, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0332.

Title: Section 76.614, Cable Television System Regular Monitoring; Section 76.1706, Signal Leakage Logs and Repair Records.

From Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,800 respondents and 5,800 responses.

Estimated Hours per Response: 0.0167–0.5 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 4,062 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 302 and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required for this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1706 requires cable operators shall maintain a log showing the date and location of each leakage source identified pursuant to 47 CFR 76.614, the date on which the leakage was repaired, and the probable cause of the leakage. The log shall be kept on file for a period of two years and shall be made available to authorized representatives of the Commission upon request.

OMB Control Number: 3060–0688.

Title: Abbreviated Cost-of-Service Filing for Cable Network Upgrades.

Form Number: FCC Form 1235.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; State, local or tribal governments.

Number of Respondents and Responses: 50 respondents and 50 responses.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Hours per Response: 10–20 hours.

Total Annual Burden: 750 hours.

Total Annual Costs: None

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required for this collection of information.

Privacy Assessment: No impact(s).

Needs and Uses: FCC Form 1235 is an abbreviated cost of service filing for significant network upgrades that allows cable operators to justify rate increases related to capital expenditures used to improve rate-regulated cable services.

FCC Form 1235 is filed following the end of the month in which upgraded cable services become available and are providing benefits to subscribers. In addition, FCC Form 1235 can be filed for pre-approval any time prior to the upgrade services becoming available to subscribers using projected upgrade costs. If the pre-approval option is exercised, the operator must file the form again following the end of the month in which upgraded cable services become available and are providing benefits to customers of regulated services, using actual costs where applicable.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–14787 Filed 6–17–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, June 22, 2010, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final Rule: Temporary Liquidity Guarantee Program.

Memorandum re: Deposit Insurance Fund Loss, Income and Reserve Ratio Projection Update for the Restoration Plan.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: June 15, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–14906 Filed 6–16–10; 4:15 pm]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: June 23, 2010—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Part of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Fact Finding No. 27: Complaints or Inquiries from Individual Shippers of Household Goods or Private Automobiles

Closed Session

1. Fact Finding Investigation No. 26: Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades—Discussion of the Fact Finding Officer's Interim Report Findings

2. Staff Briefing and Discussion Regarding Passenger Vessel Financial Responsibility Notice of Inquiry Information Collection

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–14939 Filed 6–16–10; 4:15 pm]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10219, CMS–10317, CMS–10069, CMS–367, CMS–10068, CMS–R–13 and CMS–2728]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections 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 functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Healthcare Effectiveness Data and Information Set (HEDIS®) Data Collection for Medicare Advantage; *Use:* Medicare Advantage Organizations (MAOs) and section 1876 cost contracting managed care are required to submit HEDIS® data to CMS on an annual basis. Sections 422.152 and 422.516 of Volume 42 of the Code of Federal Regulations (CFR) specify that Medicare Advantage organizations must submit performance measures as specified by the Secretary of the Department of Health and Human Services and by CMS. These performance measures include HEDIS®. HEDIS® is a widely used set of health plan performance measures utilized by both private and public health care purchasers to promote accountability and to assess the quality of care provided by managed care organizations. HEDIS® is designed for private and public health care purchasers to promote accountability and to assess the quality of care provided by managed care organizations. CMS is committed to the implementation of health care quality assessment in the Medicare Advantage program. In January 1997, CMS began requiring Medicare managed care organizations (MCOs) (these organizations are now called Medicare Advantage organizations or MAOs) to collect and report performance measures from HEDIS® relevant to the Medicare managed care beneficiary population.

The data are used by CMS staff to monitor MAO performance and inform audit strategies, and inform beneficiary choice through their display in CMS' consumer-oriented public compare tools and Web sites. Medicare Advantage organizations use the data for quality

assessment and as part of their quality improvement programs and activities. Quality Improvement Organizations (QIOs) and CMS contractors use HEDIS® data in conjunction with their statutory authority to improve quality of care, and consumers who are making informed health care choices. *Form Number:* CMS–10219 (OMB#: 0938–1028); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 483; *Total Annual Responses:* 483; *Total Annual Hours:* 154,560. (For policy questions regarding this collection contact Lori Teichman at 410–786–6684. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* The Medicare Acute Care Episode Demonstration; *Use:* Medicare's Acute Care Episode (ACE) Demonstration is authorized under Section 646 of the MMA (Pub. L. 108–173) that amends title XVIII (42 U.S.C. 1395) of the Social Security Act. The ACE Demonstration stems from a longstanding need for improved quality of care and decreased costs.

As costs have risen over time, ideas to improve Medicare payment systems and efficiency have been developed. Moving from a cost based payment arrangement to a hospital prospective payment system has dramatically simplified billing and coding procedures and generated important impacts on Medicare savings and quality of care measures. While prospective hospital payments based on diagnosis related groups (DRGs) for acute care was the innovation of the 1980s, the Federal government has taken interest in value-based purchasing (VBP) in recent years. The VBP strategy rests on linking hospital performance to financial incentives. VBP has been heralded as a method to increase efficiency and quality of care while decreasing cost. In addition to its use as a payment system, the VBP strategy allows for performance scoring of hospitals based on the designated VBP quality measures.

In the case of the ACE Demonstration, the test has been designed to address the use of a global payment for an episode of care as an alternative approach to payment under traditional Medicare. The episode of care is defined as the bundle of Part A and Part B services provided during an inpatient stay for Medicare FFS beneficiaries for included Medicare severity-based diagnosis-related groups (MS–DRGs). The ACE Demonstration is limited to health care groups (i.e., physician-hospital organizations—PHOs) with at least one physician group and at least one hospital and that routinely provide care for at least one group of selected orthopedic or cardiac procedures:

- Hip/knee replacement or revision surgery; and/or
- Coronary artery bypass graft (CABG) surgery or cardiac intervention procedure (pace-maker and stent placement).

Evaluation of ACE will reveal whether the use of a bundled payment system will produce savings for Medicare for episodes of care involving the included DRGs. In addition to cost savings, the evaluation will assess changes to quality of care at the demonstration sites; whether or not the payment system creates better collaboration between physicians and facilities leading to higher quality patient care. *Form Number:* CMS–10317 (OMB#: 0938–New); *Frequency:* Occasionally; *Affected Public:* Individuals or households; *Number of Respondents:* 509; *Total Annual Responses:* 509; *Total Annual Hours:* 763.5. (For policy questions regarding this collection contact Jesse Levy at 410–786–6600. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Waiver Demonstration Application; *Use:* The currently approved application has been used for several congressionally mandated and Administration high priority demonstrations. The standardized proposal format is not controversial and will reduce burden on applicants and reviewers. Responses are strictly voluntary. The standard format will enable CMS to select proposals that meet CMS objectives and show the best potential for success. *Form Number:* CMS–10069 (OMB#: 0938–0880); *Frequency:* Once; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 75; *Total Annual Responses:* 75; *Total Annual Hours:* 6,000. (For policy questions regarding this collection contact Diane Ross at 410–786–1169. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Program Monthly and Quarterly Drug Reporting Format; *Use:* In order for payment to be made under Medicaid, the drug labeler must complete and sign a drug rebate agreement and fill in the information on the related documents. The Patient Protection and Affordable Care Act of 2010 added two new data elements to potentially be reported by manufacturers. In addition, the Food and Drug Administration has informed us that "DESI" is now obsolete; therefore, we are replacing it with a more appropriate "rebate eligibility code" that will more accurately describe how a product is eligible for coverage under the drug rebate program. *Form Number:* CMS–367 (OMB#: 0938–0578); *Frequency:* Monthly and Quarterly; *Affected Public:* Private Sector: Business or other for-profits; *Number of Respondents:* 580; *Total Annual Responses:* 9,280; *Total Annual Hours:* 137,344. (For policy questions regarding this collection contact Samone Angel at 410–786–1123. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Beneficiary Customer Service Feedback Survey; *Use:* The Centers for Medicare & Medicaid Services (CMS) stresses a continuing need for setting customer service goals that include providing accurate, timely, and relevant information to its customers. With these goals in mind, the Division of Medicare Ombudsman Assistance (DMOA) needs to periodically survey its customers that correspond with CMS to ensure that the needs of Medicare beneficiaries are being met. This survey will be used to measure overall satisfaction of the customer service that the DMOA provides to Medicare beneficiaries and their representatives. The need for this previously OMB approved information collection is to further meet the customer service goals that the CMS has established and to continue to create a rapport within the Medicare community. *Form Number:* CMS–10068 (OMB#: 0938–0894); *Frequency:* Quarterly; *Affected Public:* Individuals and Households; *Number of Respondents:* 2,242; *Total Annual Responses:* 2,242; *Total Annual Hours:* 224. (For policy questions regarding this collection contact Nancy Conn at 410–786–8374. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Conditions of Coverage for Organ Procurement Organizations and Supporting Regulations in 42 CFR, Sections 486.301–.348; *Use:* Section 1138(b) of the Social Security Act, as added by section 9318 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), sets forth the statutory qualifications and requirements that OPOs must meet in order for the costs of their services in procuring organs for transplant centers to be reimbursable

under the Medicare and Medicaid programs. An OPO must be certified and designated by the Secretary as an OPO and must meet performance-related standards prescribed by the Secretary. The corresponding regulations are found at 42 CFR Part 486 (Conditions for Coverage of Specialized Services Furnished by Suppliers) under subpart G (Requirements for Certification and Designation and Conditions for Coverage: Organ Procurement Organizations).

Since each OPO has a monopoly on organ procurement within its donation service area, CMS must hold OPOs to high standards. Collection of this information is necessary for CMS to assess the effectiveness of each OPO and determine whether it should continue to be certified as an OPO and designated for a particular donation service area by the Secretary or replaced by an OPO that can more effectively procure organs within the donation service area. *Form Number:* CMS–R–13 (OMB#: 0938–0688); *Frequency:* Occasionally; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 79; *Total Annual Responses:* 79; *Total Annual Hours:* 15,178. (For policy questions regarding this collection contact Diane Corning at 410–786–8486. For all other issues call 410–786–1326.)

7. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Medical Evidence Report Medicare Entitlement and/or Patient Registration; *Use:* The End Stage Renal Disease (ESRD) Medical Evidence Report is completed for all ESRD patients either by the first treatment facility or by a Medicare-approved ESRD facility when it is determined by a physician that the patient's condition has reached that stage of renal impairment that a regular course of kidney dialysis or a kidney transplant is necessary to maintain life. The data reported on the CMS–2728 is used by the Federal Government, ESRD Networks, treatment facilities, researchers and others to monitor and assess the quality and type of care provided to end stage renal disease beneficiaries. The data collection captures the specific medical information required to determine the Medicare medical eligibility of End Stage Renal Disease claimants. *Form Number:* CMS–2728 (OMB#: 0938–0046); *Frequency:* Occasionally; *Affected Public:* Individuals or households; *Number of Respondents:* 100,000; *Total Annual Responses:* 100,000; *Total Annual Hours:* 75,000. (For policy questions regarding this collection contact Connie Cole at 410–786–0257. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by August 17, 2010:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 15, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–14781 Filed 6–17–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10179, CMS–R–234, CMS–2540–10, CMS–10108, CMS–10315, CMS–10302, CMS–2744 and CMS–2746]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections 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; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. T*ype of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Requests by Hospitals for an Alternative Cost-to-Charge Ratio. *Use:* Section 1886(d)(5)(A) of the Act provides for additional Medicare payments to Inpatient Prospective Payment System (IPPS) hospitals for cases that incur extraordinarily high costs. To qualify for outlier payments, a case must have costs above a predetermined threshold amount (a dollar amount by which the estimated cost of a case must exceed the Medicare payment). Hospital-specific cost-to-charge ratios are applied to the covered charges for a case to determine the estimated cost of the case. In general, additional outlier payments for eligible cases are made based on a marginal cost factor of 80 percent, i.e. a fixed percentage of the costs. Therefore, if the estimated cost of the case exceeds the Medicare payment for that discharge plus the outlier threshold, generally Medicare will pay the hospital 80 percent of the excess amount. The outlier threshold is updated annually at the beginning of the Federal Fiscal Year. *Form Number:* CMS–10179 (OMB#: 0938–1020); *Frequency:* Occasionally; *Affected Public:* Private Sector and Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 18; *Total Annual Hours:* 144. (For policy questions regarding this collection contact Michael Treitel at 410–786–4552. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Subpart D—Private Contracts and Supporting Regulations contained in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, and 405.455. *Use:* Section 4507

of Balancing Budget Act (BBA) 1997 amended section 1802 of the Social Security Act to permit certain physicians and practitioners to opt-out of Medicare and to provide through private contracts services that would otherwise be covered by Medicare. Under such contracts the mandatory claims submission and limiting charge rules of section 1848(g) of the Act would not apply. Subpart D and the Supporting Regulations contained in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, and 405.455, counters the effect of certain provisions of Medicare law that, absent section 4507 of BBA 1997, preclude physicians and practitioners from contracting privately with Medicare beneficiaries to pay without regard to Medicare limits. *Form Number:* CMS–R–234 (OMB#: 0938–0730); *Frequency:* Biennially; *Affected Public:* Private Sector and Business or other for-profits; *Number of Respondents:* 26,820; *Total Annual Responses:* 26,820; *Total Annual Hours:* 7,197. (For policy questions regarding this collection contact Fred Grabau at 410–786–0206. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility Health Care Complex Cost Report. *Use:* Providers of services participating in the Medicare program are required under sections 1815(a), and 1861(v)(1)(A) of the Social Security Act to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. The CMS–2540–10 cost report is needed to determine the amount of reimbursement that is due to these providers furnishing medical services to Medicare beneficiaries.

CMS is requesting review and approval of revisions made to the Skilled Nursing Facility (SNF) Cost Report FORM CMS–2540–10, (for cost reporting periods beginning on or after December 1, 2010) which replaces the existing FORM CMS 2540–96. Revisions made to update the forms currently in use are incorporated within this request for approval. Refer to the supporting documents for a list of revision to the cost reporting forms. *Form Number:* CMS–2540–10 (OMB#: 0938–0463); *Frequency:* Yearly; *Affected Public:* Private Sector and Business or other for-profits; *Number of Respondents:* 15,037; *Total Annual Responses:* 15,037; *Total Annual Hours:* 2,706,660. (For policy questions regarding this collection contact Edwin Gill at 410–786–4525. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Managed Care Regulations for 42 CFR 438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.204, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.604, 437.710, 438.722, 438.724, and 438.810; *Use:* These information collection requirements implement regulations that allow States greater flexibility to implement mandatory managed care program, implement new beneficiary protections, and eliminate certain requirements viewed by State agencies as impediments to the growth of managed care programs. Information collected includes information about managed care programs, grievances and appeals, enrollment broker contracts, and managed care organizational capacity to provide health care services. *Form Number:* CMS–10108 (OMB#: 0938–0920); *Frequency:* Reporting: Occasionally; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 39,114,558; *Total Annual Responses:* 4,640,344; *Total Annual Hours:* 3,930,093.5. (For policy questions regarding this collection contact Angela Garner at 410–786–7062. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Patient Safety Survey Under the 9th Scope of Work: Nursing Home in Need (NHIN). *Use:* The Centers for Medicare & Medicaid Services (CMS) is requesting OMB clearance for the Nursing Homes in Need (NHIN) Survey. The NHIN is a component of the Patient Safety Theme of the Quality Improvement Organization (QIO) Program's 9th Scope of Work (SOW). The statutory authority for this scope of work is found in Part B of Title XI of the Social Security Act (the Act) as amended by the Peer Review Improvement Act of 1982. The Act established the Utilization and Quality Control Peer Review Organization Program, now known as the Quality Improvement Organization (QIO) Program.

The QIO in each State will provide special technical assistance to a small number of nursing homes in need of assistance with quality improvement efforts. This special technical assistance will be for the QIO to conduct a root cause analysis (RCA) with one nursing home in its state per year (three over three years). Under this component, it is expected that within the first quarter of the contract period, CMS will assign one nursing home to each QIO. The determination of which nursing homes are eligible under this component will be made by CMS. Some of these facilities may meet criteria for Special Focus Facilities (SFF). The intent of this component is that each State QIO will work with three nursing homes over the three-year contract period; these assignments are expected to be spaced out so that each State QIO will get one nursing home assigned approximately every 12 months.

The NHIN Survey is a new information collection to be used by CMS to obtain information on nursing home satisfaction with technical assistance strategies delivered as a component of the NHIN. The NHIN Survey will be a census of 53 nursing homes working with their respective QIOs. The survey will be conducted one time for each of the nursing homes assisted in the first two years under the 9th SOW and it will be conducted twice with nursing homes assisted in the third year. The information collected through this survey will allow CMS to help focus the NHIN task to maximize the benefit to participating nursing homes. The NHIN Survey will be administered via telephone by trained and experienced interviewers. Responses will be entered into a pre-programmed Computer-Assisted Telephone Interviewing (CATI) interface.

The NHIN Survey will include questions to determine if the QIO has conducted a root cause analysis and developed an action plan. These will be followed by questions about their satisfaction with the QIO and their perceived value of the QIO's assistance. The NHIN Survey will address the following:

- Background information;
- Current work—information and assessment;
- Satisfaction with QIOs;
- Value of QIO assistance;
- Sources of information; and
- Respondent comments.

All survey protocol and correspondence will be translated into Spanish and bi-lingual telephone interviewers will be used as needed. *Form Number:* CMS–10315 (OMB#: 0938–New); *Frequency:* Occasionally; *Affected Public:* Businesses and other for-profit and not-for-profit institutions; *Number of Respondents:* 53; *Total Annual Responses:* 106; *Total Annual Hours:* 17.5 hours (years 1 and 2), 35 hours (year 3). (For policy questions regarding this collection contact Bob Kambic 410–786–1515. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of*

Information Collection: Collection Requirements for Compendia for Determination of Medically-accepted Indications for Off-label Uses of Drugs and Biologicals in an Anti-cancer Chemotherapeutic Regimen *Use:* Congress enacted the Medicare Improvement of Patients and Providers Act (MIPPA). Section 182(b) of MIPPA amended Section 1861(t)(2)(B) of the Social Security Act (42 U.S.C. 1395x(t)(2)(B)) by adding at the end the following new sentence: 'On and after January 1, 2010, no compendia may be included on the list of compendia under this subparagraph unless the compendia has a publicly transparent process for evaluating therapies and for identifying potential conflicts of interest.' We believe that the implementation of this statutory provision that compendia have a "publicly transparent process for evaluating therapies and for identifying potential conflicts of interests" is best accomplished by amending 42 CFR 414.930 to include the MIPPA requirements and by defining the key components of publicly transparent processes for evaluating therapies and for identifying potential conflicts of interests.

All currently listed compendia will be required to comply with these provisions, as of January 1, 2010, to remain on the list of recognized compendia. In addition, any compendium that is the subject of a future request for inclusion on the list of recognized compendia will be required to comply with these provisions. No compendium can be on the list if it does not fully meet the standard described in section 1861(t)(2)(B) of the Act, as revised by section 182(b) of the MIPPA. *Form Number:* CMS–10302 (OMB#: 0938–1078); *Frequency:* Reporting, Recordkeeping and Third-party disclosure; *Affected Public:* Business and other for-profits and Not-for-profit institutions; *Number of Respondents:* 845; *Total Annual Responses:* 900; *Total Annual Hours:* 5,135. (For policy questions regarding this collection contact Brijet Burton at 410–786–7364. For all other issues call 410–786–1326.)

7. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Medical Information Facility Survey; *Form Number:* CMS–2744 (OMB#: 0938–0447); *Use:* The End Stage Renal Disease (ESRD) Medical Information Facility Survey form (CMS–2744) is completed annually by Medicare-approved providers of dialysis and transplant services. The CMS–2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients. The information is used to assess and evaluate the local, regional and national levels of medical and social impact of ESRD care and is used extensively by researchers and suppliers of services for trend analysis. The information is available on the CMS Dialysis Facility Compare website and will enable patients to make informed decisions about their care by comparing dialysis facilities in their area. *Frequency:* Yearly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 5,465; *Total Annual Responses:* 5,465; *Total Annual Hours:* 43,720. (For policy questions regarding this collection contact Connie Cole at 410–786–0257. For all other issues call 410–786–1326.)

8. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification P.L. 95–292; 42 CFR 405.2133, 45 CFR 5–5b; 20 CFR Parts 401 and 422E *Use:* The ESRD Death Notification (CMS–2746) is completed by all Medicare-approved ESRD facilities upon the death of an ESRD patient. Its primary purpose is to collect fact of death and cause of death of ESRD patients. Certain other identifying information (e.g., name, Medicare claim number, and date of birth) is required for matching purposes. Federal regulations require that the ESRD Networks examine the mortality rates of every Medicare-approved facility within its area of responsibility. The Death Form provides the necessary data to assist the ESRD Networks in making decisions that result in improved patient care and in cost-effective distribution of ESRD resources. The data is used by the ESRD Networks to verify facility deaths and to monitor facility performance. *Form Number:* CMS–2746 (OMB#: 0938–0448); *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 5,173; *Total Annual Responses:* 82,768; *Total Annual Hours:* 41,384. (For policy questions regarding this collection contact Connie Cole at 410–786–0257. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections 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: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: June 15, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–14780 Filed 6–17–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0083]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 19, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0339. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr.,

P150—400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed—(OMB Control Number 0910–0339)—Extension

This information collection was established because epidemiological evidence gathered in the United Kingdom suggested that bovine spongiform encephalopathy (BSE), a progressively degenerative central nervous system disease, is spread to ruminant animals by feeding protein derived from ruminants infected with BSE. This regulation places general requirements on persons that manufacture, blend, process, and distribute products that contain or may contain protein derived from mammalian tissue, and feeds made from such products.

In the **Federal Register** of February 26, 2010 (75 FR 8959), FDA published a 60-day notice requesting public comment on the proposed collection of information. In response, FDA received one comment. This comment was outside the scope of the four topics discussed in the 60-day notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
589.2000(e)(1)(iv)	400	1	400	14	5,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 14, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–14813 Filed 6–17–10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0267]

Agency Information Collection Activities; Proposed Collection; Comment Request; Survey on Consumers' Emotional and Cognitive Reactions to Food Recalls

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey on Consumers' Emotional and Cognitive Reactions to Food Recalls.

DATES: Submit either electronic or written comments on the collection of information by August 17, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey on Consumers' Emotional and Cognitive Reactions to Food Recalls—21 U.S.C. 393(d)(2)(C) (OMB Control Number 0910–NEW)

I. Background

The proposed "Survey on Consumers' Emotional and Cognitive Reactions to Food Recalls" will be conducted under a cooperative agreement between the Joint Institute for Food Safety and Applied Nutrition (JIFSAN) and the Center for Risk Communication Research at the University of Maryland. JIFSAN was established in 1996 and is a public and private partnership between FDA and the University of Maryland. The Center for Risk Communication Research will design and administer the study.

The proposed study will assess consumers' emotional and cognitive recollection of certain food recalls and gauge how these recollections affect their current perceptions about food recalls and their inclination to adhere to future recommended food recall behaviors. Existing data show that many consumers do not take appropriate protective actions during a foodborne illness outbreak or food recall (Refs. 1

and 2). For example, 41 percent of U.S. consumers say they have never looked for any recalled product in their home (Ref. 2). Conversely, some consumers overreact to the announcement of a foodborne illness outbreak or food recall. In response to the 2006 fresh, bagged spinach recall which followed a multistate outbreak of *Escherichia coli* O157: H7 infections (Ref. 3), 18 percent of consumers said they stopped buying other bagged, fresh produce because of the spinach recall (Ref. 1).

Research shows that emotion plays a large role in decisionmaking, and that individuals may not be conscious of its effects on their behavior (Ref. 4). For example, when people are angry they are likely to place blame, take action, and want justice to be served (Ref. 5). If a particular food recall engenders widespread anger and the anger is coupled with behavior that is less than desirable from a food safety or nutritional standpoint, it is possible that anger will be the lens through which future food recall situations are viewed, thus resulting in similar undesirable behaviors. Findings from this study will help FDA understand the emotional response to food recalls. This will help FDA to design more effective consumer food recall messages during and after a recall.

FDA conducts research and educational and public information programs relating to food safety under its broad statutory authority, set forth in section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2)), to protect the public health by ensuring that foods are "safe, wholesome, sanitary, and properly labeled," and in section 903(d)(2)(C), to conduct research relating to foods, drugs, cosmetics, and devices in carrying out the act.

FDA plans to survey U.S. consumers using a Web-based panel of U.S. households to collect information on consumers' cognitive and emotional reaction to food recalls. The survey will query consumers on their recollection of food recalls within the past 5 years; attitude toward recalled foods; knowledge about particular food recalls; behavior during the food recall; assessment and appraisals of susceptibility, severity, satisfaction, and self-efficacy.

The data will be collected using an online survey. A pool of 10,000 consumers from a Web-based consumer panel will be screened for eligibility based on age (18+ years) and familiarity with recent food recalls. One thousand of those screened consumers will be randomly selected to participate in the survey. The results of the survey will not be used to generate population estimates.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener	10,000	1	10,000	.006	60
Pre-test	40	1	40	.167	7
Survey	1,000	1	1,000	.167	167
Total	11,040	1	11,040		234

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Ten thousand members of a Web-based consumer panel will be screened. We estimate that it will take a respondent 20 seconds (.006 hours) to complete the screening questions, for a total of 60 hours. We will conduct a pre-test of the survey with 40 respondents; we estimate that it will take a respondent 10 minutes (.167 hours) to complete the pre-test, for a total of 7 hours. One thousand (1,000) respondents will complete the survey. We estimate that it will take a respondent 10 minutes (.167 hours) to complete the survey, for a total of 167 hours. Thus, the total estimated burden is 234 hours.

II. References

1. Cuite, C., S. Condry, M. Nucci, et al., "Public Response to the Contaminated Spinach Recall of 2006," Publication number RR–0107–013, New Brunswick, NJ: Rutgers, the State University of New Jersey, Food Policy Institute, 2007.

2. Hallman, W., C. Cuite, and N. Hooker, "Consumer Responses to Food Recalls: 2009 National Survey Report," Publication number RR–0109–018, New Brunswick, NJ: Rutgers, the State University of New Jersey, Food Policy Institute, 2009.

3. Acheson, D., "Outbreak of *Escherichia coli* 0157 Infections Associated With Fresh Spinach—United States, August-September 2006," 2007 (*http://first.fda.gov/cafdas/documents/Acheson_Spinach_Outbreak_2006_FDA_pres.ppt*).

4. Han, S., J. S. Lerner, and D. Keltner, "Feelings and Consumer Decision Making: The Appraisal-Tendency Framework," *Journal of Consumer Psychology*, 17(3) 158–168, 2007.

5. Lazurus, R. S., "Emotion and Adaptation," New York: Oxford University Press, 1991.

Dated: June 14, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–14815 Filed 6–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0182]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 19, 2010.

ADDRESSES: To ensure that comments on the information collection are received,

OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0354. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products—(OMB Control Number 0910–0354)—Extension

FDA regulations in part 123 (21 CFR part 123) mandate the application of hazard analysis and critical control point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (a)(4)).

Certain provisions in part 123 require that processors and importers of seafood collect and record information. The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (e.g., the values for processing times, temperatures, acidity, etc., as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided.

HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to be made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and on the nature of the equipment or instruments required to monitor critical control points. The burden estimate in table 1 of this document includes only those collections of information under the seafood HACCP regulations that are not already required under other statutes and regulations. The estimate also does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (§ 1240.60 (21 CFR 1240.60)) is a customary and usual practice among seafood processors. Consequently, the estimates in table 1 account only for information collection and recording requirements attributable to part 123. Respondents to this collection of information include processors and importers of seafood.

In the **Federal Register** of April 9, 2010 (75 FR 18211), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section[2]	No. of Recordkeepers	Annual Frequency of Recordkeeping[3]	Total Annual Records	Hours per Record[4]	Total Hours
123.6(a),(b), and (c)	50	1	50	16.00	800
123.6(c)(5)	15,000	4	60,000	0.30	18,000
123.8(a)(1) and (c)	15,000	1	15,000	4.00	60,000
123.12(a)(2)(ii)	4,100	80	328,000	0.20	65,600
123.6(c)(7)	15,000	280	4,200,000	0.30	1,260,000
123.7(d)	6,000	4	24,000	0.10	2,400
123.8(d)	15,000	47	705,000	0.10	70,500
123.11(c)	15,000	280	4,200,000	0.10	420,000
123.12(c)	4,100	80	328,000	0.10	32,800
123.12(a)(2)	41	1	41	4.00	164
Total					1,930,264

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] These estimates include the information collection requirements in the following sections: § 123.16—Smoked Fish—process controls (see § 123.6(b)); § 123.28(a)—Source Controls—molluscan shellfish (see § 123.6(b)); § 123.28(c) and (d)—Records—molluscan shellfish (see § 123.6(c)(7)).

[3]Based on an estimated 280 working days per year.
[4]Estimated average time per 8-hour workday unless one-time response.

FDA bases this hour burden estimate on its experience with the application of HACCP principles in food processing. Further, the burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry. The hour burden of HACCP recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the size of the facility and complexity of the HACCP control scheme (i.e., the number of products and the number of hazards controlled); the daily frequency that control points are monitored and values recorded; and also on the extent that data recording time and cost are minimized by the use of automated data logging technology. The burden estimate does not include burden hours for activities that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (§ 1240.60) is a customary and usual practice among seafood processors.

Based on its records, FDA estimates that there are 15,000 processors and 4,100 importers. FDA estimates that 50 processors will undertake the initial preparation of a hazard analysis and HAACP plan (§ 123.6(a),(b), and (c)). FDA estimates the burden for the initial preparation of a hazard analysis and HAACP plan to be 16 hours per processor for a total burden of 800 hours. FDA estimates that all processors (15,000 processors) will undertake and keep records of 4 corrective action plans (§ 123.6(c)(5)) for a total of 60,000 records. FDA estimates the burden for the preparation of each record to be 0.30 hours for a total burden of 18,000 hours.

FDA estimates that all processors (15,000 processors) will annually reassess their hazard analysis and HACCP plan (§ 123.8(a)(1) and (c)). FDA estimates the burden for the reassessment of the hazard analysis and HAACP plan to be 4 hours per processor for a total burden of 60,000 hours.

FDA estimates that all importers (4,100 importers) will take affirmative steps to verify compliance of imports and prepare 80 records of their verification activities (§ 123.12(a)(2)(ii)) for a total of 328,000 records. FDA estimates the burden for the preparation of each record to be 0.20 hours for a total burden of 65,600 hours.

FDA estimates that all processors (15,000 processors) will document the monitoring of critical control points (§ 123.6(c)(7)) at 280 records per processor for a total of 4,200,000 records. FDA estimates the burden for the preparation of each record to be 0.30 hours for a total burden of 1,260,000 hours.

FDA estimates that 40 percent of all processors (6,000 processors) will maintain records of any corrective actions taken due to a deviation from a critical limit (§ 123.7(d)) at 4 records per processor for a total of 24,000 records. FDA estimates the burden for the preparation of each record to be 0.10 hours for a total burden of 2,400 hours.

FDA estimates that all processors (15,000 processors) will maintain records of the calibration of process-monitoring instruments and the performing of any periodic end-product and in-process testing (§ 123.8(d)) at 47 records per processor for a total of 705,000 records. FDA estimates the burden for the preparation of each record to be 0.10 hours for a total burden of 70,500 hours.

FDA estimates that all processors (15,000 processors) will maintain sanitation control records (§ 123.11(c)) at 280 records per processor for a total of 4,200,000 records. FDA estimates the burden for the preparation of each record to be 0.10 hours for a total burden of 420,000 hours.

FDA estimates that all importers (4,100 importers) will maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123 (§ 123.12(c)). FDA estimates that 80 records will be prepared per importer for a total of 328,000 records. FDA estimates the burden for the preparation of each record to be 0.10 hours for a total burden of 32,800 hours.

FDA estimates that 1 percent of all importers (41 importers) will require new written verification procedures to verify compliance of imports (§ 123.12(a)(2)). FDA estimates the burden for preparing the new procedures to be 4 hours per importer for a total burden of 164 hours.

Dated: June 14, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–14817 Filed 6–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; National Institute of Diabetes and Digestive and Kidney Diseases Information Clearinghouses Customer Satisfaction Survey

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH), is giving public notice that the agency proposes to request reinstatement of an information collection activity for which approval expired on February 28, 2010.

Proposed Collection

Title: NIDDK Information Clearinghouses Customer Satisfaction Survey. *Type of Information Requested:* Reinstatement, with change, of a previously approved collection for which approval has expired. The OMB control number 0925–0480 expired on February 28, 2010. *Need and Use of Information Collection:* NIDDK is conducting a survey to assess the efficiency and effectiveness of services provided by NIDDK's three clearinghouses: The National Diabetes Information Clearinghouse (NDIC); the National Digestive Diseases Information Clearinghouse (NDDIC); and the National Kidney and Urologic Diseases Information Clearinghouse (NKUDIC). The survey responds to Executive Order 12821, "Setting Customer Service Standards," which requires agencies and departments to identify and survey their "customers to determine the kind and quality of service they want and their level of satisfaction with existing services." *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; business and for profit organizations; not-for-profit agencies. *Type of Respondents:* Physicians, health care professionals, patients, family and friends of patients.

The annual reporting burden is as follows: Estimated number of respondents: 7,079; estimated number of responses per respondent: 1; estimated average burden hours per response: 0.025; and estimated total annual burden hours requested: 177. The

annualized cost to respondents is estimated at $3,793.00. There are no capital costs to report. There are no operating or maintenance costs to report.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, *Attention:* Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection reports and instrument, contact Kathy Kranzfelder, Director, NIDDK Office of Communications and Public Liaison, Building 31, Room 9A06, MSC2560, Bethesda, MD 20852 or e-mail your request, including your address to: *KranzfelderK@mail.nih.gov.* To request more information on the proposed project or to obtain a copy of the data collection reports and instrument, contact Kathy Kranzfelder, Director, NIDDK Office of Communications and Public Liaison, Building 31, Room 9A06, MSC2560, Bethesda, MD 20852. You may also submit comment and data by electronic mail (e-mail) at *KranzfelderK@mail.nih.gov.*

Dated: June 14, 2010.

Lynell Nelson,

NIDDK Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–14793 Filed 6–17–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2008–E–0268 and FDA–2008–E–0267]

Determination of Regulatory Review Period for Purposes of Patent Extension; BYSTOLIC; U.S. Patent Nos. 5,759,580 and 6,545,040

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BYSTOLIC and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product BYSTOLIC (nebivolol hydrochloride). BYSTOLIC is indicated for the treatment of hypertension. Subsequent to this approval, the Patent and Trademark Office received two patent term restoration applications for BYSTOLIC (U.S. Patent Nos. 5,759,580 and 6,545,040) from Forest Laboratories, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibilities for patent term restoration. In a letter dated June 10, 2008, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of BYSTOLIC represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for BYSTOLIC is 6,790 days. Of this time, 5,463 days occurred during the testing phase and 1,327 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under subsection 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (U.S.C. 355 (i)) involving this drug product became effective*: May 17, 1989. The applicant claims July 6, 2000, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND originally became effective on May 17, 1989, which was 30 days after FDA receipt of the original IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: April 30, 2004. The applicant claims April 29, 2004, as the date the new drug application (NDA) for BYSTOLIC (NDA 21–742) was initially submitted. However, FDA records indicate that NDA 21–742 was submitted on April 30, 2004.

3. The date the application was approved: December 17, 2007. FDA has verified the applicant's claim that NDA 21–742 was approved on December 17, 2007. This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,828 days of patent term extension for U.S. Patent No. 5,759,580 and 619 days of patent term extension for U.S. Patent No. 6,545,040.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 17, 2010. Furthermore, any interested person may petition FDA for a determination

regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 15, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 10, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–14814 Filed 6–17–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): Cooperative Agreement Program for the National Academic Centers of Excellence in Youth Violence Prevention (U01), Funding Opportunity Announcement (FOA) CE10–004, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates: 8 a.m.–5 p.m., July 22, 2010 (Closed). 8 a.m.–5 p.m., July 23, 2010 (Closed).

Place: Embassy Suites Atlanta—Buckhead, 3285 Peachtree Road, NE., Atlanta, Georgia 30305, Telephone: 404–261–7733.

Status: The meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Cooperative Agreement Program for the National Academic Centers of Excellence in Youth Violence Prevention (U01), FOA CE10–004."

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: J. Felix Rogers, Ph.D., 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 10, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–14772 Filed 6–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0295]

Web-Based Public Meeting To Discuss Issues Related to the Development of an Enforcement Action Plan; Request for Data, Information, and Views

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of Web-based public meeting; request for data, information, and views.

SUMMARY: The Food and Drug Administration (FDA), Center for Tobacco Products is announcing that it is hosting a Web-based public meeting to discuss issues regarding the development of an enforcement action plan to enforce restrictions on promotion and advertising of menthol and other cigarettes to youth, including youth in minority communities. FDA is seeking participation in the Web-based public meeting and data, information, and views from all interested parties, including, but not limited to, public health organizations, minority community groups and leaders, other stakeholders with demonstrated expertise and experience in serving minority communities, groups serving youth, patient groups, advertising agencies, the regulated industry, and other interested parties. This Web-based public meeting and the data, information, and views we receive are intended to help FDA in developing an enforcement action plan. FDA is seeking input on a number of specific issues, but is interested in other pertinent information as well.

DATES: The Web-based public meeting will be held on June 30, 2010, from 9 a.m. to 5 p.m. EDT. Persons interested in participating in the Web-based public meeting must submit written or electronic registration by close of business on June 23, 2010. Submit written and electronic data, information, and views by August 2, 2010.

ADDRESSES: Submit data, information, and views electronically to *http://www.regulations.gov*. Submit written data, information, and views to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic registration to *CTPCompliance@fda.hhs.gov*. Submit written registration to Anthony W. Lee, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Anthony W. Lee, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373, email: *AnthonyW.Lee@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Public Law 111–31; 123 Stat. 1776) was enacted on June 22, 2009, providing FDA with the authority to regulate tobacco products in order to protect the public health generally and to reduce tobacco use by minors. Tobacco products are responsible for more than 440,000 deaths each year in the United States (Ref. 1). In enacting the Tobacco Control Act, Congress found, among other things, that the use of tobacco products by children is a pediatric disease and virtually all new users of tobacco products are under the minimum legal age to purchase such products (sections 2(1) and (4) of the Tobacco Control Act). Advertising, marketing, and promotion of tobacco products have been "especially directed to attract young persons to use tobacco products, and these efforts have resulted in increased use of such products by youth" (section 2(15) of the Tobacco Control Act).

Additionally, the rates of tobacco use and tobacco-related mortality are higher among certain racial and ethnic groups, including American Indian and Alaska Natives, and African-American men. As the National Cancer Institute (NCI) noted in Monograph 19, "[t]argeting of various population groups—including * * * specific racial and ethnic

populations * * * has been strategically important to the tobacco industry." (Ref. 2).

The first Surgeon General's Report to address the tobacco industry's history of targeting its marketing to minority communities was published in 1998 (Ref. 3). Additionally, studies from the early 1990s document that outdoor tobacco advertising was disproportionately targeted to young people and to minority communities (Refs. 4 and 5). A longitudinal study conducted from 1990 to 1994 in four types of Los Angeles ethnic neighborhoods found that, "[c]ompared with White neighborhood thoroughfares, African American and Hispanic neighborhoods contained a greater tobacco ad density, and all minority neighborhoods contained greater tobacco ad concentration along the roadsides * * *. These data are consistent with the assertion that tobacco companies target ethnic minorities with higher rates of advertising and ethnically tailored campaigns." (Ref. 6). A meta-analysis published in 2007 confirmed that "African Americans are exposed to a higher volume of pro-tobacco advertising in terms of both concentration and density." (Ref. 7). In addition to the volume of advertising, the methods used in targeting advertisements to some specific communities have also been studied. For example, Monograph 19 discusses how advertising for mentholated brands to African-Americans was designed around lifestyle appeals relating to "fantasy and escapism," "expensive objects," and "nightlife, entertainment, and music" themes. (Ref. 8). However, as NCI noted, "little attention has been paid to understanding tobacco marketing aimed at American Indians and Alaska Natives, despite their high prevalence of tobacco use." (Ref. 9). Tobacco marketing to Asian Americans is also under-studied.

Section 102 of the Tobacco Control Act directed the Secretary of Health and Human Services (the Secretary) to publish a final rule which, among other things, prohibits the sale of cigarettes and smokeless tobacco to persons under age 18 and imposes restrictions on the marketing, labeling, and advertising of such products (Youth Access and Advertising Regulation). FDA published the final rule on March 19, 2010 (75 FR 13225) and the rule takes effect on June 22, 2010. Section 105(a) of the Tobacco Control Act (21 U.S.C. 387f–1) requires the Secretary to develop and publish an action plan to enforce restrictions, including those provided in the Youth Access and Advertising Regulation, on promotion and advertising of menthol and other cigarettes to youth. The provision requires that the Secretary develop this plan in consultation with public health organizations and other stakeholders with demonstrated experience and expertise in serving minority communities. This action plan must also include provisions designed to ensure enforcement of the restrictions, including those provided in the Youth Access and Advertising Regulation, on the promotion and advertising of menthol and other cigarettes to youth in minority communities. FDA is requesting data, information, and views that will assist it in developing an action plan regarding enforcement of restrictions on promotion and advertising of menthol and other cigarettes to youth, including youth in minority communities.

II. Scope of the Web-Based Public Meeting and Request for Data, Information, and Views

We are interested in data, information, and views that will help FDA in developing an enforcement action plan to enforce restrictions on promotion and advertising of menthol and other cigarettes to youth, including youth in minority communities. FDA is seeking any pertinent information from all interested parties, including public health organizations and other stakeholders with demonstrated expertise and experience in serving youth and minority communities as well as others with relevant expertise. In addition to general information, we are specifically interested in information on the following topics as they relate to the restrictions on promotion and advertising of menthol and other cigarettes to youth:

1. A discussion of how FDA can identify companies and others who promote and advertise menthol or other cigarettes to youth in violation of applicable restrictions.

2. A discussion of how FDA can identify companies and others who promote and advertise menthol or other cigarettes to youth in minority communities in violation of applicable restrictions.

3. A discussion of how FDA can better understand the types and placement of promotion and advertising of menthol and other cigarettes to youth.

4. A discussion of how FDA can better understand the types and placement of promotion and advertising of menthol and other cigarettes to youth in minority communities.

5. A discussion of how FDA can understand the themes and techniques used in promotion and advertising of menthol and other cigarettes to youth.

6. A discussion of how FDA can understand the themes and techniques used in promotion and advertising of menthol and other cigarettes to youth in minority communities.

III. How to Submit Data, Information, and Views and Participate in the Web-Based Public Meeting

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either or electronic or written data, information, and views 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. Where relevant, you should annotate and organize your data, information, and views to identify the specific topic addressed by the discussion topic number referenced in section II of this document. Received data, information, and views may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

If you wish to participate in the Web-based public meeting, you must submit written or electronic registration as specified previously in this document (see **ADDRESSES**). Registration is free and will be accepted on a first-come, first-served basis, as participation is limited. We strongly encourage members from public health organizations and other stakeholders with demonstrated expertise and experience in serving youth and minority communities to make an oral presentation at this Web-based public meeting. Other interested parties may also be able to make an oral presentation. If you wish to make an oral presentation during the Web-based public meeting, you must state your intention on your registration submission (see **ADDRESSES**) and submit your name, title, company or organization (if applicable), address, telephone and fax numbers, and email address. FDA has included specific topics for discussion in section II of this document. You should also identify by number each discussion topic(s) you wish to address in your presentation, if relevant, and the approximate desired length of your presentation. FDA will do its best to accommodate requests to speak, and attempt to include equal representation from public health organizations and other stakeholders with demonstrated expertise and experience in serving youth and minority communities. FDA requests that speakers make their presentations

onsite at White Oak Bldg. 1, 10903 New Hampshire Ave., Silver Spring, MD 20993. Presenters unable to appear onsite may submit a slide presentation to be shown during the Web-based public meeting. If possible, individuals and organizations with common interests should consolidate or coordinate their presentations and request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. FDA will contact each presenter prior to the Web-based public meeting with the amount of time available and the approximate time at which his or her presentation is scheduled to begin. Once FDA notifies presenters of their scheduled times, each presenter must submit to FDA an electronic copy of the presentation to be given. In order to be included in the Web-based public meeting, presentations must be received no later than June 25 at 5 P.M. (EDT). Please refer to FDA's Web site (*http://www.fda.gov/Tobacco*) for more information and updates on the Web-based public meeting. Transcripts of the Web-based public meeting will be available for review at the Division of Dockets Management (see **ADDRESSES**) and on the Internet at *http://www.regulations.gov* approximately 30 days after the Web-based public meeting.

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Centers for Disease Control and Prevention, "Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004," Morbidity and Mortality Weekly Report (serial online); 57(45), pp. 1226–1228, 2008 (*http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm*).

2. National Cancer Institute, U.S. Department of Health & Human Services, "The Role of the Media in Promoting and Reducing Tobacco Use," Tobacco Control Monograph No. 19; p. 11, 2008 (*http://www.cancercontrol.cancer.gov/tcrb/monographs/19/index.html*).

3. U.S. Department of Health and Human Services, "Tobacco Use Among U.S. Racial/Ethnic Minority Groups—African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics," A Report of the Surgeon General; p. 220, 1998 (*http://profiles.nlm.nih.gov/NN/B/B/F/Q/_/nnbbfq.pdf*).

4. Mitchell, O. and M. Greenberg, "Outdoor Advertising of Addictive Products," New Jersey Medicine; 88, p. 331, 1991 (finding that billboards in Black and Hispanic neighborhoods in four New Jersey cities disproportionately contained advertisements for tobacco and alcohol products.)

5. Ammerman, S.D. and M. Nolden, "Neighborhood-Based Tobacco Advertising Targeting Adolescents," *Western Journal of Medicine*; 162, pp. 514–518, 1995 (*http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1022829/pdf/westjmed00058–0028.pdf*) (finding that adolescent exposure to tobacco billboard advertisements in San Francisco in 1992 and 1993 was greater in Latino neighborhoods due to a greater adolescent population, and finding that qualitative analyses of the tobacco advertisements "suggested that adolescents are the primary targets.")

6. Stoddard, J.L., et. al., "Tailoring Outdoor Tobacco Advertising to Minorities in Los Angeles County," *Journal of Health Communication*; 3. p. 137, 1998.

7. Primack, B.A., et al., "Volume of Tobacco Advertising in African American Markets: Systematic Review and Meta-Analysis," *Public Health Reports*; 122, p. 607 2007.

8. National Cancer Institute, U.S. Department of Health and Human Services, "The Role of the Media in Promoting and Reducing Tobacco Use," Tobacco Control Monograph No. 19; p. 57, 2008 (*http://www.cancercontrol.cancer.gov/tcrb/monographs/19/index.html*).

9. Id., p. 15.

Dated: June 15, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–14809 Filed 6–14–10; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Program Project Grant Review.

Date: July 2, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Blvd, Suite 800, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric H. Brown, Scientific Review Officer, Scientific Review Branch, NIAMS/NIH, 6701 Democracy Blvd, Suite 824, Bethesda, MD 20892, (301) 594–4955, *browneri@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Clinical Trials Application Review.

Date: July 16, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza—Dulles Airport, 2200 Centerville Road, Herndon, VA 20170.

Contact Person: Michael L. Bloom, MBA, PhD, Scientific Review Officer, Scientific Review Branch, NIAMS/NIH, 6701 Democracy Blvd, Suite 820, Bethesda, MD 20892, 301–594–4953, *bloomm2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14771 Filed 6–17–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Office of State, Tribal, Local and Territorial Support (OSTLTS)

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of November 5, 2009, and September 23, 2004, Consultation and Coordination with Indian Tribal Governments, the Centers for Disease Control and Prevention (CDC), OSTLTS announces the following Tribal Consultation Advisory Committee (TCAC) Meeting and Tribal Consultation Session:

Name: Tribal Consultation Advisory Committee (TCAC) Meeting and 5th Biannual Tribal Consultation Session

Times and Dates: TCAC Meeting on July 26–28, 2010, from 8 a.m.–6 p.m. and the 5th

Biannual CDC Tribal Consultation Session on July 29, 2010, from 8–6 p.m.

Place: The July 26 TCAC Meeting will be on the Ft. Belknap Indian Reservation, Harlem, MT; the July 27th TCAC Meeting will be on the Rocky Boy's Reservation, Box Elder, MT; the July 28 TCAC Meeting and the July 29th Consultation Session will be held at the Montana State University—Northern, Havre, MT. All meetings are being hosted by the Ft. Belknap Indian Reservation and Rocky Boy's Reservation. Meetings are open to the public with a special invitation to Montana and Wyoming American Indian Tribal leaders, Montana and Wyoming State Health Department Officials, and all American Indian/Alaska Native (AI/AN) Tribal leaders from across the nation and other AI/AN stakeholders.

Purpose: CDC released their Tribal Consultation Policy in October of 2005 with the primary purpose of providing guidance across the agency to work effectively with AI/AN tribes, communities, and organizations to enhance AI/AN access to CDC resources and programs. In November of 2006, an Agency Advisory Committee (CDC/ATSDR Tribal Consultation Advisory Committee—TCAC) was established to provide a complementary venue wherein tribal representatives and CDC staff will exchange information about public health issues in Indian Country, identifying urgent public health needs in American Indian/Alaska Native (AI/AN) communities, and discuss collaborative approaches to these issues and needs. Within the CDC Consultation Policy, it is stated that CDC will conduct government-to-government consultation with elected tribal officials or their designated representatives and also confer with tribal and Alaska Native organizations and AI/AN urban and rural communities before taking actions and/or making decisions that affect them. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. CDC believes that consultation is integral to a deliberative process that results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues. Although formal responsibility for the agency's overall government-to-government consultation activities rests within the Office of the Director (OD), other OD Offices and National Center leadership shall actively participate in TCAC meetings and HHS-sponsored regional and national tribal consultation sessions as frequently as possible.

Matters to Be Discussed: The TCAC will convene their advisory committee meeting with discussions and presentations from various CDC senior leadership on activities and areas identified by TCAC members and other tribal leaders as priority public health issues. The Biannual Tribal Consultation Session will engage CDC Senior leadership from the Office of the Director and various CDC Offices and National Centers including the Financial Management Office (FMO), proposed Office of the Associate Director of Communications (OC), proposed Office for State, Tribal, Local and Territorial Support (OSTLTS), National Center for Environmental Health and the Agency for Toxic Substances and Disease Registry (NCEH–ATSDR), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) as well as others. Opportunities will be provided during the Consultation Session for tribal testimony. Tribal Leaders are encouraged to submit written testimony by COB on July 15, 2010, to CAPT Pelagie (Mike) Snesrud, Senior Tribal Liaison for Policy and Evaluation, Office of State, Tribal, Local and Territorial Support (proposed OSTLTS), 1600 Clifton Road, NE., MS K–86 Atlanta, GA 30329, telephone 770–488–1625, e-mail: *pws8@cdc.gov*. Depending on the time available it may be necessary to limit the time of each presenter.

FOR FURTHER INFORMATION CONTACT: CAPT Pelagie (Mike) Snesrud by e-mail at: *pws8@cdc.gov* or telephone 770–488–1625. Please reference the Web link of *http://www.cdc.gov/omhd/TCAC/AAC.html* to review information about the TCAC and CDC's Tribal Consultation Policy and previous meetings. 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 10, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–14800 Filed 6–17–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1917–DR; Docket ID FEMA–2010–0002]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1917–DR), dated May 24, 2010, and related determinations.

DATES: *Effective Date:* June 11, 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 Oklahoma is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 24, 2010.

Alfalfa, Grant, Major, Noble, and Osage Counties for Public Assistance.

Cleveland, McIntosh, Okfuskee, Pottawatomie, and Seminole Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–14699 Filed 6–17–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–23]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

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

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988

court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 10, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–14446 Filed 6–17–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5386–N–04]

Privacy Act; Notification of a New Privacy Act System of Records, Title Eight Automated Paperless Office Tracking System (TEAPOTS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of a new Privacy Act system of records.

SUMMARY: The Department's Office of Fair Housing and Equal Opportunity (FHEO) proposes to establish a new Privacy Act of 1974 (5 U.S.C. 552a), system of records notice (SORN). The purpose of the new system of records will be to allow FHEO to process, track, and maintain housing discrimination complaints submitted by complainants with allegations of housing discrimination. FHEO will utilize TEAPOTS as an automated case management system, to process complaints, compliance reviews, and to track the activities throughout the investigation process. The system will be used for all major FHEO responsibilities required to support the execution of program mission functions. It will enable the Department to provide faster, more reliable case tracking, and monitoring for the entire scope of enforcement activities.

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

Comment Due Date: July 19, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Officer, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8047. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records as identified as TEAPOTS.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records. The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Agencies Responsibilities for Maintaining Records About Individuals," July 25, 1994 (59 FR 37914).

Authority: 42 U.S.C. 3601.

Dated: June 11, 2010.

Jerry E. Williams,

Chief Information Officer.

HUD/FHEO–06

SYSTEM NAME:

Title Eight Automated Paperless Office Tracking System (TEAPOTS).

SYSTEM LOCATION:

Resides on HUD Network servers in West Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons filing a housing discrimination complaint (known as Complainants) and their representatives; all persons and/or organizations identified by Complainants as having committed housing discrimination (know as Respondents) and their representatives; all those investigating and reviewing the housing discrimination complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Housing discrimination complaint inquiries and case files, which are documented during the investigation process. Information on the complainants is collected on a case-by-case basis only if relevant to the particular case. These elements include the complainants name, date of birth, home address, telephone number, race, ethnicity, gender type, income and financial data. Medical and health information is provided only when disability discrimination cases are filed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988 (42 U.S.C. 3601 *et seq.*), Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d–2000d–7), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 *et seq.*), Section 109 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5321), Title II of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), Age Discrimination Act of 1975 (42 U.S.C. Sections 6101–107), Title IX of the Education Amendments Act of 1972 (Title 20 U.S.C. Sections 1681–1688), and the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*).

PURPOSE:

TEAPOTS is used to track housing discrimination cases throughout the investigation processes, generate management reports, and assist in producing certain case documents for cases filed under Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988, and other processes. TEAPOTS also tracks complaints and compliance for the Title VI, Title IX, Age Discrimination of 1975, and Americans with Disabilities authorities. TEAPOTS supports FHEO execution of their enforcement mission functions by providing faster, more reliable case tracking, as well as analysis of the entire scope of enforcement activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

FHEO uses TEAPOTS to monitor the quality of the investigations performed by non-Federal agencies and to determine the amount these agencies should be paid for doing this work. A paper case file that includes the information tracked in TEAPOTS, as well as additional information, is maintained outside of TEAPOTS.

To State and local agencies—Once certified by HUD to investigate and adjudicate Title VIII housing discrimination complaints, State and local agencies also use TEAPOTS to record investigation information.

To authorized requestors requesting release from records under the Freedom of Information Act (FOIA).

To HUD's Office of General Counsel—The case file (paper file) of record is manually delivered.

To Legal Counsel if the discrimination investigation supports issuing a charge of discrimination.

To HUD's Office of the Chief Information Officer—for use in HUD's Resource Estimation and Allocation Process/Total Estimation and Allocation Mechanism (REAP/TEAM). REAP is a resource management initiative used throughout HUD as a methodology for defining and estimating required staffing resources by capturing actual information on workload accomplishments and time usage by HUD employees in the program and support areas.

To HUD's Legal Counsel—The case file (paper file) of record is manually delivered to Legal Counsel if the discrimination investigation supports issuing a charge of discrimination.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: The data is stored on the production TEAPOTS server, and the reporting server. The data is backed up every night to tape. No electronic records have ever been archived. A copy of all the records in the system on December 31, 2000, was sent to the National Archives and Record Administration on a CD for permanent storage. The hard copy case files.

SAFEGUARDS:

TEAPOTS is housed in a secured facility in West Virginia. The entire building is occupied by the Department of Housing and Urban Development and contractor personnel and is not open to the general public. A User ID and password are required authentication before access is granted to TEAPOTS. The TEAPOTS regional system administrator creates distinctive user accounts and temporary passwords for all authorized users. All users are required to change their temporary password when they initially login to the TEAPOTS system. TEAPOTS controls the user's ability to perform specific functions according to access level permissions assigned by the system administrator. Permission restrictions prevent unsolicited and illicit access to another region's data. For added access security, TEAPOTS requires all users to update their password every 90 days. TEAPOTS displays a reminder each time the user logs that displays the age of their current password. TEAPOTS require users to create a strong password that complies with National Institute Standards Technology guidance. It must be at least eight (8) characters in length, and utilize a combination of letters, numbers and special characters. Should the user fail to change their password within the 90-day time period, TEAPOTS locks the user out of the system, and they must contact the TEAPOTS regional system administrator to reset their account and assign a temporary password. The user is required to create a new password upon logging into the system with the temporary password. Should the user fail to provide the appropriate username and password after three (3) attempts, TEAPOTS locks the user out of the system, and they must contact the TEAPOTS regional system administrator to reset their account and assign them a temporary password to regain access. The system administrator can unlock the user account upon request. Access scripts with embedded passwords, bypassing authentication requirements, and electronic signatures are not applicable to the TEAPOTS system, as per FHEO requirements.

RETRIEVING:

Records are retrieved by file number, Complainant name, or Respondent name.

RETENTION AND DISPOSAL:

No records have ever been archived. A copy of all the records in the system in 2000 was sent to the National Archives and Record Administration on a CD for permanent storage. The retention and disposal of records is done in accordance to HUD's Records and Disposition Schedule Handbook 2225.6, Appendix 50.

SYSTEM MANAGER(S) AND ADDRESS:

Nina Aten, Director; Office of Information Services and Communications, Fair Housing and Equal Opportunity; U.S. Department of Housing and Urban Development; 451 7th Street, SW., Room 5118; Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Officer at the Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–3000. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting:

(i) In relation to contesting contents of records, the Departmental Privacy Act, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410.

(ii) In relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information is obtained from the record subjects.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–14744 Filed 6–17–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5386–N–05]

Privacy Act; Proposed Alteration to Existing Systems of Records, Single Family Mortgage Asset Recovery Technology (SMART/A80H)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Modification to existing Privacy Act System of Records Notice (SORN).

SUMMARY: The Department proposes to alter an existing Privacy Act SORN subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alterations to the existing records system is to capture a new routine use permitting the disclosure of records to its Credit Alert Interactive Verification Reporting System (CAIVRS) for the purpose of computer matching, and to identify an increase in the number of records maintained by the system. These alterations do not impact the scope, purpose, or record types for the records system. Additionally, this notice supersedes previous notice published at 73 FR 41105 on July 17, 2008.

DATES: *Effective Date:* This action shall be effective without further notice on *July 19, 2010* unless comments are received that would result in a contrary determination.

Comments Due by: July 19, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act Related questions contact Donna Robinson-Staton, Departmental Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4178, Washington, DC 20410, Telephone Number (202) 402–8073. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given of an alteration to the Department's Office of Housing records system, SMART, HUD/HS–58. The SMART system is utilized for accounting level detail on forward and reverse mortgages; inclusive of its case-tracking ability; report generating capability; query functions; database management, analyzing, processing, and tracking of Federal Housing Administration (FHA) Insured and Secretary-held first, second and subordinate note and mortgage loan servicing functions.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the modified system of records, and require published notice of the existence and character of the system of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Committee on Homeland Security and Governmental Affairs of the Senate, and the House Committee on Oversight and Government Reform of the House of Representatives pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," July 25, 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: June 11, 2010.

Jerry E. Williams,

Chief Information Officer.

HUD/HS–59

SYSTEM NAME:

Single Family Mortgage Asset Recovery Technology (SMART).

SYSTEM LOCATION:

Morris-Griffin Corporation (Sub-Contractor site), Lanham, Maryland; C & L Service Corporation/Morris-Griffin Corporation (Contractor/Sub-Contractor site), Tulsa, Oklahoma (Access for HUD users is through a Citrix Server).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors (Secretary-Held First, Second and Subordinate Note and mortgages).

CATEGORIES OF RECORDS IN THE SYSTEM:

Mortgagor's name, Spouse name, social security number, loan number, date of birth, property address, home telephone, personal email address, telephone number, FHA case number, and income financial data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 204, National Housing Act, 12 U.S.C. 1710(a) in general.

PURPOSES:

The information is used to perform a wide range of FHA Insured and Secretary-held first, second and subordinate note and mortgage loan servicing functions. The SMART System is a comprehensive loan servicing system that processes the mortgage transactions for both forward and reverse mortgages, including interest, appreciation, amortization and other agreed calculations for the Secretary-Owned Title II Portfolio.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To the U.S. Treasury—for disbursements and adjustments; and

(b) To the Internal Revenue Service—for reporting payments for mortgage interest, for reporting of discharge indebtedness and real estate taxes.

(c) To CAIVRS—Records may be manually keyed into CAIVRS which is a HUD-sponsored database that makes a federal debtor's delinquency and claim information available to federal lending and assistance agencies and private lenders who issue federally insured or guaranteed loans for the purpose of evaluating a loan applicant's creditworthiness.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic files are stored on servers and back up files are stored on tapes. Servers are stored in a secured server room and at an offsite secured facility for disaster contingency.

RETRIEVABILITY:

Information can only be retrieved by Mortgagor's name, SSN, FHA Case Number, and home address. Only individuals with rights to the full/limited access can view this type of information.

SAFEGUARDS:

The original collateral documents (hard copy) are stored at the Contractors office site for all open loans and the closed documents are stored at a secured offsite document storage facility. All hard copy files are stored within a secured room within the Contractor's secured office suite when not in use. Background screening, limited authorizations and access, with access limited to authorized personnel and technical restraints employed with regard to accessing the records; access to automated systems by authorized users by passwords.

RETENTION AND DISPOSAL:

Are in accordance with HUD Records Disposition Schedule 2225.6, Appendix 20.

SYSTEM MANAGER(S) AND ADDRESS:

Sharon Lundstrom, Director, Housing, Office of Single Family Asset Management, Servicing & Loss Mitigation Division (a/k/a National Servicing Center), Tulsa, Oklahoma, Department of Housing and Urban Development, National Servicing Center, Tulsa, Oklahoma, Telephone Number (405) 609–8443.

NOTIFICATION PROCEDURE:

For information assistance, or inquiry about existence of records, contact Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402–8073.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Departmental

Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Departmental Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410; and

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

The original information was transferred from the A43C System and an access database program; records were also established using the legal instruments (*i.e.,* mortgage, deed, subordinate mortgage, etc.) received from the mortgagees; and loan balances were taken from F12 (IACS). New loan data is currently loaded via upload of data through a FTR from CHUMS(F17) and IACS(F12), and the legal instruments.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–14710 Filed 6–17–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N128] [96300–1671–0000–P5]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0137; Applications for Single Use Permits and Registration of Production Facilities (CITES)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on July 31, 2010. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before July 19, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0137.

Title: Applications for Single Use Permits and Registration of Production Facilities (CITES), 50 CFR 13.11, 23.20, 23.36, and 23.51.

Service Form Number(s): 3–200–74 and 3–200–75.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals, businesses, nonprofit organizations, and State, tribal, and local governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Annual Nonhour Cost Burden: $33,000 associated with processing fees.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
FWS Form 3–200–74	360	1,000	6 minutes	101
FWS Form 3–200–75	90	95	30 minutes	49
Totals	450	1,095		150

Abstract: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) uses a system of permits and certificates to help ensure that international trade is legal and does not threaten the survival of wildlife or plant species in the wild. Prior to the import or export of CITES-listed species, the Management Authority and Scientific Authority must make appropriate determinations and issue CITES documents. Section 8A of the Endangered Species Act (16 U.S.C. 1531 et seq.) designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. The Secretary delegated these authorities to the Fish and Wildlife Service.

Before a country can issue an export permit for CITES Appendix I or II specimens, the CITES Scientific Authority of the exporting country must determine that the export will not be detrimental to the species, and the Management Authority must be satisfied that the specimens were acquired legally. For the export of Appendix III specimens, the Management Authority must be satisfied that the specimens were acquired legally (CITES does not require findings from the Scientific Authority). Prior to the importation of Appendix I specimens, both the Scientific Authority and the Management Authority of the importing country must make required findings. The Scientific Authority must also monitor trade of all species to ensure that the level of trade is sustainable.

Article VIII(3) of the treaty states that participating parties should make efforts to ensure that CITES specimens are traded with a minimum of delay. Section XII of Resolution Conf. 12.3 (Rev. CoP13) recommends use of simplified procedures for issuing CITES documents to expedite trade that will have no impact, or a negligible impact, on conservation of the species involved.

We use FWS Form 3–200–74 (Single-Use Export Permits Under a Master File or Annual Program File (CITES)) to streamline the application process for CITES documents that involve multiple, similar actions over a given amount of time. For the initial application, respondents use forms designed

specifically to address their particular activity (approved under OMB Control No. 1018–0093). From information in the application, we create a master file or annual program file that contains all the information necessary for us to make the required legal acquisition and nondetriment findings. The applicant can then submit FWS Form 3–200–74 to request authorization to carry out multiple, identical activities over the next 6 months. On FWS Form 3–200–74, we request information only about the number of additional documents the applicant requires to carry out activities approved under the previous application process. By referencing information in the master file or annual program file, we can quickly issue partially completed CITES documents (with certain specific areas left blank for completion by the applicant).

United States facilities, such as farms and aquaculture operations, produce several native U.S. taxa listed in CITES Appendices II and III in closed and semi-closed production systems. By registering a production facility and setting up a master file, we can expedite issuance of export permits for that facility. The registration is valid for 1 year. We use FWS Form 3–200–75 (Registration of a Production Facility for Export of Certain Native Species (CITES)) to collect information on annual production levels, method of producing specimens, source of the parental and founder stock, and method of transport for international trade. This information allows us to issue documents on a very short turnaround time, and we do not need to collect additional information prior to the issuance of export documents.

Comments: On February 23, 2010, we published in the **Federal Register** (75 FR 8102) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on April 26, 2010. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 11, 2010.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 2010–14761 Filed 6–17–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2010–N127] [91200–1231–00WH–M3]

Proposed Information Collection; OMB Control Number 1018–0023; Migratory Bird Surveys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on February 28, 2011. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by August 17, 2010.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act (16 U.S.C. 703-711) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for (1) the wise management of migratory bird populations frequenting the United States, and (2) setting hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird harvest. Based on information from harvest surveys, we can adjust hunting regulations as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Under the Migratory Bird Harvest Program, State licensing authorities collect the name and address information needed to provide a sample frame of all licensed migratory bird hunters. Since Federal regulations require that the States collect this information, we are including the associated burden in our approval request to OMB.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program, under which each State annually provides a list of all migratory bird hunters in the State. We randomly select migratory bird hunters; send them either a waterfowl questionnaire, a dove and band-tailed pigeon questionnaire, a woodcock questionnaire, or a snipe, rail, gallinule and coot questionnaire; and ask them to report their harvest of those species. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest of those species.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Migratory Bird Hunter Survey the previous year are asked to complete and return a postcard if they are willing to participate in the Parts Collection Survey. We provide postage-paid envelopes to respondents before the hunting season and ask them to send in a wing or the tail feathers from each duck or goose they harvest, or a wing from each mourning dove, woodcock, band-tailed pigeon, snipe, rail, or gallinule they harvest. We use the wings and tail feathers to identify the species, sex, and age of the harvested sample. We also ask

respondents to report on the envelope the date and location of harvest for each bird. We combine the results of this survey with the harvest estimates obtained from the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable us to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help us determine appropriate hunting regulations.

The Sandhill Crane Harvest Survey is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and ask them to report the date, location, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of permits issued, enables us to estimate the total harvest of sandhill cranes. Based on information from this survey, we adjust hunting regulations as needed.

II. Data

OMB Control Number: 1018-0023.

Title: Migratory Bird Surveys.

Service Form Number(s): 3-165, 3-165A, 3-165B, 3-165C, 3-165D, 3-165E and 3-2056J-N.

Type of Request: Extension of a currently approved collection.

Affected Public: States and migratory game bird hunters.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually or on occasion.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Migratory Bird Harvest Information Program	49	686	185 hours	126,910
Migratory Bird Hunter Survey	84,200	84,200	4.3 minutes	6,034
Parts Collection Survey	27,300	140,600	4.5 minutes	10,545
Sandhill Crane Harvest Survey	8,300	8,300	3.5 minutes	484
Totals	119,849	233,786		143,973

III. Request for Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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.

Dated: June 11, 2010.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 2010–14763 Filed 6–17–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N122]
[96300–1671–0000–P5]

Emergency Exemption: Issuance of Permit for Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency issuance of permit for endangered species.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a request for a copy of such documents to: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On May 28, 2010, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–14281A) to the Rare Species Conservatory Foundation, Loxahatchee, Florida, to import one captive-hatched imperial parrot (*Amazona imperialis*) for the purpose of enhancement of the survival of the species. This action was authorized under Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service determined that an emergency affecting the health and life of the imperial parrot existed, and that no reasonable alternative was available to the applicant for the following reasons:

The Rare Species Conservatory Foundation requested a permit to import the above-mentioned imperial parrot chick captive-hatched on May 6, 2010, at the Dominican Government Aviary (Parrot Conservation and Research Centre), Botanical Gardens, in Roseau, Dominica, for emergency and ongoing health evaluation purposes. This juvenile is the first of its species hatched in captivity anywhere in the world and was being parent-reared at the aviary until it was abandoned by its parents and subsequently rescued by the Centre. This import is necessary to save the bird's life and provide intensive veterinary and husbandry care not available in Dominica.

Dated: June 11, 2010.

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–14804 Filed 6–17–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination for Federal Acknowledgment of the Shinnecock Indian Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: The Department of the Interior (Department) gives notice that the Acting Principal Deputy Assistant Secretary–Indian Affairs (PDAS–IA) has determined the Shinnecock Indian Nation is entitled to be acknowledged as an Indian tribe within the meaning of Federal law. This notice is based on a determination that affirms the reasoning, analysis, and conclusions in the Proposed Finding (PF). The petitioner satisfies the seven mandatory criteria for acknowledgment set forth in the applicable regulations, and therefore, meets the requirements for a government-to-government relationship with the United States. This notice is the Final Determination (FD). Based on the limited nature and extent of comment and consistent with prior practices, the Department did not produce any detailed report or other summary under the criteria pertaining to this FD.

DATES: This determination is final and will become effective 30 days from publication of this notice in the **Federal Register** on July 19, 2010, unless the petitioner or an interested party files within 30 days of this notice a request for reconsideration pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment (202) 513–7650.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 83.10(h), the Department publishes this notice in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (AS–IA) by 209 DM 8. The AS–IA delegated authority to sign certain Federal acknowledgment findings, including this FD, to the PDAS–IA on June 4, 2009, to avoid the appearance of any possible conflict of interest. The Department issued a PF to acknowledge the Shinnecock Indian Nation, Petitioner #4, on December 14, 2009, and published notice of that preliminary determination in the **Federal Register** on December 21, 2009. This FD affirms the PF that the Shinnecock Indian Nation, P.O. Box 5006, Southampton, NY 11969–0751, c/o Messrs. Lance Gumbs, Randall King, and Gordell Wright, satisfies the seven mandatory criteria for acknowledgment as an Indian tribe.

The issuance of this FD complies with the June 18, 2010, deadline set by the settlement agreement that the petitioner and the Department negotiated and the Federal District Court approved by order on May 26, 2009, in *Shinnecock* v. *Salazar,* No. CV–06–5013, 1 (E.D.N.Y.). The settlement agreement controls whenever the schedule for processing the Shinnecock petition under this agreement differs from the timelines provided by the regulations in 25 CFR part 83. The settlement agreement shortened the 180-day comment period provided in the regulations at § 83.10(i) to 90 days; hence, the comment period closed March 22, 2010. Neither the Shinnecock petitioner nor other parties asked for an on-the-record technical assistance meeting under § 83.10(j)(2) or to extend the comment period to 180 days. The petitioner submitted comments certified by its Board of Trustees; however, no third parties submitted comments on the PF during the comment period. Under the settlement agreement the petitioner did not have a response period because no interested or informed party submitted comment.

As part of a consultation process provided by the settlement agreement, the Department wrote a letter to the group's trustees on April 2, 2010, followed by a telephone call to their counsel. These communications informed the petitioner that the Department planned to begin active consideration of its comments on April 19, 2010, and to issue a FD on or before Friday, June 18, 2010. The petitioner did not object to this schedule. Accordingly, the Department began the 60-day period for issuing a FD on April 19, 2010.

The petitioner's comments included a 9-page cover letter signed by the group's attorney with 71 pages of exhibits. It also contained a 73-page report with 45 exhibits by the petitioner's consulting historian disputing the PF's conclusion that the petitioner did not qualify for processing under the unambiguous previous Federal acknowledgment provision in § 83.8 of the acknowledgment regulations. A second report ("Comment") by the group's consulting anthropologist, commenting on issues under § 83.7, consisted of 46 pages, of which 12 pages pertained to criterion § 83.7(b) and the remaining 34 pages concerned criterion § 83.7(e). The second report included 21 exhibits. In addition, the petitioner submitted membership and genealogy updates in electronic form. These items included an updated and separately certified Family Tree Maker™ (FTM) genealogical database of the petitioner's members and their ancestry as well as a Microsoft Access™ database containing tables of all current members, re-enrolled members, current members who had been represented as "potential" members in the PF materials, and deceased members.

This FD reviews and considers the petitioner's argument and evidence submitted as comments along with the record for the PF. Most of the exhibits included in the petitioner's comments that did not concern enrollment contained the same, similar, or related documents already in the record for the PF and proffered arguments already considered in the PF. Because the PF addressed in detail these documents and arguments, this FD must be read in conjunction with the PF.

This FD considers the petitioner's submissions to determine if they change the Department's reasoning, analysis, and conclusions under § 83.7 and regarding § 83.8. The petitioner's comments raise legal issues already responded to in other documents prior to the PF, attempt to rebut a small number of factual conclusions in the PF, and provide limited new analyses. After considering the petitioner's comments, this FD concludes that the materials submitted for the FD contain essentially the same evidence as the petitioner provided previously and do not merit revision of the reasoning, analysis, and conclusions in the PF. This FD modifies only a few specific findings in the PF concerning criterion § 83.7(e), but these revised calculations, based on updated and newly submitted membership information, do not change the overall conclusions of the PF that the petitioner meets all seven mandatory criteria. This FD affirms the PF.

Unambiguous Previous Federal Acknowledgment: Previous Federal acknowledgment means, "action by the Federal Government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States" (§ 83.1). The preamble to the 1994 regulations states, "the regulations require that previous acknowledgment be unambiguous and clearly premised on acknowledgment of a government-to-government relationship with the United States" (59 FR 9283). This FD finds that evidence in the record does not show that the Federal Government established, by its actions, a relationship between the United States and the petitioner as an Indian tribe at any time.

In its comments concerning previous acknowledgment, the petitioner

revisited the *Thomas* v. *Hendricks* trespass litigation of 1936–1937 that was reviewed in the PF (*Shinnecock* PF, Appendix A, 18–19), providing additional biographical detail about Charles C. Daniels, a special assistant to the U.S. Attorney General, and the nature of his involvement in the *Hendricks* case. This evidence further corroborates conclusions in the PF that Daniels was authorized only to assist the NY Attorney General in the *Hendricks* case, that Daniels requested to participate "without making an appearance or intervening in the action" (Daniels 12/28/1936) to which the Department concurred (Chapman 2/4/1937), and that the United States did not bring suit on behalf of a Shinnecock tribal entity. This evidence of limited involvement contrasts with the role of the U.S. Department of Justice in bringing suit on behalf of the Burt Lake Indians from 1911 to 1917 (*United States of America* v. *John W. McGinn and A. L. Agate; Burt Lake Band* FD, 8). The evidence submitted in the petitioner's comments strengthens and affirms the PF's conclusions that the litigation materials do not demonstrate unambiguous previous Federal acknowledgment.

In its comments concerning § 83.8, the petitioner also revisited correspondence involving officials at the Department of the Interior during the late 1930s and early 1940s, Felix Cohen's "Handbook of Federal Indian Law", the 1914 Reeves Report, the "Clancy Bill" (H.R. 18735, 63rd Congress, 1914), the annual report of the Commissioner of Indian Affairs in 1915, the Criminal Jurisdiction Act of 1948, and the Civil Jurisdiction Act of 1950. The PF addressed this evidence with respect to § 83.8 (*Shinnecock* PF, 14; Appendix A, 9–14, 16–18, 22–23). As explained in the PF and confirmed here, these materials, when placed in context of the complete record, provide evidence that the Department was aware of the Shinnecock of Long Island and held internal discussions as to whether the Department should establish a Federal relationship with them, but the Department took no action to do so. As the PF discussed in detail, during this same period, the Federal Government explicitly rejected the opportunity to establish a relationship with the petitioner, sometimes stating that the petitioner was the State of New York's responsibility (*Shinnecock* PF, 17). Nothing in this evidence now alters the Department's earlier detailed analysis and conclusions regarding these same materials in the PF.

The comments also argued against acknowledgment precedent and the standard used in interpreting evidence under § 83.8, issues that were addressed in correspondence from the Department before the PF and in the PF. Nothing in this argument alters the Department's analysis and conclusions regarding § 83.8.

The petitioner's comments, combined with the rest of the argument and evidence in the record, do not provide evidence of previous unambiguous Federal acknowledgment and the reasoning, analysis, and conclusions pertaining to § 83.8 in the PF are affirmed. Therefore, the petitioner will be evaluated under the requirements of the mandatory acknowledgment criteria § 83.7(a) through (g) without modification by the provisions of § 83.8(d).

Historical Indian Tribe: The petitioner's comments maintained that the Department's identification of the historical Shinnecock Indian tribe in the PF was inconsistent (Comment, 12–16). To be clear, the PF determined that the Shinnecock Indians of the Shinnecock leasehold in 1789 is the historical Indian tribe from which the Department evaluated continuous tribal existence. To allow for the inclusion of available documents from before and after this specific year in the analysis, the PF sometimes referred to the historical Indian tribe as it existed in the late 18th century, especially from 1792 to 1800, a period when the some of the group's members were named and their specific activities were documented. The PF stated, "[t]his PF treats the Indian population on or associated with the Shinnecock leasehold in the late 18th century as the 'historical Indian tribe' " (*Shinnecock* PF, 10).

The petitioner's comments implied that the PF sometimes treated the group in 1865 as the historical Indian tribe, rather than the 1789 Indian tribe as the historical Indian tribe. This comment is inaccurate. For purposes of demonstrating descent from the historical Indian tribe in 1789 for § 83.7(e), the PF used an 1865 New York State census as the earliest complete list of reservation residents. The PF noted that this practice of using a list with a later date than 1789 or the date of "first contact" is consistent with precedent and the explanation in the preamble to the 1994 regulations. It stated that the regulations "have not been interpreted to require tracing ancestry to the earliest history of a group" (*Shinnecock* PF, 13), and that, "for most groups, ancestry need only to be traced to rolls and/or other documents created when their ancestors can be identified clearly as affiliated with the historical tribe" (59 FR 9288). Other documents discussed in detail in the PF, especially in sections dealing with criteria § 83.7(a) and (c), identified, described, and located the historical Indian tribe from 1789 to 1865.

Evaluation under the Criteria: Criterion § 83.7(a) requires that external observers have identified the petitioner as an American Indian entity on a substantially continuous basis since 1900. None of the petitioner's comments explicitly referred to the PF's conclusions under criterion § 83.7(a). The petitioner meets criterion § 83.7(a) based on the summary findings in the PF. This FD affirms the PF under criterion § 83.7(a).

Criterion § 83.7(b) requires that a predominant portion of the petitioning group has comprised a distinct community since historical times. The petitioner met this criterion in the PF. No new evidence under criterion § 83.7(b) was submitted; however, the petitioner provided a new partial analysis and argument concerning "extant" marriages between 1800 and 1910 (Comment, 5–9) and charted "Kinship Relations of [specific] Households" on the 1850 Federal census of Shinnecock Neck as evidence described in § 83.7(b)(2)(i) and (ii) (Exh. 126). The petitioner also compiled a list of seven categories of identifications between 1792 and 1865 of Shinnecock as evidence described in § 83.7(b)(1)(vii) (Comment, 2–3).

The comments implied that these submissions were in response to information requested in the PF concerning a demonstrable lack of evidence of generation-to-generation genealogical links of Shinnecock members during this period (Comment, 1–2). Such information, although not needed to meet any of the criteria, would further define lines of descent between early 19th century and 1865 reservation populations under § 83.7(e) (*Shinnecock* PF, 59).

The PF did not request evidence to demonstrate criterion § 83.7(b). Because the petitioner meets criterion § 83.7(b) utilizing "crossover" evidence from criterion § 83.7(c) at § 83.7(b)(2)(v), it is not necessary to reanalyze the evidence to demonstrate the petitioner meets criterion § 83.7(b) or to explicate how the petitioner might meet criterion § 83.7(b) using evidence listed under § 83.7(b)(1) or (b)(2)(i)–(iv). Evaluation of the comments by the Department does not change the overall conclusions of the PF that the petitioner meets criterion § 83.7(b). Therefore, this FD affirms the reasoning, analysis, and conclusion of the PF under criterion § 83.7(b).

In the case of the Shinnecock petition, only evidence of the type described at

§ 83.7(c)(2)(i) to show that the petitioner "allocate[d] group resources such as land, residence rights and the like on a consistent basis" from 1789 to the present was used for the petitioner to meet both criteria § 83.7(b) and (c) (*Shinnecock* PF, 29). The PF provided a general discussion of the community historically and at present only for purposes of identifying the community allocating these resources, not for purposes of evaluating evidence described at § 83.7(b)(1) or (b)(2)(i)–(iv) to directly demonstrate social community (*Shinnecock* PF, 29).

None of the evidence submitted with the petitioner's comments is new, and the petitioner does not attempt to rebut the findings under criterion § 83.7(c), or to change the overall conclusions in the PF that the petitioner met criterion § 83.7(b). The petitioner's analyses, reasoning, and summary conclusions to show how the petitioner could meet § 83.7(b) using this evidence directly, however, sometimes misinterprets data or diverges from how such evidence has been evaluated under acknowledgment precedent. The petitioner's alternative analysis is not adopted here.

The petitioner, for example, submitted a listing of seven types of identifications of a Shinnecock entity, presumably to demonstrate the petitioner meets criterion § 83.7(b) using corroborating evidence of "the persistence of a named, collective, Indian identity" as described in § 83.7(b)(viii). Six of these identifications were by non-Shinnecock and were therefore the type of identifications of an Indian entity by outsiders used to demonstrate criterion § 83.7(a), not evidence demonstrating collective group "identity" by members. The seventh category of evidence mentioned in the petitioner's comment relates to criterion (b) because it deals with "identity" and not "identification." This category included two petitions signed by Shinnecock Indians in 1800 and 1822. This category of evidence, however, was already addressed in the PF. The PF used evidence in these petitions to demonstrate in part that the petitioner met § 83.7(c) at a high level (*Shinnecock* PF, 49–50) and referenced them in a background statement in the PF section discussing the Shinnecock's "collective Indian identity." The PF stated that the "Indians claiming this identity have consistently referred to their group since the early 1600s as the Shinnecock, the Shinnecock Indian tribe, the Shinnecock Indians, and similar names incorporating various spellings of "Shinnecock" (*Shinnecock* PF, 31, 32). The petitioner's comment fails to distinguish between identifications by outsiders (criterion § 83.7(a)) and a "named, collective, Indian identity," maintained by the group itself (criterion § 83.7(b)), as established in precedent, and its new analysis is not adopted here.

The petitioner submitted new analysis under § 83.7(b)(2) for high rates of marriage within the group for the period 1800 to 1920. The PF section on criterion (b) considered the marriage data generally and found that members who mostly married outside the group after 1880 were more likely to move from the reservation and their descendants are less likely to be members of the current membership. In contrast, those who married within the group and continued to reside on the reservation were more likely to have descendants in the membership. These statements in the PF were not made to demonstrate that the petitioner met criterion § 83.7(b); rather, they were made to identify the general makeup of the group and to trace its continuous association with the reservation because this was the group over which political authority was exercised.

The petitioner contends that an analysis of "extant marriages" based on the length each marriage lasted, rather than a general analysis of "marriage events," would demonstrate that the petitioner meets § 83.7(b)(2) from 1800 to 1920. The PF did not make a determination that the petitioner met criterion § 83.7(b) using evidence for marriage as described at § 83.7(b)(1) or (b)(2); nor is it necessary to do so here. This FD's consideration of this argument, however, finds that the petitioner's analysis is flawed. It does not account for the group's historical membership and does not submit any historical membership lists, annuities lists, rolls, or similar documents that would include on- and off-reservation members, as precedent has established in other cases. In addition, the analysis deals with descendants of only two couples from the early 1800s to 1920, thus representing only a partial analysis of the Shinnecock population.

It is impossible to calculate accurate percentages of marriages between members of the group as required under § 83.7(b)(2)(ii), whether one attempts to analyze single "marriage events" or "extant marriages," without tracking the group's actual membership and without accounting for all of the marriages, not just select lines of descent. This FD does not accept the comment's conclusion that "extant" marriages predominated within the group from 1800 to 1920. The petitioner seeks to substitute a different analysis from that in the PF, and its analysis uses incomplete data for purposes of criterion § 83.7(b) from 1800 to 1920. That specific analysis is flawed, and it diverges from precedent. It is also unnecessary to show that the petitioner meets criterion § 83.7(b), using direct evidence of community, as the petitioner meets criterion § 83.7(b) using crossover evidence from criterion § 83.7(c)(2). The PF's conclusion that the petitioner meets criterion 83.7(b) using crossover evidence under criterion § 83.7(c) is affirmed.

Criterion § 83.7(c) requires that the petitioning group has maintained political influence over its members as an autonomous entity since historical times. The petitioner met this criterion in the PF. Neither the petitioner nor any other party submitted new evidence or analysis under criterion § 83.7(c). The PF found that the Shinnecock petitioner met criterion § 83.7(c) from 1789 to the present using a type of evidence described at § 83.7(c)(2)(i), that demonstrates a petitioner has allocated "group resources such as land, residence rights and the like on a consistent basis." Under the regulations, this form of evidence is sufficient in itself to demonstrate the presence of political influence within a group as required by criterion § 83.7(c). This FD affirms the conclusions of the PF that the petitioner meets the requirements of criterion § 83.7(c).

Criterion § 83.7(d) requires that the petitioner provide a copy of its governing document including its membership criteria. The PF found that the Shinnecock petitioner met criterion § 83.7(d) because, in lieu of a formal governing document, it described in full its governing procedures and membership criteria in 1978, 1998, 2008, and 2009 (*Shinnecock* PF, 92–93).

The petitioner did not submit new criterion § 83.7(d) evidence for the FD but commented that the Office of Federal Acknowledgment (OFA) "failed to include in its iteration [of membership requirements] the letter from the Nation's attorney" dated May 27, 2009, that "clearly describes the petitioner's current membership criteria" (Comment, 16).

The cited transmittal letter does not constitute petition documentation and repeats information already provided to the Department in 2008 and cited in the PF. The petitioner's comment does not affect the analysis or conclusion of the PF under this criterion. Therefore, the FD affirms the PF that the petitioner meets the requirements of criterion § 83.7(d).

Criterion § 83.7(e) requires that the petitioner's members descend from a historical Indian tribe or from historical

Indian tribes that combined and functioned as a single autonomous political entity and that the petitioner submits a membership list. The PF found that the Shinnecock petitioner met criterion § 83.7(e) because it submitted a separately certified membership list and demonstrated that its 1,066 members descend from the historical Indian tribe. In the comment period, the petitioner submitted a 46-page report by its anthropologist with its 21 numbered exhibits (Exh. 123–143) including an updated membership list (Exh. 140); membership files for 62 members re-enrolled in the group (Exh. 142); an updated genealogical database; and separate lists of re-enrolled members, formerly "potential" members, and members deceased since the PF.

Evaluation under criterion § 83.7(e) considers the comments addressing: (1) The petitioner's current members; (2) the historical Indian tribal members they claim as ancestors; and (3) the evidence of that descent. Each of those three considerations is addressed here in that order.

New membership evidence for the FD includes the Shinnecock Board of Trustee's March 18, 2010, resolution stating that it "hereby opens the membership roll on a limited basis to add 169 individuals, to re-enroll 62 individuals, and to remove five deceased individuals from the roll for a final total of 1,292 enrolled members" (Petitioner resolution 3/18/2010). The 169 individuals were analyzed in the PF as the petitioner identified them as "potential members"; the 62 re-enrolled persons are reviewed here for the first time. The petitioner submitted a separately certified, updated membership list of 1,292 members (Exh. 140). Added members included 10 of the 13 non-members who voted in the 2009 Shinnecock elections (*Shinnecock* PF, 95, 103, 110, 112, 114).

For the FD, the petitioner did not add to the 2010 membership list the remaining 139 of 201 members disenrolled in 2009 for lack of descent documentation. Neither did the petitioner add to its 2010 membership list the 100 applicants whose files had been approved by the enrollment officer prior to the PF. The petitioner apparently did not overturn its longstanding bar to membership for children born to Shinnecock fathers not married to their non-Shinnecock mothers, 99 of whom were noted in the PF as additional prospective members.

The PF concluded that the historical Shinnecock Indian tribe of 1789 evolved as a continuously existing Indian tribe to 1865, which is the date of the earliest record to state plainly that it is an enumeration of all residents of the Shinnecock Reservation. This record is part of the 1865 New York State census of Southampton, Suffolk County. The PF invited the submission of evidence that would support or rebut the Department's conclusion about the tribe's continuity between 1789 and 1865, and, therefore, its reliance on the 1865 list to measure descent from the 1789 Shinnecock tribe (*Shinnecock* PF, 21, 100, 103, 113, 115).

The petitioner submitted limited new evidence addressing the petitioner's continuity as an Indian tribe between 1789 and 1865 or the Department's use of the 1865 State census to measure current members' descent from the 1789 Shinnecock tribe. None of this new evidence was created before 1865. Their submissions also included argument and analyses. If accepted, these submissions would support the Department's conclusion of continuity.

The petitioner offered alternative theories or interpretations of the 1806 and 1815 debarments (prohibiting individuals from drawing land on the Shinnecock Reservation) and of an 1836 deed (Comment, 30–35). The alternative debarment theory is plausible in some respects, but, when analyzed, does not account for all the known aspects of the 1806 debarment. The petitioner's argument about the Department's characterization of the 1836 deed reflects an incomplete reading of the deed. Neither alternative, however, would change the conclusion reached in the PF to rely upon descent from the 1865 Indians to measure descent from the 1789 Shinnecock tribe.

The petitioner's comment about "Shinnecock households" recorded in the early (1790–1840) Federal census records provides the opportunity to present a clarification here, which the PF did not include, of how the 1790–1880 Federal census enumerated Indians (Comment, 9). In establishing the Federal census, the U.S. Constitution directed that "Indians not taxed" be excluded (Art. 1, Sec. 2). Indians documented in contemporary records as residents of the Shinnecock leasehold or reservation—such as David Waukus (b.bef.1773–d.aft.1828) and Abraham Jacob (b.bef.1771–d.aft.1822)—constituted "Indians not taxed." They were not enumerated in the early censuses, apparently because the census enumerators complied with their instructions (*Shinnecock PF* Appendix F, 7). Indians or spouses of Indians who owned property off of the reservation—such as Paul Cuffee or James Bunn—were taxable, and that may explain the appearance of these individuals on early census records. Their appearance in the early censuses does not demonstrate either reservation residence or Shinnecock ancestry, as the comments presume. The pre-1840 Federal census enumerations that include individuals associated with the Shinnecock Indians are not treated as enumerations of Shinnecock Reservation residents in either the PF or the FD.

(It should be noted that, by 1840 and 1850, the census enumerators appeared to depart from their instructions, as they recorded individuals known to be reservation residents from contemporary court records. Further, in 1870 the enumerator prepared two returns of "Shinnecock," one of which is marked as a special report of "Indians not taxed.")

The petitioner submitted additional descent evidence and comment. Submitted evidence (Exh. 132–134) resolved parentage questions for the three current members among the four individuals noted in the PF, but not for the fourth noted individual, Frederick Cuffee (b.1782) (*Shinnecoc*k PF, 111).

Additional evidence clarified the identity and parentage of a current member whose previous FTM entry the petitioner had erroneously tagged as "adopted" (Exh. 135). The petitioner provided acceptable indirect evidence of parentage for Roxanna Bunn (b.ca.1809-d.1899) (Exh. 130). This additional genealogical connection helps support the PF's finding of 1789-to-1865 continuity and increases the number of 1865 reservation residents represented by current members, although it does not affect the number of current members demonstrating descent from 1865 Shinnecock Indians.

Another submission consisted of two charts of the descendants of James Bunn (b.ca.1767) and of David Walker/Waukus (b.bef.1773)—handwritten and dated by a Dr. Morris Steggerda on October 2, 1930—offered as parentage evidence for Elizabeth "Betsy" Bunn (b.1796) and for the various children the petitioner ascribed to David Waukus (Exh. 129). This type of evidence, created more than 100 years after the births it illustrates, is useful only as a guide to research. The named informants (born in 1845 and 1848) could not have provided firsthand knowledge of events occurring before their own births. Here, too, the number of current members demonstrating descent from 1865 Shinnecock Indians is not affected by determinations of these specific parentages.

The bulk of the new descent evidence consisted of membership files for the 62 re-enrolled members (Exh. 142) and for one member whose file had not been

submitted previously (Exh. 138). The Department genealogist analyzed the new descent evidence for the historical individuals, the questioned 2009 members, and the 62 new 2010 members. The result is that 1,254 current members demonstrate descent from the historical Indian tribe and 38 do not.

Thirty-one of the 38 current members who did not demonstrate descent from the 1865 reservation residents documented back to within a generation of the 1865 residents. They documented descent from Frederick Cuffee (b. 1872) for whom contemporary evidence of parentage has not been found. Five of the remaining seven current members who did not demonstrate descent from the 1865 reservation residents consist of one re-enrolled member and four previously "potential" members. They are depicted as close relatives of current members but need better evidence of their own parentage, and the two remaining members who did not demonstrate descent are documented as their children.

The 38 current members who did not demonstrate descent from an 1865 reservation resident may all be described as lacking satisfactory evidence of a single child-to-parent link in their line of descent from the 1865 reservation residents they claim as ancestors. In no instance did the evidence demonstrate that any of them descend from a specific non-Indian instead of the specific 1865 Shinnecock Reservation resident they claim as an ancestor.

The petitioner also submitted considerable descent argument. However, most of it is not applicable to the FD because it centers on the PF's Appendix D descriptions of the group's pre-1800 progenitors and the PF's calculations of members' descent from these pre-1800 individuals (Comment, 19–32) and from reservation residents in 1900 and 1910 (Comment, 35–36, 39; Exh. 137). The PF provided the pre-1800 and post-1900 information and calculations as background information that gave context for the Department's rebuttable use of the 1865 State census as a reliable list for measuring members' descent from the 1789 historical Indian tribe under criterion § 83.7(e). However, descent from the pre-1800 or post-1900 historical individuals was not and is not the measurement relied upon to determine whether the petitioner meets criterion § 83.7(e). Rather, descent from individuals on the 1865 list is the measurement for criterion § 83.7(e).

Analysis of the petitioner's comments addressing pre-1800 or post-1900 descent calculations neither supports nor rebuts the Department's use of the 1865 State census as a reliable list of the 1789 historical Shinnecock tribe as it evolved or the PF's conclusions under criterion § 83.7(e). Thus, the individual comments on descent calculations are not addressed in this FD.

The Department's measurement of descent from the historical Indian tribe for criterion § 83.7(e) differs from the petitioner's measurement of descent for membership purposes; however, the results of both types of descent measurements are similar. The petitioner requires its 1,292 members to demonstrate direct or collateral descent from any of the 130 Indian individuals on the 1900 or 1910 Indian schedules of Southampton, NY. Analysis for the FD showed 93 percent of the members claimed a direct ancestor on the 1900 or 1910 Indian schedule, and another 7 percent claimed descent from one of two siblings of one such Indian. The Department verified that 92 percent demonstrated descent from 1900 or 1910 reservation residents and 7 percent demonstrated descent from a sibling of such a resident, resulting in 99 percent descent overall. For purposes of demonstrating descent from the historical Indian tribe under criterion § 83.7(e), the Department evaluated members' direct descent from any of the 156 Indian individuals of the 1865 Shinnecock Reservation. Analysis for the FD verified that 97 percent of the 1,292 members demonstrated descent from an 1865 Shinnecock Reservation resident.

For the FD, the Department continues to rely upon the enumeration of the 146 individuals within the 28 Indian families residing on the Shinnecock Reservation from the 1865 New York State census. For the purposes of criterion § 83.7(e), the Department determines this state census to be a reliable list for measuring descent from the 1789 historical Shinnecock tribe as it evolved. The Department finds that the petitioner demonstrates descent from 48 of those 146 individuals.

Had the petitioner included the 139 members who were disenrolled in 2009, the petitioner would have also met criterion (e) (1,262 of 1,431, or 88 percent). The petitioner submitted a separately certified and updated list of all current members and evidence that demonstrates 97 percent of the members (1,254 of 1,292) descend from the historical Shinnecock tribe. Therefore, the FD affirms the PF's conclusion that the petitioner meets the requirements of criterion § 83.7(e) but with a revised membership total and percentage of descent.

The membership list used for the FD of an acknowledged tribe becomes its base roll for purposes of Federal funding and other administrative purposes (see § 83.12(b)). Therefore, the list of 1,292 members certified by the Shinnecock trustees as its complete membership list on March 18, 2010, is the base roll for purposes of Federal funding and other administrative purposes for the acknowledged Shinnecock Indian tribe. Under § 83.12, any additions to be made to subsequent tribal membership rolls of this acknowledged Indian tribe, other than descendants of those on the base roll and who meet the tribe's membership criteria, "shall be limited to those meeting the requirements of § 83.7(e) and maintaining significant social and political ties with the Indian tribe (i.e., maintaining the same relationship with the tribe as those on the list submitted with the group's documented petition)."

Criterion § 83.7(f) requires that the petitioner's membership be composed principally of persons who are not members of another federally recognized Indian tribe. The Shinnecock petitioner met this criterion in the PF. Four of the 169 new members added since the PF stated on consent forms that they belonged to federally recognized Indian tribes. None of the 62 re-enrolled members claimed enrollment in a federally recognized Indian tribe but one claimed membership in the Hassanamisco Nipmuc and two in the Unkechaug or Poospatuck groups. A total of ten current members claim enrollment in federally recognized tribes: Fort Sill Apache Tribe of Oklahoma (1 member), Hoopa Valley Tribe (2 members), Mashantucket Pequot Tribe of Connecticut (2 members), Navajo Nation (1 member), Pueblo of Taos (3 members), and White Mountain Apache Tribe of the Fort Apache Reservation (1 member).

The evidence in the record demonstrates that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. The FD affirms the PF's conclusion that the petitioner meets the requirements of criterion § 83.7(d).

Criterion § 83.7(g) requires that the petitioner not be subject to congressional legislation that has terminated or forbidden the Federal relationship. The PF found that the Shinnecock petitioner met criterion § 83.7(g), because there is no evidence that Congress has either terminated or forbidden a Federal relationship with the petitioner or its members. The

petitioner did not submit comment on this criterion; therefore, this FD affirms the PF's conclusion that the petitioner meets the requirements of criterion § 83.7(g).

This notice is the FD to extend Federal acknowledgment under 25 CFR part 83 to the Shinnecock Indian Nation petitioner. As provided in § 83.10(h) of the regulations, this FD summarizes the evidence, reasoning, and analyses that form the basis for this decision. In addition to its publication in the **Federal Register**, this notice will be posted on the Department's Indian Affairs Web site at *http://www.bia.gov.*

The May 26, 2009, settlement agreement that the petitioner and the Department negotiated and the Court approved by order on May 26, 2009, in *Shinnecock* v. *Salazar,* No. CV–06–5013, 1 (E.D.N.Y.), shortens several of the regulatory periods following publication of a notice of a FD provided in § 83.11. A copy of the court-approved stipulation and order for settlement appears as Appendix B of the Shinnecock Indian Nation Proposed Finding (PF), which is available at *http://www.bia.gov/WhoWeAre/AS-IA/OFA/RecentCases/index.htm.*

This FD on the Shinnecock petitioner will become a final and effective agency decision 30 days after the publication of this notice in the **Federal Register**, unless the petitioner or an interested party files a request for reconsideration, pursuant to § 83.11, with the Interior Board of Indian Appeals (IBIA) within that shortened time period. If the IBIA receives a request for reconsideration within the 30-day period, the party requesting reconsideration has an additional 30 days to file a detailed statement in support of its request. This statement shall be the requesting party's opening brief. The IBIA must receive the detailed statement no later than 60 days after the publication of this FD notice in the **Federal Register**. The Shinnecock petitioner or interested parties opposed to the requested reconsideration shall have 30 days to file an answer brief in opposition to the reconsideration request. The IBIA must receive the answer brief no later than 90 days after the publication of this FD notice in the **Federal Register**.

Dated: June 13, 2010.

George T. Skibine,

Acting Principal Deputy, Assistant Secretary—Indian Affairs.

[FR Doc. 2010–14733 Filed 6–17–10; 8:45 am]

BILLING CODE 4310–G1–P

DEPARTMENT OF THE INTERIOR

Advisory Committee on Water Information (ACWI); Meeting

AGENCY: United States Geological Survey, Interior Department.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting is to discuss broad policy-related topics relating to national water initiatives, and the development and dissemination of water information, through reports from ACWI subgroups. The agenda will include results of the Department of Agriculture's Conservation Effects Assessment Program for the Upper Mississippi; an update by the Subcommittee on Ground Water regarding their National Framework for Ground Water Monitoring; a briefing on the Reservoir Sedimentation Database; highlights from the 7th National Monitoring Conference, which was held earlier this year in Denver, Colorado; status of the National Monitoring Network for U.S. Coastal Waters and their Tributaries; an update on Federal agency interactions with the regional water quality monitoring organizations of the Integrated Ocean Observing Systems; and updates on recent activities of the Methods and Data Comparability Board.

The ACWI was established under the authority of the Office of Management and Budget Memorandum M–92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water information users and professionals to advise the Federal Government on activities and plans that may improve the effectiveness of meeting the Nation's water information needs. Member organizations help to foster communications between the Federal and non-Federal sectors on sharing water information.

Membership, limited to 35 organizations, represents a wide range of water resources interests and functions. Representation on the ACWI includes all levels of government, academia, private industry, and professional and technical societies. For more information on the ACWI, its membership, subgroups, meetings and activities, please see the Web site at: *http://ACWI.gov*.

DATES: The formal meeting will convene at 9 a.m. on July 13, 2010, and will adjourn at 5:30 p.m. on July 14, 2010.

ADDRESSES: The meeting will be held at the Crowne Plaza Dulles Airport, located at 2200 Centreville Road, Herndon, Virginia 20171.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy E. Norton, ACWI Executive Secretary and Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 417, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648–5644; e-mail: *wenorton@usgs.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Norton at the above address no later than July 2, 2010. It is requested that 65 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Norton for distribution at the ACWI meeting.

Dated: May 31, 2010.

Katherine Lins,

Chief, Office of Water Information.

[FR Doc. 2010–14738 Filed 6–17–10; 8:45 am]

BILLING CODE 4310–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 22, 2010. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service,, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 6, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your

personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

COLORADO

Boulder County

Rocky Mountain Mammoth Mine (Metal Mining and Tourist Era Resources of Boulder County MPS), 4879 Magnolia Dr, Nederland, 10000422

IOWA

Clarke County

Osceola Masonic Block, 101–103 S Main St, Osceola, 10000421

Polk County

Iowa Commission for the Blind Building, 524 4th St, Des Moines, 10000420

KANSAS

Atchison County

Wherrett—Mize Drug Company Building, 201 Main St, Atchison, 10000432

Harvey County

J.J. Krehbiel and Company Carriage Factory, 128–130 E 6th St, Harvey, 10000427

Riley County

Strasser House, 326 Laramie St, Manhattan, 10000431

Saline County

Christ Cathedral, 138 S 8th St, Salina, 10000429

Sedgwick County

Wilson, Fred D., House (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957), 205 N Pershing, Wichita, 10000428

Wyandotte County

H.W. Gates Funeral Home, 1901 Olathe Blvd, Kansas City, 10000430

LOUISIANA

East Feliciana Parish

California Club, The, 538 S Flower St, Los Angeles, 10000425

Iberia Parish

Vida Shaw Bridge, Vida Shaw Rd near intersection with SHWY 344, Loreaville, 10000419

MASSACHUSETTS

Middlesex County

Butters—Avery House (First Period Buildings of Eastern Massachusetts TR), 165 Chestnut St, Wilmington, 10000413

MINNESOTA

Carver County

Chaska Historical Marker, County Highway 61 near Edgehill Rd, Chaska, 10000415

Scott County

Holmes Street Bridge (Iron and Steel Bridges in Minnesota MPS), Holmes Street over the Minnesota River, Shakopee, 10000414

MONTANA

Missoula County

Bonner Company Town Historic District, Roughly bounded by W Riverside Dr on NW, Anaconda Ave on W, and unnamed ridges on N, S, and E., Bonner, 10000426

NORTH DAKOTA

Divide County

Travelers Hotel, 121 Main St, Noonan, 10000423

Grand Forks County

WPA Stone Structures in Memorial Park and Calvary Cemetery, SE Corner from intersection of Gateway Dr and N Columbia Rd, Grand Forks, 10000424

WASHINGTON

Cowlitz County

Berwind—Purcell House, 808 Lone Oak Rd, Longview, 10000416

Spokane County

Dodd House, 603 S Arthur St, Spokane, 10000417

Whitman County

Hutchison Studio, NE 200 Kamiaken St, Whitman, 10000418

[FR Doc. 2010–14773 Filed 6–17–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N123]
[96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before July 19, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), [and] our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17[,] require that we invite public comment before final action on these permit applications.

III. Permit Applications

Endangered Species

Applicant: St. Louis Zoo, St. Louis, MO; PRT–171410

The applicant requests a permit to import biological samples from several wild lemur populations within the *Daubentoniidae, Lemuridae* and *Lepilemuridae* families for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–727416

The applicant requests a permit to import biological samples from multiple species including wild, captive-held, and captive-born endangered species for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5–year period.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–13802A

The applicant requests a permit to export one female captive bred giant panda (*Ailuropoda melanoleuca*) born at the zoo in 2007and owned by the Government of China, to the Wolong Nature Reserve, Sichuan Province, China, under the terms of Zoological Society of San Diego loan agreement with the China Wildlife Conservation Association. This export is part of the approved loan program for the purpose of enhancement of the survival of the species through scientific research as outlined in the Zoological Society of San Diego's original permit.

Applicant: United States Department of Agriculture/Animal and Plant Health Inspection Service/Wildlife Service/ National Wildlife Research Center, Fort Collins, CO; PRT–12152A

The applicant requests a permit to import biological samples collected from wild African wild dogs (*Lycaon pictus*) in Zambia for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5–year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Frank Pohl, Rowlett, TX; PRT–00588A

Applicant: Katherine Lavie Fraser, Santa Barbara, CA; PRT–14520A

Applicant: Patrick B. Carrier, Kingsland, TX; PRT–14522A

Applicant: Alvin T. Filpula, Rancho Cordova, CA; PRT–14519A

Dated: June 11, 2010.

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–14803 Filed 6–17– 10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request of the Resource Justification Model (RJM); Comment Request

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 17, 2010.

ADDRESSES: Send comments to Lauren C. Harrel, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4531, Washington, DC 20210, telephone number (202) 693–2992 (this is not a toll-free number). E-mail address is *harrel.lauren@dol.gov* and fax number is (202) 693–2874 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The collection of actual Unemployment Insurance (UI) administrative cost data from states' accounting records and projected expenditures for upcoming years is accomplished through the RJM data collection instrument. The data collected consists of the actual, most recently completed fiscal year's program expenditures and hours broken out by functional activity and two years of projected expenditures. The actual cost data informs ETA's administrative funding allocation model so that state UI program administration funds are allocated as equitably as possible among states.

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the proposed extension of the RJM data collection. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the information collection 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 submissions of responses.

III. Current Actions

The data collected within the RJM state submissions are used as input to the process of distributing UI program appropriated funds among the states and inform ETA of the funding requirements states are anticipating.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Resource Justification Model.

OMB Number: 1205–0430.

Affected Public: State Government.

Cite/Reference/Form/etc: Social Security Act, Section 303(a)(b).

Total Respondents: 53 State Workforce Agencies.

Frequency: Annually.

Total Responses: 53 respondents × 4 submittals = 212 responses.

Average Estimated Response Time: 123 hours.

Total Estimated Burden Hours: 6,519.

Form/activity	Total respondents	Frequency	Total responses	Average time per response (hours)	Total estimated burden (hours)
Crosswalk	53	Annually	53	108	5,724
ACCT SUM	53	Annually	53	4	212
RJM 1–6	53	Annually	53	3	159
Narrative	53	Annually	53	8	424
Totals			212		6,519

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this solicitation will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 11, 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–14707 Filed 6–17–10; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Federal Employees' Compensation; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. Currently, DOL is soliciting comments for a new collection, FECA Contractor Surveys. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 17, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, E-mail Alvarez.Vincent@dol.gov. Please use only one method of transmission for comments (mail, fax, or E-mail).

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) conducts a variety of voluntary Customer Satisfaction Surveys of regulated/non-regulated entities, which are specifically designed to gather information from a customer's perspective as prescribed by E.O. 12862, Setting Customer Service Standards, September 11, 1993. These Customer Satisfaction Surveys provide information on customer attitudes about the delivery and quality of agency products/services and are used as part of an ongoing process to improve DOL programs. This generic clearance allows agencies to gather information from both Federal and non-Federal users. In addition to conducting Customer Satisfaction Surveys, the Department also includes the use of evaluation forms for those DOL agencies conducting conferences. These evaluations are helpful in determining the success of the current conference, in developing future conferences, and in meeting the needs of the Department's product/service users.

II. Current Actions

This is a new collection. The Federal Employees' Compensation Act provides workers' compensation coverage to three million federal and postal workers around the world for employment-related injuries and occupational diseases. The Division of Federal Employees' Compensation (DFEC) is charged with administering the FECA program. To obtain better feedback

regarding various DFEC programs and functions, the DFEC is seeking approval to allow contract personnel such as Continuation of Pay (COP) Nurses, Field Nurses, and Rehabilitation Counselors, the opportunity to participate and provide feedback on DFEC effectiveness. These resources play a vital role in assisting the DFEC with the mission of returning injured employees to gainful employment. To this end, DOL seeks implementation of three separate surveys for this group. These surveys may be used on occasion and a three year approval is requested.

Type of Review: New collection request for OMB Control number.

Agency: Office of Workers' Compensation Programs.

Title: FECA Contractor Surveys.

OMB Number: pending.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents: 330.

Total Annual responses: 330.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 82.

Frequency: On occasion and usually only one time per respondent.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $10,249.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 15, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2010–14805 Filed 6–17–10; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Nanoscale Science and Engineering Center (NSEC) at the University of Pennsylvania (Committee Code: 1203).

Dates & times: July 7, 2010: 7 p.m.–9 p.m.

July 8, 2010: 8:15 a.m.–9:30 p.m.

July 9, 2010: 8 a.m.–4 p.m.

Place: University of Pennsylvania, Philadelphia, PA.

Type of meeting: Part-open.

Contact person: Dr. David Brant, Program Director, Biomaterials Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4941, e-mail *dbrant@nsf.gov.*

Purpose of meeting: To provide advice and recommendations concerning further support of the NSEC at the University of Pennsylvania (UPenn), Philadelphia, PA.

AGENDA

Wednesday, July 7, 2010

7 pm–9 pm Closed—Executive Session/Dinner.

Thursday, July 8, 2010

8:15 a.m.–4 p.m. Open—Review of the NSEC at UPenn.

4 p.m.–5 p.m. Closed—Executive session.

5 p.m.–5:30 p.m. Open—Panel Asks Clarifying Questions for NSEC Leaders.

5:30 p.m.–7:30 p.m. Open—Poster Session.

7:30 p.m.–9:30 p.m. Closed—Executive Session/Dinner.

Friday, July 9, 2010

8 a.m.–9 a.m. Closed—Executive Session/Breakfast—Director's Response.

9 a.m.–10 a.m. Open—Facilities Overview and Lab Tour.

10 a.m.–3:45 p.m. Closed—Executive Session/Draft and Review Report.

3:45 p.m.–4 p.m. Closed—Debriefing with NSEC Leaders.

Reason for closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–14723 Filed 6–17–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meeting Notice

The National Science Board's Subcommittee on Facilities, Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Tuesday, June 29, 2010, at 8 a.m. to 3 p.m.

SUBJECT MATTER: Discussion includes:

Categorization of facilities and associated issues, review of National Science Foundation facilities, identification of areas that will benefit from policy guidance and next steps (Open session).

Future year budgets for current & future facilities (Closed session: 11 p.m.–12:30 p.m).

STATUS: Open and Closed (*see* above).

PLACE: This meeting will be held in Conference Room # 375, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for information or schedule updates, or contact: Elizabeth Strickland, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Any changes to time, place, subject matter or status of meeting may be found at *http://www.nsf.gov/nsb/notices/.*

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2010–14867 Filed 6–16–10; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–156; NRC–2010–0203]

The University of Wisconsin; Facility Operating License No. R–74; Notice of Acceptance for Docketing and Opportunity for Hearing on the Application Regarding Renewal of Facility Operating License for an Additional 20-Year Period for the University of Wisconsin Nuclear Reactor and Order Imposing Procedures for Access to Safeguards Information and Sensitive Unclassified Non-Safeguards Information

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Acceptance for Docketing.

FOR FURTHER INFORMATION CONTACT: Christian Cowdrey, Project Manager, Research and Test Reactors Projects Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory

Commission, Rockville, MD 20852. Telephone: (301) 415–2758; fax number: (301) 415–1032; e-mail: *Christian.Cowdrey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the renewal of Facility Operating License No. R–74 ("Application"), which currently authorizes the University of Wisconsin (the licensee) to operate the University of Wisconsin Nuclear Reactor (UWNR) at a maximum steady-state thermal power of 1000 kilowatts (kW) thermal power. The renewed license would authorize the applicant to operate the UWNR up to a steady-state thermal power of 1000 kW for an additional 20 years from the date of issuance.

The Application contains sensitive unclassified non-safeguards information (SUNSI) and Safeguards Information (SGI).

On May 9, 2000, as supplemented on October 17, 2008, the NRC received an application from the licensee filed pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 50.51(a), to renew Facility Operating License No. R–74 for the UWNR.

Based on its initial review of the application, the Commission's staff determined that UWNR submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 so that the application is acceptable for docketing. The current Docket No. 50–156 for Facility Operating License No. R–74 will be retained. The docketing of the renewal application does not preclude requests for additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

II. Opportunity To Request a Hearing or Petition to Intervene

Within 60 days of this notice, any person(s) whose interest may be affected may file a request for hearing/petition to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 17, 2010. The petition must be filed in accordance with the filing instructions in section IV, and should meet the requirements for petitions for leave to intervene set forth in section III.A, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 17, 2010.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be

submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from June 18, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the documents NUREG–1537, entitled "Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors" and the "Interim Staff Guidance on the Streamlined Review Process for License Renewal for Research Reactors" (ISG) which can be obtained from the Commission's public document room (PDR). The detailed review guidance (NUREG–1537 and the ISG) may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML041230055 for part one of NUREG–1537, ML041230048 for part two of NUREG–1537 and ML092440244 for the ISG. Copies of the application to renew the facility license from the licensee are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738. The initial application and other related documents may be accessed through the NRC's Public Electronic Reading Room, at the address mentioned above, under ADAMS Accession Nos.: ML093570404 and ML100740573. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and SGI). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions" for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart G and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) website, a secure website that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at (301) 492–3524.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–7232 or (301) 492–7311, or by e-mail to *Forms.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check;

(d) A check or money order payable in the amount of $ 200.00 [4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address:

Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWB–05–B32M, Washington, DC 20555–0001.

These documents and materials should not be included with the request letter to the

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [5] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 14th day of June, 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in this Proceeding

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). NOTE: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv)..
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2010–14768 Filed 6–17–10; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–04544; NRC–2010–0213]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 19–07538–01, for Unrestricted Release of the Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health's Facility in Rockville, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5040; fax number (610) 337–5269; or by *e-mail: elizabeth.ullrich@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 19–07538–01. This license is held by the Department of Health and Human Services (HHS), Food and Drug Administration, Center for Devices and Radiological Health (FDA/CDRH) (the Licensee), for its FDA/CDRH Building 1 laboratory (the Facility), located at 12720 Twinbrook Parkway, in Rockville, Maryland. Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated December 30, 2009. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's December 30, 2009,

license amendment request, resulting in release of the Facility for unrestricted use. License No. 19–07538–01 was issued on July 21, 1961, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods. The licensee also used uranyl acetate pursuant to the general license in 10 CFR 40.22.

The Facility is a 19,229 square foot building situated on a 4-acre complex and consists of office space and laboratories. The Facility is located in a mixed residential/commercial area. Within the Facility, use of licensed materials was confined to 27 laboratories.

In March 2007, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations.

The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Barium 133, cesium 137, americium 241, and uranium 238. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey during November 2009. The final status survey report was attached to the Licensee's amendment request dated December 30, 2009. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, "Consolidated NMSS Decommissioning Guidance," Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR part 20 for unrestricted release. Because NRC has not established a screening value for barium 133, the licensee developed a DCGL for barium 133 for its Facility. The Licensee developed the barium 133 DCGL by conducting site-specific dose modeling using input parameters specific to the Facility, and by using the default values in RESRAD–BUILD, Version 3.4. The NRC reviewed the Licensee's methodology and proposed barium 133 DCGL and concluded that the proposed barium 133 DCGL is acceptable for use as release criteria at the Facility. The Licensee's final status survey results were below the relevant DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. Therefore, the NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Nuclear Facilities" (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed by the licensee and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. Because the environmental impacts of the proposed action and the no-action alternative are therefore similar, the no-action alternative is accordingly not considered further.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Maryland Department of the Environment, Air and Radiation Management Administration and Land Management Administration, for review on March 9, 2010. On April 26, 2010, Maryland Department of the Environment, Air and Radiation Management Administration and Land Management Administration responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore,

no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Letter dated December 30, 2009, with the "Final Radiological Status Survey Report" dated December 2009 [ML100040232];

2. Letter dated May 13, 2009 [ML091350560];

3. NUREG–1757, "Consolidated NMSS Decommissioning Guidance";

4. Title 10, Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination";

5. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;" and

6. NUREG–1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities."

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I this 10th day of June 2010.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 2010–14749 Filed 6–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2010–0212]

Florida Power & Light Company; Turkey Point Nuclear Generating Plant, Units 3 and 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 26, Section 26.9, for Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power & Light Company (the licensee), for operation of the Turkey Point Nuclear Generating Plant, Units 3 and 4, located in Florida City, Florida. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action:

The proposed action would consider approval of an exemption for Turkey Point, Units 3 and 4, from certain requirements of 10 CFR part 26, "Fitness for Duty Rule." Specifically, the licensee requests approval of an exemption from the requirements of 10 CFR 26.205(c), "Work hours scheduling," and (d), "Work hour controls."

The licensee states that during severe weather conditions, for example, tropical storms or hurricane force winds, adherence to all work hour controls requirements could impede the licensee's ability to use whatever staff resources may be necessary to prepare the site for a pending severe weather event and ensure that the plant reaches and maintains a safe and secure status.

The exemption would only apply to severe weather conditions where tropical storm or hurricane force winds are predicted onsite requiring severe weather preparations and activation and sequestering of the Turkey Point storm crew.

The proposed exemption will allow the licensee not to meet the requirements of 10 CFR 26.205(c) and (d), from the time severe weather site preparation begins until exit conditions are satisfied. The exemption would only apply to individuals on the storm crew who perform duties identified in 10 CFR 26.4(a)(1) through (a)(5). When storm crew sequestering exit conditions are met, full compliance with 10 CFR 26.205(c) and (d) will be required.

The proposed action does not involve any physical changes to the reactor, fuel, plant, structures, support structures, water, or land at the Turkey Point Units 3 and 4, site.

The proposed action is in accordance with the licensee's application dated October 13, 2009.

The Need for the Proposed Action:

Proposed action is needed because the licensee is unable to meet the requirements of 10 CFR 26.205(c) and (d) during declarations of severe weather conditions that could result due to prevailing tropical storm or hurricane force winds impacting the facility.

Compliance with work hour control requirements could impede the licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant reaches and maintains a safe and secure status.

Environmental Impacts of the Proposed Action:

The NRC staff has completed its environmental assessment of the proposed exemption. The NRC staff has concluded that the proposed exemption from the implementation of the requirements of 10 CFR 26.205(c) and (d) during declaration of severe weather conditions, would not significantly affect plant safety and would not have a significant adverse affect on the probability of occurrence of an accident.

The proposed action would not result in any increased radiological hazards beyond those previously evaluated by the NRC staff in the Safety Evaluation Report, dated March 15, 1972, related to operation of Turkey Point, Units 3 and 4. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or

protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed action. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

The licensee currently maintains a Hurricane Plan that provides directions for activation of the storm crew. The storm crew is activated upon the direction of the Emergency Coordinator, typically the site Plant General Manager or designee. This individual is qualified as an Emergency Coordinator during a declared emergency. The Plan provides specific entry conditions for the start of the emergency and specific conditions that will terminate the emergency. The licensee states that the impact on personnel manning for implementation of the site hurricane staffing and severe weather preparations is similar to entering the Emergency Plan. Although the proposed exemption would allow the licensee not to meet work hour controls during storm crew activation, sufficient numbers of management and supervision will be available during storm crew manning and activation to ensure that public health and safety is adequately protected.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action:

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action were denied, the licensee would have to comply with the fatigue rules in 10 CFR 26.205(c) and (d). This would cause unnecessary burden on the licensee, without a significant benefit in environmental impacts. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

Alternative Use of Resources:

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the Turkey Point Units 3 and 4, Docket Nos. 50–250 and 50–251, issued in 1972 and Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Turkey Point, Units 3 and 4, Final Report (NUREG–1437, Supplement 5), issued January 31, 2002.

Agencies and Persons Consulted:

In accordance with its stated policy, on May 13, 2010, the staff consulted with the Florida State official, William A Passetti of the Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further Information

For further details with respect to the proposed action, see the licensee's letter dated October 13, 2009 (ADAMS Accession No. ML092950342). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of June 2010.

For the Nuclear Regulatory Commission.

Jason C. Paige,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–14751 Filed 6–17–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–040 and 52–041; NRC–2009–0337]

Florida Power & Light Company, Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of hearing and opportunity to petition for leave to intervene.

DATES: Petitions for leave to intervene must be filed by August 17, 2010.

FOR FURTHER INFORMATION CONTACT: Manny Comar, Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* (301) 415–3863; *e-mail: Manny.Comar@nrc.gov*.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The application letter dated June 30, 2009, is available electronically under ADAMS Accession Number ML091830589. The application is electronically available for public viewing in ADAMS and can also be found at *http://www.nrc.gov/reactors/new-reactors/col/turkey-point/documents.html*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10 of the *Code of*

Federal Regulations (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," notice is hereby given that a hearing will be held, at a time and place to be set in the future by the U.S. Nuclear Regulatory Commission (NRC, the Commission) or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the application dated June 30, 2009, filed by Florida Power & Light Company, pursuant to Subpart C of 10 CFR Part 52, for a combined license (COL). The application requests approval of a COL for Turkey Point Units 6 & 7 located in Homestead, Florida. Notice of NRC's receipt of the application was published in the **Federal Register** on August 3, 2009 (74 FR 38477). The application was accepted for docketing and published on October 7, 2009 (74 FR 51621). The docket numbers established for this application are 52–040 and 52–041.

The Turkey Point Units 6 & 7 combined license application incorporates by reference Appendix D to 10 CFR Part 52 and the AP1000 Design Control Document (DCD) submitted by Westinghouse to the NRC on May 26, 2007, as Revision 16, and updated by Revision 17, on September 22, 2008.

The COL hearing will be conducted by a Board that will be designated by the Chief Judge of the Atomic Safety and Licensing Board Panel or will be conducted by the Commission. Notice as to the membership of the Board would be published in the **Federal Register** at a later date. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report. The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, "Referral to the ACRS," and the ACRS will report on those portions of the application that concern safety. The NRC staff will also complete an environmental review of the application and will document its findings in an environmental impact statement in accordance with the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR Part 51.

II. Petitions for Leave To Intervene

Requirements for petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR part 2, Section 2.309, which is available at the NRC's PDR, located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov*.

Any person whose interest may be affected by this proceeding and who desires to participate as a party to this proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a combined license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

Those permitted to intervene become parties to the contested proceeding, subject to any limitations in the order granting leave to intervene. The party's participation will be governed by applicable NRC regulations, policies, and procedures, and may include the opportunity to present the party's legal and technical views, introduce evidence, and propose questions to be asked of witnesses. The Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be filed no later than 60 days from June 18, 2010. Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Board or a presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should be submitted to the Commission by August 17, 2010. The petition must be filed in accordance with the filing instructions in Section III of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above may also seek to participate in a hearing as a nonparty in accordance with 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. The Licensing Board will determine when it will accept limited appearance statements, and advise the public of such opportunities.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a petition for leave to intervene, any

motion or other document filed in the proceeding prior to the submission of a petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner should contact the Office of the Secretary by e-mail at *Hearing.Docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, Board, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

As noted in Section II above, petitions for leave to intervene must be filed no later than 60 days from June 18, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Any person who files a motion pursuant to 10 CFR 2.323 must consult with counsel for the applicant and counsel for the NRC staff who are listed below. Counsel for the applicant is Antonio Fernandez, (561) 304–5288, *Antonio.Fernandez@fpl.com*. Counsel for the NRC staff in this proceeding is Patrick Moulding, (301) 415–2549, *Patrick.Moulding@nrc.gov*.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the

Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-reactors/col/turkey-point/documents.html.* The application is also available to local residents at the South Dade Regional Library and the Homestead Branch Library. To search for documents in ADAMS using Turkey Point application docket numbers, 52–040 and 52–041, one should enter the terms "05200040" and "05200041" in the "Docket Number" field when using either the web-based search (advanced search) engine or the ADAMS "Find" tool in Citrix. The Westinghouse AP1000 DCD, which is incorporated by reference into Appendix D of 10 CFR part 52, as well as the design certification amendment currently under NRC staff review, can be found at *http://www.nrc.gov/reactors/newreactors/designcert.html.*

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including sensitive unclassified non-safeguards information (SUNSI) and safeguards information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1) of this Order;

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions" for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, Subpart G and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at (301) 492–3524.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–7232 or (301) 492–7311, or by e-mail to *Forms.Resource@nrc.gov*. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check;

(d) A check or money order payable in the amount of $200 [4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requestor or any individual who will have access to SGI believes

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address:

Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWB–05–B32M, Washington, DC 20555–0001.

These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [5] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access. If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

[5] Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR

Continued

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 14th day of June 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to sensitive unclassified non-safeguards information (SUNSI) and/or safeguards information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for the fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt + 30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt + 180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). NOTE: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv).
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt + 25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt + 7) Petitioner/Intervener reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2010–14757 Filed 6–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–73; NRC–2010–0210; EA–2010–050]

Exelon Generation Company, LLC, Braidwood Station, Independent Spent Fuel Installation Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order for Implementation of Additional Security Measures and Fingerprinting for Unescorted Access to Exelon Generation Company, LLC.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards

49139; August 28, 2007), apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

(NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492–3316; fax number: (301) 492–3348; e-mail: *Raynard.Wharton@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, NRC (or the Commission) is providing notice, in the matter of Braidwood Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

NRC has issued a general license to Exelon Generation Company (Exelon), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations (10 CFR) Part 72. This Order is being issued to Exelon because it has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR Part 73, Appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued Advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at Exelon's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions must be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. Exelon shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the Braidwood Station's physical security plan. Exelon shall complete implementation of the requirements in Attachments 1 and 2 to the Order no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI, whichever is earlier. Additionally, Exelon must receive written verification that the ASMs have been adequately implemented before initially placing spent fuel in the ISFSI.

B.1. Exelon shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause Exelon to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide Exelon's justification for seeking relief from, or variation of, any specific requirement.

2. If Exelon considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, Exelon must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, Exelon must supplement its response, to

Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C.1. Exelon shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. Exelon shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Exelon's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by Exelon as a result of this order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, Exelon must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, Exelon and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which Exelon relies and the reasons as to why the Order should not have been issued. If a person other than Exelon requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by Exelon or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Exelon may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date this Order is published in the **Federal Register**, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated at Rockville, Maryland, this 9th day of June 2010.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) contains Safeguards Information and is not included in the **Federal Register** notice.

Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, dated June 3, 2010.

A. General Basis Criteria

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the U.S. Nuclear Regulatory Commission (NRC)-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

B. Additional Security Measures for Access Authorization Program

1. The licensee shall develop, implement and maintain a program, or enhance its existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety for the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past three years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than three years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent two years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (*e.g.,* driver's license; passport; government identification; State-, province-, or country-of-birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with "Protection of Information," in Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and shall verify and ensure, to the extent possible, the accuracy of the provided social security number and alien registration number, as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service for the past three years, and/or academic enrollment and attendance in lieu of employment, for the past five years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government-granted security clearance

(*i.e.,* Top Secret, Secret, or Confidential).

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past three years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, *i.e.,* Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed five years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, *i.e.,* Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the "reviewing official," must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to Safeguards Information (SGI) or unescorted access to any facility subject to NRC regulation, if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee under this Order, must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information," in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (*e.g.,* a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of three years from the date the individual no longer requires access to the facility.

D. Prohibitions

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge, or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

E. Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop TWB–05–B32M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to forms@nrc.gov. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee shall send an e-mail to *det@nrc.gov.* The e-mail must include the licensee's company name, address, point of contact (POC), POC e-mail address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user lD. Once the licensee has established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 492–3531. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for CHRCs, including the FBI fingerprint record.

F. Right To Correct and Complete Information

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.,* law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least 10 days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

G. Protection of Information

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need to know.

4. The personal information obtained on an individual from a CHRC may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. 2010–14764 Filed 6–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–74; EA–2010–051; NRC–2010–0211]

In the Matter of Luminant Generation Company LLC; Comanche Peak Steam Electric Station; Independent Spent Fuel Installation; Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order for Implementation of Additional Security Measures and Fingerprinting for Unescorted Access to Luminant Generation Company LLC.

FOR FURTHER INFORMATION, CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492–3316; fax number: (301) 492–3348; e-mail: *Raynard.Wharton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, NRC (or the Commission) is providing notice, in the matter of Comanche Peak Steam Electric Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

NRC has issued a general license to Luminant Generation Company LLC (Luminant), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations (10 CFR) part 72. This Order is being issued to Luminant because it has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR part 73, appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued Advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at Luminant's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions must be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. Luminant shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the Comanche Peak Steam Electric Station's physical security plan. Luminant shall complete implementation of the requirements in Attachments 1 and 2 to the Order no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI, whichever is earlier. Additionally, Luminant must receive written verification that the ASMs have been adequately implemented before initially placing spent fuel in the ISFSI.

B. 1. Luminant shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause Luminant to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide Luminant's justification for seeking relief from, or variation of, any specific requirement.

2. If Luminant considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, Luminant must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, Luminant must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. Luminant shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. Luminant shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Luminant's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by Luminant as a result of this order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, Luminant must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, Luminant and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which Luminant relies and the reasons as to why the Order should not have been issued. If a person other than Luminant requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or

by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by Luminant or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Luminant may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date this Order is published in the **Federal Register**, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated at Rockville, Maryland, this 9th day of June, 2010.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) contains Safeguards Information and is not included in the **Federal Register** Notice.

Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, Dated June 3, 2010

A. General Basis Criteria

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the U.S. Nuclear Regulatory Commission (NRC)-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

B. Additional Security Measures for Access Authorization Program

1. The licensee shall develop, implement and maintain a program, or enhance its existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety for the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past three years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than three years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent two years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (e.g., driver's license; passport; government identification; state-, province-, or country-of-birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with "Protection of Information," in Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and shall verify and ensure, to the extent possible, the accuracy of the provided social security number and alien registration number, as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service for the past three years, and/or academic enrollment and attendance in lieu of employment, for the past five years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government-granted security clearance (i.e., Top Secret, Secret, or Confidential).

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past three years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed five years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active "Q" or "L" clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the "reviewing official," must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to Safeguards Information (SGI) or unescorted access to any facility subject to NRC regulation, if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee under this Order, must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information," in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of three years from the date the individual no longer requires access to the facility.

D. Prohibitions

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge, or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

E. Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop TWB–5B32M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section.

Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee shall send an e-mail to *det@nrc.gov*. The e-mail must include the licensee's company name, address, point of contact (POC), POC e-mail address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user lD. Once the licensee has established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 492–3531. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for CHRCs, including the FBI fingerprint record.

F. Right To Correct and Complete Information

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

provide at least 10 days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

G. Protection of Information

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need to know.

4. The personal information obtained on an individual from a CHRC may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. 2010–14747 Filed 6–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–36; NRC–2009–0278]

Westinghouse Electric Company, LLC; License Amendment Request, Opportunity To Provide Comments, Request a Hearing and To Petition for Leave To Intervene

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of amendment and opportunity to request a hearing and to petition for leave to intervene.

DATES: Submit comments by September 16, 2010. Requests for a hearing or leave to intervene must be filed by August 17, 2010.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0278 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0278. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail Comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

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

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Room 01 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The license application request is available electronically under ADAMS Accession Number ML100700619.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0278.

FOR FURTHER INFORMATION CONTACT: John J. Hayes,, Project Manager, Materials Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, Maryland 20852–2738 Telephone: (301) 415–5928; fax number: (301) 415–5928; e-mail: *john.hayes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has received a license amendment application from Westinghouse Electric Company LLC (WEC or the licensee) dated March 3, 2010, for disposal of NRC-licensed source, byproduct and special nuclear material pursuant to 10 CFR 20.2002 from its former fuel cycle facility located in Festus, Missouri. WEC holds NRC License No. SNM–00033, which authorizes the licensee to conduct decommissioning activities. The amendment requests authorization for WEC to transfer decommissioning waste to U.S. Ecology Idaho, Inc., a Resource Conservation and Recovery Act (RCRA) Subtitle C disposal facility located near Grand View, Idaho. The U.S. Ecology Idaho facility is regulated by the Idaho Department of Environmental Quality and is not an NRC-licensed facility. Pursuant to 10 CFR 30.11 and 70.17, WEC's application also requests that U.S. Ecology be granted exemptions from the licensing requirements of 10 CFR 30.3 and 70.3 for byproduct and special nuclear material, respectively. These exemptions are necessary because the disposal of byproduct and special nuclear material must occur at a facility licensed by the NRC to possess such material and the U.S. Ecology Idaho facility does not have an NRC license.

An NRC administrative review, documented in a letter to WEC dated May 14, 2010, (ADAMS No. ML101310335) found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an

amendment to NRC License No. SNM–00033. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at 01 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)(viii).

A State, county, municipality, Federally recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 17, 2010. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally recognized Indian Tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 17, 2010.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the

Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from June 18, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Dated at Rockville, Maryland, this 4th day of June 2010.

For the U.S. Nuclear Regulatory Commission.

Keith McConnell,

Deputy Director, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–14759 Filed 6–17–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0215]

PSEG Power, LLC and PSEG Nuclear, LLC; Notice of Receipt and Availability of Application for an Early Site Permit

On May 25, 2010, PSEG Power, LLC and PSEG Nuclear, LLC filed with the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," an application for an early site permit (ESP) for the PSEG Site located in Salem County, New Jersey.

An applicant may seek an ESP in accordance with Subpart A of 10 CFR Part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the period of an ESP (up to 20 years), the permit holder may reference the permit in an application for a CP or COL.

Subsequent **Federal Register** notices will address the acceptability of the tendered ESP application for docketing and provisions for participation of the public in the ESP review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555

Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The cover letter ADAMS Accession Number is ML101480484. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application is also available at *http://www.nrc.gov/reactors/new-reactors/esp.html*.

Dated at Rockville, Maryland, this 14th day of June 2010.

For The Nuclear Regulatory Commission.

Prosanta Chowdhury,

Project Manager, EPR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2010–14754 Filed 6–17–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62289; File No. SR–CTA/CQ–2009–03]

Consolidated Tape Association; Order Approving the Fifteenth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and Eleventh Substantive Amendment to the Restated Consolidated Quotation Plan

June 14, 2010.

I. Introduction

On November 2, 2009, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan participants ("Participants") [1] filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 608 thereunder,[3] a proposal [4] to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the "Plans").[5] The proposal represents the fifteenth substantive amendment to the CTA Plan ("Fifteenth Amendment to the CTA Plan") and the eleventh substantive amendment to the CQ Plan ("Eleventh Amendment to the CQ Plan"), and reflects changes unanimously adopted by the Participants. The Fifteenth Amendment to the CTA Plan and the Eleventh Amendment to the CQ Plan ("Amendments") would amend the Plans to provide that the Participants pay the Network B Administrator a fixed annual fee in exchange for its performance of Network B administrator functions under the Plans. In addition, the Amendments seek to accommodate recent changes in names and addresses of certain Participants. The proposed Amendments were published for comment in the **Federal Register** on February 8, 2010.[6] No comment letters were received in response to the Notice. This order approves the proposed amendments to the Plans.

II. Description of the Proposal

Section XII ("Financial Matters") of the CTA Plan and Section IX ("Financial Matters") of the CQ Plan each provide that a network's Operating Expenses are to be deducted from the network's Gross Income to determine the amounts that the network's administrator distributes to the Participants. Section XII(c)(i) ("Determination of Operating Expenses") of the CTA Plan currently provides that a CTA network's Operating Expenses include all costs and expenses "associated with, relating to, or resulting from, the generation, consolidation or dissemination of the CTA's network's last sale price information." Likewise, Section IX(c)(i) ("Determination of Operating Expenses") of the CQ Plan currently provides that a network's Operating Expenses include all costs and expenses that the network's administrator incurs in "collecting, processing and making available that CQ network's quotation information." The Network B Administrator stated that accounting for operating costs is administratively burdensome, especially the allocation of organization overhead costs to the Network B Administrator function. As a result, the Network B Participants proposed to pay the Network B Administrator a fixed fee in exchange for the services the Network B administrator performs on behalf of the Plans. Therefore, the Participants proposed to replace their payment to the Network B Administrator of Operating Costs with their payment to the Network B Administrator of a fixed fee.[7]

For calendar year 2009, the Network B Participants proposed to set the fixed fee at $3,000,000. The Participants concluded that this amount would compensate the Network B Administrator for its Network B Administrative services during 2009 under both the CTA Plan and the CQ Plan. For each subsequent calendar year, the Network B Participants proposed to increase (but not decrease) the amount of the payment by the percentage increase (if any) in the annual cost-of-living adjustment that the U.S. Social Security Administration applies to Supplemental Security Income for the preceding calendar year, subject to a maximum annual increase of five percent.[8] The Participants' payment of the fixed fee will compensate the Network B Administrator for all ordinary and customary operating expenses that it incurs in performing the network administrator functions under the CTA and CQ Plans. However, it does not compensate the Network B Administrator for extraordinary expenses that the Network B Administrator may incur on behalf of the Network B Participants. Extraordinary expenses include such things as that portion of legal and audit expenses and marketing and consulting

[1] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex, Inc.; and NYSE Arca, Inc.

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 242.608.

[4] On January 13, 2010, the CTA filed a revised transmittal letter indicating, among other technical changes, that the Participants also proposed to make changes in the names and addresses of certain Participants ("Transmittal Letter").

[5] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 61457 (February 1, 2010), 75 FR 6229 ("Notice").

[7] The Participants noted that the Network A Administrator similarly receives a fixed fee for its performance of administrative functions under the CTA and CQ Plans and the Participants understand that Nasdaq receives a fixed fee for its performance of administrative functions under the "Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis" ("Nasdaq UTP Plan").

[8] *See* Notice, *supra* note 6 at 6230 for a more detailed description of how the fee will be assessed.

fees that are outside of the ordinary functions that the Network B Administrator performs.[9]

In addition, the Participants proposed to amend the Plans to reflect changes in the corporate names and street addresses of NASDAQ OMX BX, Inc. (formerly Boston Stock Exchange, Inc.), NASDAQ OMX PHLX, Inc. (formerly Philadelphia Stock Exchange, Inc.) and NYSE Amex, Inc. (formerly American Stock Exchange LLC). They also proposed to conform the language signifying the status of BATS Exchange, Inc. as a national securities exchange to the language used for the other Plan Participants.

III. Discussion

After careful review, the Commission finds that the Amendments to the Plans are consistent with the requirements of the Act and the rules and regulations thereunder,[10] and, in particular, Section 11A(a)(1) of the Act [11] and Rule 608 thereunder [12] in that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. The Commission believes that paying a flat fee to the Network B Administrator should eliminate the need for the Network B Administrator to account for operating costs and thus make the administration of the Plans more efficient.[13] Additionally, the Commission notes that every two years the Network B Administrator is required to provide a report detailing any significant changes to the administrative expenses during the preceding two years to enable the Participants to review and determine by majority vote whether to continue the Annual Fixed Payment at its then current level.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[14] and the rules thereunder, that the proposed amendments to the CTA and CQ Plans are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14740 Filed 6–17–10; 8:45 am]

BILLING CODE 8010–01–P

[9] The Commission notes that the Transmittal Letter accompanying the proposed Amendments included language not voted on by the Participants and thus of no legal consequence: "Network B Administrator will not incur any extraordinary expense on behalf of the Network B Participants unless the Network B Participants determine by majority vote to approve the incurrence of that extraordinary expense."

[10] The Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 17 CFR 240.608.

[13] The Commission notes that the Network A Administrator under the CTA Plan and CQ Plan and Nasdaq under the Nasdaq UTP Plan similarly receive a fixed fee for the performance of administrative functions.

[14] 15 U.S.C. 78k–1.

[15] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62280]

Order Granting Application for Extension of a Temporary Conditional Exemption Pursuant to Section 36(a) of the Exchange Act by the International Securities Exchange, LLC Relating to the Ownership Interest of International Securities Exchange Holdings, Inc. in an Electronic Communications Network

June 11, 2010.

I. Introduction

On December 22, 2008, the Securities and Exchange Commission ("Commission") approved a proposal filed by the International Securities Exchange, LLC ("ISE" or "Exchange") in connection with corporate transactions (the "Transactions") in which, among other things, the parent company of ISE, International Securities Exchange Holdings, Inc. ("ISE Holdings"), purchased a 31.54% ownership interest in Direct Edge Holdings LLC ("Direct Edge"), the owner and operator of Direct Edge ECN ("DECN"), a registered broker-dealer and electronic communications network ("ECN").[1] Following the closing of the Transactions (the "Closing"), Direct Edge's wholly-owned subsidiary, Maple Merger Sub LLC ("Merger Sub") began to operate a marketplace for the trading of U.S. cash equity securities by Equity Electronic Access Members of ISE (the "Facility"), under ISE's rules and as a "facility," as defined in Section 3(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act"),[2] of ISE.[3]

DECN, which operates as an ECN and submits its limit orders to the Facility for display and execution, is an affiliate of ISE through ISE Holdings' equity interest in DE Holdings. DECN also is a facility, as defined in Section 3(a)(2) of the Exchange Act, of ISE because it is an affiliate of ISE used for the purpose of effecting and reporting securities transactions. Because DECN is a facility of ISE, ISE, absent exemptive relief, would be obligated under Section 19(b) of the Exchange Act to file with the Commission proposed rules governing the operation of DECN's systems and subscriber fees.

On December 22, 2008, the Commission exercised its authority under Section 36 of the Exchange Act to grant ISE a temporary exemption, subject to certain conditions, from the requirements under Section 19(b) of the Exchange Act with respect to DECN's proposed rules.[4] On June 19, 2009, the Commission extended this temporary exemption for an additional 180 days, subject to certain conditions.[5] On December 16, 2009, the Commission further extended the temporary exemption for an additional 180 days, subject to certain conditions.[6]

On May 19, 2010, ISE filed with the Commission, pursuant to Rule 0–12 [7] under the Exchange Act, an application under Section 36(a)(1) of the Exchange Act [8] to extend the relief granted in the Exemption Order through August 31, 2010.[9] This order grants ISE's request, subject to the satisfaction of certain conditions, which are outlined below.

II. Application for an Extension of the Temporary Conditional Exemption From the Section 19(b) Rule Filing Requirements

On May 19, 2010, ISE requested that the Commission exercise its authority under Section 36 of the Exchange Act to temporarily extend, subject to certain conditions, the temporary conditional exemption granted in the Exemption Order from the rule filing procedures of Section 19(b) of the Exchange Act in

[1] *See* Securities Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (order approving File No. SR–ISE–2008–85).

[2] 15 U.S. C. 78c(a)(2).

[3] Under Section 3(a)(2) of the Act, the term "facility," when used with respect to an exchange, includes "its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service."

[4] *See* Securities Exchange Act Release No. 59133 (December 22, 2008), 73 FR 79940 (December 30, 2008) ("Exemption Order").

[5] *See* Securities Exchange Act Release No. 60152 (June 19, 2009), 74 FR 30334 (June 25, 2009) ("June Extension").

[6] *See* Securities Exchange Act Release No. 61174 (December 16, 2009), 74 FR 68294 (December 23, 2009) ("December Extension").

[7] 17 CFR 240.0–12.

[8] 15 U.S.C. 78mm(a)(1).

[9] *See* letter from Michael J. Simon, General Counsel and Secretary, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated May 19, 2010 ("Extension Request").

connection with ISE Holdings' equity ownership interest in DE Holdings and the continued operation of DECN as a facility of ISE.[10]

In May 2009, EDGA Exchange, Inc., and EDGX Exchange, Inc. (together, the "Exchange Subsidiaries"), two wholly-owned subsidiaries of DE Holdings, filed with the Commission Form 1 applications (the "Form 1 Applications") to register as national securities exchanges under Section 6 of the Exchange Act.[11] The Form 1 Applications, which included the proposed rules of the Exchange Subsidiaries, were published for comment on September 17, 2009,[12] and the Commission granted the Exchange Subsidiaries' exchange registration applications on March 12, 2010.[13]

ISE states that the Exchange Subsidiaries expect to begin operating as national securities exchanges in early July 2010.[14] To ensure a smooth transition of trading from DECN to the Exchange Subsidiaries, there will be a two-week pre-launch period during which members will be able to enter mock orders on each Exchange Subsidiary using test symbols.[15] Following the launch date, there will be a two-week phase-in period during which securities currently traded on DECN will be moved from DECN to each Exchange Subsidiary.[16] ISE believes that this process will help to ensure the functionality of the Exchange Subsidiaries and an orderly transition from DECN to the Exchange Subsidiaries.[17] Accordingly, to ensure the launch of the Exchange Subsidiaries, phase-in the trading of all securities on the Exchange Subsidiaries, decommission DECN after the Exchange Subsidiaries are trading all symbols, and incorporate the ability to respond to unanticipated transition issues, ISE requests an additional extension until August 31, 2010, of the relief granted in the Exemption Order.[18] ISE expects that DECN will continue to operate as a facility of ISE for a relatively brief period.[19]

ISE believes that it would be unduly burdensome and inefficient to require DECN's operating rules to be separately subject to the Section 19(b) rule filing process because the published rules of the Exchange Subsidiaries "substantially align with DECN's operations in practice and DECN is only operating temporarily as a facility of ISE until all symbols are fully migrated to the Exchange Subsidiaries."[20] ISE believes, further, that the publication of the Exchange Subsidiaries' rules as part of the Form 1 Applications should help to mitigate any concerns regarding the transparency of the rules under which DECN will continue to operate, temporarily, as a facility of ISE.[21]

ISE has asked the Commission to exercise its authority under Section 36 of the Exchange Act to grant ISE a temporary extension, until August 31, 2010, subject to certain conditions, of the Exemption Order's relief from the Section 19(b) rule filing requirements that otherwise would apply to DECN as a facility of ISE.[22] The extended temporary conditional exemption would commence immediately and would permit the continued operation of DECN until all symbols are fully migrated to the Exchange Subsidiaries, but in no event later than August 31, 2010.[23] ISE believes that the extended temporary conditional exemption will help to ensure an orderly transition from DECN to the Exchange Subsidiaries.[24]

ISE states, in addition, that the extended exemption will not diminish the Commission's ability to monitor ISE and DECN.[25] In this regard, ISE notes that to the extent that ISE makes changes to its systems, including the Facility, during the extended temporary exemption period, or thereafter, it remains subject to Section 19(b) and thus obligated to file proposed rule changes with the Commission.[26] Further, in the Extension Request, ISE commits to satisfying certain conditions, as outlined below, which are identical to the conditions in the Exemption Order, the June Extension, and the December Extension.[27] For example, as a condition to the extended temporary exemption, ISE will be required to submit proposed rule changes with respect to any material changes to DECN's functions during the exemption period.[28] ISE notes, however, that neither ISE nor DECN anticipates any material changes to DECN's functionality during the extended temporary exemption period.[29]

III. Order Granting Extension of Temporary Conditional Section 36 Exemption

In 1996, Congress gave the Commission greater flexibility to regulate trading systems, such as DECN, by granting the Commission broad authority to exempt any person from any of the provisions of the Exchange Act and to impose appropriate conditions on their operation.[30] Specifically, NSMIA added Section 36(a)(1) to the Exchange Act, which provides that "the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."[31] In enacting Section 36, Congress indicated that it expected that "the Commission will use this authority to promote efficiency, competition and capital formation."[32] It particularly intended to give the Commission sufficient flexibility to respond to changing market and competitive conditions:

> The Committee recognizes that the rapidly changing marketplace dictates that effective regulation requires a certain amount of flexibility. Accordingly, the bill grants the SEC general exemptive authority under both the Securities Act and the Securities Exchange Act. This exemptive authority will allow the Commission the flexibility to explore and adopt new approaches to

[10] *See* Extension Request at 3.

[11] *See* Extension Request at 2.

[12] Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 ("Form 1 Applications Notice"). *See* Extension Request at 2 and 3.

[13] Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) ("Exchange Registration Order"). *See* Extension Request at 2.

[14] *See* Extension Request at 2.

[15] *Id.*

[16] *Id.* Once a symbol has migrated from DECN to the Exchange Subsidiaries, it will no longer be available for trading on DECN and will only be available for trading on the Exchange Subsidiaries. *See* Extension Request at note 6. After all symbols have migrated to the Exchanged Subsidiaries, DECN intends to promptly file a "Cessation of Operations Report" with the Commission and to cease operations as an ECN. *See* Extension Request at 2.

[17] *See* Extension Request at 2 and 3.

[18] *See* Extension Request at 2.

[19] *Id.* ISE states that it would be impracticable for DECN to display its limit orders other than on the Facility. *See* Extension Request at 4.

[20] *See* Extension Request at 3.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *See* Extension Request at note 9 and accompanying text. ISE also represents that it has complied with the conditions in the Exemption Order, the June Extension, and the December Extension, and that it will continue to comply with these conditions during any extension of the relief granted in the Exemption Order. *See* Extension Request at 4.

[28] *See* Extension Request at 3.

[29] *See* Extension Request at note 8.

[30] 15 U.S.C. 78mm(a). Section 36 of the Exchange Act was enacted as part of the National Securities Markets Improvements Act 1996, Pub. L. No. 104–290 ("NSMIA").

[31] 15 U.S.C. 78mm(a)(1).

[32] H.R. Rep. No. 104–622, 104th Cong., 2d Sess. 38 (1996).

registration and disclosure. It will also enable the Commission to address issues relating to the securities markets more generally. For example, the SEC could deal with the regulatory concerns raised by the recent proliferation of electronic trading systems, which do not fit neatly into the existing regulatory framework.[33]

As noted above, on December 22, 2008, the Commission exercised its Section 36 exemptive authority to grant ISE a temporary exemption, subject to certain conditions, from the 19(b) rule filing requirements in connection with the Transaction.[34] The Commission granted temporary extensions of this exemptive relief, subject to certain conditions, on June 19, 2009,[35] and December 16, 2009.[36] In addition, the Commission previously granted similar exemptive relief in connection with Nasdaq's acquisition of Brut, LLC, the operator of the Brut ECN.[37]

Section 19(b)(1) of the Exchange Act requires a self-regulatory organization ("self-regulatory organization" or "SRO"), including ISE, to file with the Commission its proposed rule changes accompanied by a concise general statement of the basis and purpose of the proposed rule change. Once a proposed rule change has been filed with the Commission, the Commission is required to publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless approved by the Commission by order, unless the rule change is within the class of rule changes that are effective upon filing pursuant to Section 19(b)(3)(A) of the Act[38] or put into effect summarily pursuant to Section 19(b)(3)(B) of the Act.[39]

Section 19(b)(1) of the Exchange Act defines the term "proposed rule change" to mean "any proposed rule or rule change in, addition to, or deletion from the rules of [a] self-regulatory organization." Pursuant to Section 3(a)(27) and 3(a)(28) of the Exchange Act, the term "rules of a self-regulatory organization" means (1) the constitution, articles of incorporation, bylaws and rules, or instruments corresponding to the foregoing, of an SRO, and (2) such stated policies, practices and interpretations of an SRO (other than the Municipal Securities Rulemaking Board) as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules. Rule 19b–4(b) under the Exchange Act,[40] defines the term "stated policy, practice, or interpretation" to mean generally "any material aspect of the operation of the facilities of the self-regulatory organization or any statement made available to the membership, participants, or specified persons thereof that establishes or changes any standard, limit, or guideline with respect to rights and obligations of specified persons or the meaning, administration, or enforcement of an existing rule."

The term "facility" is defined in Section 3(a)(2) of the Exchange Act, with respect to an exchange, to include "its premises, tangible or intangible property whether on the premises or not, any right to use such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service."

ISE acknowledges that Merger Sub has operated the Facility as a facility of ISE since the Closing.[41] Absent an exemption, Section 19(b) of the Exchange Act and Rule 19b–4 thereunder would require ISE to file proposed rules with the Commission to allow ISE to operate DECN as a facility of ISE.

As described more fully above, ISE states that the Exchange Subsidiaries expect to begin operating as national securities exchanges in early July 2010.[42] To ensure a smooth transition from DECN to the Exchange Subsidiaries, there will be a two-week pre-launch period during which members will be able to enter mock orders on the Exchange Subsidiaries using test symbols.[43] Following the launch date of the Exchange Subsidiaries, there will be a two-week phase-in period during which securities currently trading on DECN will be moved from DECN to each Exchange Subsidiary.[44] ISE requests a temporary extension until August 31, 2010, of the relief granted in the Exemption Order, subject to certain conditions, to allow for the pre-launch testing and phase-in of trading on the Exchange Subsidiaries and to provide an orderly transition from DECN to the Exchange Subsidiaries.[45] ISE notes that DECN intends to cease operations as an ECN when all symbols are fully migrated to the Exchange Subsidiaries.[46] Accordingly, ISE expects that DECN will continue to operate as a facility of ISE for a relatively brief period of time.[47] ISE represents that it has complied with the conditions in the Exemption Order, the June Extension, and the December Extension, and that it will continue to comply with these conditions during any extension of the relief granted in the Exemption Order.[48]

The Commission believes that it is appropriate to grant a temporary extension of the relief provided in the Exemption Order, subject to the conditions described below, to allow DECN to continue to operate as a facility of ISE without being subject to the rule filing requirements of Section 19(b) of the Exchange Act for a temporary period.[49] Accordingly, the Commission has determined to grant ISE's request for an extension of the relief granted in the Exemption Order, subject to certain conditions, through the earlier of (1) the completion of the migration of all symbols from DECN to the Exchange Subsidiaries; or (2) August 31, 2010. The Commission finds that the temporary extended conditional exemption from the provisions of Section 19(b) of the Exchange Act is appropriate in the public interest and is consistent with the protection of investors. In particular, the Commission believes that the temporary extended exemption should help to promote efficiency and competition in the market by allowing DECN to continue to operate as an ECN for a limited period of time while the Exchange Subsidiaries test their systems and phase-in the trading of securities on the Exchange Subsidiaries. The Commission notes ISE's belief that it would be unduly burdensome and inefficient to require DECN's operating rules to be separately subjected to the Section 19(b) rule filing

[33] S. Rep. No. 104–293, 104th Cong., 2d Sess. 15 (1996).

[34] *See* Exemption Order, *supra* note 4.

[35] *See* June Extension, *supra* note 5.

[36] *See* December Extension, *supra* note 6.

[37] *See* Securities Exchange Act Release No. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004). Although granting the ISE's Extension Request would result in a temporary exemption longer than the exemption granted in connection with Nasdaq's acquisition of Brut, LLC, the Commission believes that it is appropriate to provide the Exchange Subsidiaries with a further extension to help facilitate an orderly transition from DECN to the Exchange Subsidiaries.

[38] 15 U.S.C. 78s(b)(3)(A).

[39] 15 U.S.C. 78s(b)(3)(B).

[40] 17 CFR 240.19b–4(b).

[41] *See* Extension Request at 1. As discussed above, ISE owns a 31.54% ownership interest in DE Holdings, the sole owner of Merger Sub.

[42] *See* Extension Request at 2.

[43] *Id.*

[44] *Id.*

[45] *See* Extension Request at 2 and 3.

[46] *See* Extension Request at 2.

[47] *Id.*

[48] *See* Extension Request at 4.

[49] In granting this relief, the Commission makes no finding regarding whether ISE's operation of DECN as a facility would be consistent with the Exchange Act.

and approval process because DECN will operate only temporarily as a facility of ISE.[50] In addition, the Commission notes that ISE represents that the rules of the Exchange Subsidiaries, which were published for comment as part of the Form 1 Applications, "substantially align" with DECN's operations in practice.[51] Accordingly, the Commission believes that the publication of the Form 1 Applications, coupled with the posting of the rules of the Exchange Subsidiaries on Direct Edge's Web site, should help to mitigate any concerns regarding transparency with respect to the rules under which DECN will continue to operate, temporarily, as a facility of ISE.

To provide the Commission with the opportunity to review and act upon any proposal to change DECN's fees or to make material changes to DECN's operations as an ECN during the period covered by the extended temporary exemption, as well as to ensure that the Commission's ability to monitor ISE and DECN is not diminished by the extended temporary exemption, the Commission is imposing the following conditions while the extended temporary exemption is in effect. The Commission believes such conditions are necessary and appropriate in the public interest for the protection of investors. Therefore, the Commission is granting to ISE an extended temporary exemption, until the earlier of (1) the completion of the migration of all symbols from DECN to the Exchange Subsidiaries; or (2) August 31, 2010, pursuant to Section 36 of the Exchange Act, from the rule filing requirements imposed by Section 19(b) of the Exchange Act as set forth above, provided that ISE and DECN comply with the following conditions:

(1) DECN remains a registered broker-dealer under Section 15 of the Exchange Act[52] and continues to operate as an ECN;

(2) DECN operates in compliance with the obligations set forth under Regulation ATS;

(3) DECN and ISE continue to operate as separate legal entities;

(4) ISE files a proposed rule change under Section 19 of the Exchange Act[53] if any material changes are sought to be made to DECN's operations. A material change would include any changes to a stated policy, practice, or interpretation regarding the operation of DECN or any other event or action relating to DECN that would require the filing of a proposed rule change by an SRO or an SRO facility;[54]

(5) ISE files a proposed rule change under Section 19 of the Exchange Act if DECN's fee schedule is sought to be modified; and

(6) ISE treats DECN the same as other ECNs that participate in the Facility, and, in particular, ISE does not accord DECN preferential treatment in how DECN submits orders to the Facility or in the way its orders are displayed or executed.[55]

In addition, the Commission notes that the Financial Industry Regulatory Authority is currently the Designated Examining Authority for DECN.

For the reasons discussed above, the Commission finds that the extended temporary conditional exemptive relief requested by ISE is appropriate in the public interest and is consistent with the protection of investors.

IT IS ORDERED, pursuant to Section 36 of the Exchange Act,[56] that the application for an extended temporary conditional exemption is granted through the earlier of (1) the completion of the migration of all symbols from DECN to the Exchange Subsidiaries; or (2) August 31, 2010, effective immediately.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–14684 Filed 6–17–10; 8:45 am]

BILLING CODE 8010–01–P

[50] *See* Extension Request at 3.

[51] *See* Extension Request at 3.

[52] 15 U.S.C. 78*o*.

[53] 15 U.S.C. 78s.

[54] *See* Section 19(b) of the Exchange Act and Rule 19b–4 thereunder. The Commission notes that a material change would include, among other things, changes to DECN's operating platform; the types of securities traded on DECN; DECN's types of subscribers; or the reporting venue for trading that takes place on DECN. The Commission also notes that any rule filings must set forth the operation of the DECN facility sufficiently so that the Commission and the public are able to evaluate the proposed changes.

[55] *See* Extension Request at note 9.

[56] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62286; File No. SR–CBOE–2010–051]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

June 11, 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 26, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "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 CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to amend its Fees Schedule to adopt fees for the use of a new front-end order entry workstation, referred to as PULSe, that will be a facility of the Exchange. 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, on the Commission's Web site at *http://www.sec.gov* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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, Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to establish fees relating to the use of the PULSe order entry workstation.

The PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of CBOE and CBOE Stock Exchange ("CBSX").[5] In

[5] The Exchange represents that the PULSe workstation is merely a new front-end system

Continued

addition to providing the capability to send orders to the markets of CBOE and CBSX, the PULSe workstation will also provide a user with the capability to send options orders to other U.S. options exchanges and stock orders to other U.S. stock exchanges through a "PULSe Routing Intermediary" as further described below ("away-market routing").[6] Additionally, the PULSe workstation functionality will include access to consolidated real-time options and stock market data.[7]

The PULSe workstation will be made available by Signal Trading Systems, LLC ("STS"). STS is an affiliate of CBOE that is jointly owned by CBOE and FlexTrade Systems, Inc. ("FlexTrade"), a technology services provider. STS will grant licenses to use the workstation directly to CBOE and CBSX members and trading permit holders (sometimes collectively referred to herein as "members"). Members may also make the workstation available to their customers, including sponsored users. However, any order routed to CBOE or CBSX through a PULSe workstation must be routed through a member or sponsored user (whose orders are sponsored by a member).

The Exchange proposes a monthly PULSe workstation fee to members of $350 per workstation per month for the first 10 PULSe workstations and $100 per workstation per month for each additional PULSe workstation. The Exchange also proposes an away-market routing fee to the entering member of $0.10 per executed options contract (or equivalent share amount in the case of stock) for away-market routing of orders through the PULSe workstation. The Exchange is proposing that the workstation and away-market routing fees be waived through July 30, 2010, thus these fees will be assessed beginning August 2, 2010.

These new PULSe fees will allow for the recoupment of the costs of developing, maintaining, and supporting the PULSe workstation and for income from the value-added services being provided through use of the PULSe workstation as well as the related away-market routing technology. The Exchange believes the fee structure represents an equitable allocation of reasonable fees in that the same fees are applicable to all users. The Exchange also believes the workstation and routing intermediary fees are competitive with fees applicable to similar workstations that offer away-market routing services provided by other exchanges. In addition, the Exchange believes that the $0.10 away-market routing fee is reasonable and appropriate in light of the fact that it is small in relation to the value to the user of the PULSe workstation and its extensive functionality, including its ability to facilitate the routing of orders to any securities exchange and in relation to the total costs typically incurred in routing and executing orders. The Exchange also notes that use of the PULSe workstation and the away-market routing functionality available through the PULSe workstation are not compulsory. The services are to be offered as a convenience to members and would not be the exclusive means available to a member to send orders to CBOE or CBSX or intermarket.

The PULSe workstation will cause CBOE (CBSX) to be the default destination exchange for individually executed marketable option (stock) orders if CBOE (CBSX) is at the national best bid or offer ("NBBO"), regardless of size or time, but will allow any user to manually override CBOE (CBSX) as the default destination on an order-by-order basis.[8] The workstation also incorporates a function allowing option (stock) orders at a specified price to be sent to multiple exchanges with a single click ("sweep function"), and the sweep function will be configured to cause an option (stock) order to be sent to CBOE (CBSX) for up to the full size quoted by CBOE (CBSX) if CBOE (CBSX) is at the NBBO.[9] Again, the away-market routing functionality is to be offered as a convenience to members and would not be an exclusive means available to a member to send orders intermarket.[10]

To use the PULSe workstation, a member must either be a PULSe Routing Intermediary or establish a relationship with a PULSe Routing Intermediary. A "PULSe Routing Intermediary" is a CBOE or CBSX member or trading permit holder that has connectivity to, and is a member of, other options and/or stock exchanges. If a member sends an order from the PULSe workstation, the PULSe Routing Intermediary will route that order to the designated market on behalf of the entering member. For member convenience, CBOE will make available a list of PULSe Routing Intermediaries that provide third-party routing services. The Exchange proposes that each PULSe Routing Intermediary be charged a fee of $20 per PULSe workstation per month for each PULSe workstation that is enabled to send orders through that Routing Intermediary if another member requests routing functionality through that Routing Intermediary. The Exchange is proposing that the PULSE Routing Intermediary fee be waived through November 30, 2010, thus this fee will be assessed beginning December 1, 2010.

The Exchange believes that the PULSe workstation will constitute a "facility" of CBOE[11] to the extent that it is used with respect to orders for options and other

interface to existing CBOE and CBSX trading systems (*i.e.,* it is a new means of connecting to these existing trading systems), and does not require any changes to the Exchange's surveillance or communications rules. Further, there is no change to, or impact on, the Exchange's market structure as a result of the PULSe workstations. The Exchange notes that the C2 Options Exchange ("C2") has not yet begun trading. Use of the PULSe workstation as a front-end system interface to C2 will be addressed in a separate rule filing prior to the initiation of trading on C2.

[6] The Exchange notes that, at least initially, orders that are sent from the PULSe workstation to CBOE and CBSX will be routed through connectivity provided by a PULSe Routing Intermediary. The Exchange envisions that the PULSe workstation functionality will be modified so that orders sent from the workstation to CBOE and CBSX may be sent directly instead of through the connectivity provided by a PULSe Routing Intermediary.

[7] The workstation will also have the capability to enable a user to send orders for commodity futures and commodity options to designated contract markets and other venues of the user's choice at which the user has trading privileges and to futures commission merchants (each, an "FCM") and introducing brokers (each, an "IB") of the user's choice. The workstation may also have the capability to enable a user to send orders in other non-security products to one or more destinations of the user's choice.

[8] Nothing about the PULSe order routing functionality would relieve any member that is using the PULSe workstation from complying with its best execution obligations. Specifically, just as with any customer order and any other routing functionality, a member would have an obligation to consider the availability of price improvement at various markets and whether routing a customer order through the PULSe functionality would allow for access to opportunities for price improvement if readily available. Moreover, a member would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that would include its use of the PULSe workstation.

[9] For example, if a member were to enter an option order to buy 250 contracts using the sweep function at a time when CBOE is at the NBBO for 100 contracts, the sweep function will be configured to send an order for 100 contracts to CBOE, with the balance of the order routed as specified by the member entering the order from the configurations offered by the PULSe workstation. Nothing will require a person using the PULSe workstation to use the sweep function, and, in this same example, if the member wished to route the entire order for 250 contracts to an exchange other than CBOE using the PULSe workstation, the member will be free to manually override CBOE as the default destination for the entire order.

[10] With respect to options (stocks), the Exchange also notes that the away-market functionality in the PULSe workstation will not displace the provisions of the Options Order Protection and Locked/Crossed Market Plan (Regulation NMS), which will continue to apply in the circumstances described in the Plan (Regulation NMS).

[11] The Exchange believes that the PULSe workstation will, in the language of Section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2), constitute a property or service "for the purpose of effecting or reporting a transaction on an exchange * * *."

securities.[12] A portion of the fees collected by CBOE for the use of the workstation will be remitted to STS.[13]

The Exchange notes that FlexTrade engages and will engage in business activities in addition to its provision of services to STS and that these activities include providing other technology services to broker-dealers.[14] The Exchange also notes that STS may in the future engage in business activities in addition to making the PULSe workstation facility available, and that these activities may also include the provision of other technology services to broker-dealers. In this regard: (i) There will be procedures and internal controls in place that are reasonably designed so that FlexTrade does not unfairly take advantage of confidential information relating to PULSe in its other business activities and so that STS will not unfairly take advantage of confidential information relating to PULSe to the extent that STS engages in any other business activities other than providing the PULSe workstation. (ii) The books, records, premises, officers, directors, agents, and employees of STS, with respect to the PULSe workstation, as a facility of CBOE, will be deemed to be those of CBOE for purposes of and subject to oversight pursuant to the Act. (iii) Use of the PULSe workstation will be optional. Members will not be required to use the PULSe workstation to initiate their orders, and a member use any available order entry system that it selects, including one that it develops itself, for use to initiate its orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(4) [16] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE and CBSX members and trading permit holders in that the same fees are applicable to all users of the PULSe workstation.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriatae in furtherance of puropses 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and subparagraph (f)(2) of Rule 19b–4 [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–051. 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 CBOE. 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–CBOE–2010–051 and should be submitted on or before July 9, 2010.

[12] The capability of the workstation to initiate orders for commodity futures and commodity options and other non-security products to be sent to a designated contract market, FCM, IB or other destination that does not constitute an "exchange" (as that term is defined in Section 3(a)(1), 15 U.S.C. 78c(a)(1), and used in Section 3(a)(2), 15 U.S.C. 78c(a)(2), of the Act) will not constitute part of the "facility" of CBOE.

[13] FlexTrade is not, and, at least initially, will not be registered as a broker-dealer under Section 15(a) of the Act, 15 U.S.C. 78o. STS also will not, at least initially, be registered as a broker-dealer under Section 15(a) of the Act. In this regard, we note the following: (i) CBOE will be primarily responsible for the marketing of the PULSe workstation. In no event will FlexTrade have any role in marketing the PULSe workstation. FlexTrade will not be a party to any agreements with members for the PULSe workstation. (ii) In contributing services to STS, FlexTrade will be limited to providing software and systems technology and maintaining proper technical functioning. CBOE will be responsible for ensuring that STS's provision of the PULSe workstation, as a facility of CBOE, meets CBOE's obligations as a self-regulatory organization. (iii) Unless it becomes registered as a broker-dealer under Section 15(a) of the Act, neither STS nor FlexTrade will hold itself out as a broker-dealer, provide advice related to securities transactions, match orders, make decisions about routing orders, facilitate the clearance and settlement of executed trades, prepare or send transaction confirmations, screen counterparties for creditworthiness, hold funds or securities, open, maintain, administer or close brokerage accounts, or provide assistance in resolving problems, discrepancies or disputes related to brokerage accounts. Should STS or FlexTrade seek to register as a broker-dealer in the future, the Exchange represents that the broker-dealer would not perform any operations without first discussing with the Commission staff whether any of the broker-dealer's operations should be subject to an Exchange rule filing required under the Act, 15 U.S.C. 78s(b)(1).

[14] The Exchange notes that FlexTrade is the sole member of a single member limited liability company named FlexTrade LLC, that FlexTrade LLC is a registered broker-dealer, and that FlexTrade and FlexTrade LLC each currently makes a front-end order entry workstation named "FlexTrader" available. FlexTrade LLC is not a member of CBOE or CBSX.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14739 Filed 6–17–10; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice: 7051]

Meeting To Learn of U.S. Information and Communications Technologies (ICT) Industry Efforts To Assist Haitian Relief and Reconstruction Efforts Following the January 2010 Earthquake

AGENCY: Department of State.

ACTION: Notice of a meeting.

SUMMARY: The United States Coordinator for International Communications and Information Policy (CIP) will hold a public meeting on July 9, 2010 from 1:30 p.m. to 3:30 p.m. (with additional time available through 4:30 p.m. if needed) in the Loy Henderson Auditorium of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The Office of the U.S. Coordinator (CIP) advocates international policies for expanded access to information and communication technologies (ICT), improved efficiency in the worldwide ICT and telecommunications market through increased reliance on free-market forces, and fair opportunities for U.S. companies to participate in this important sector around the globe.

The meeting will be led by Ambassador Philip L. Verveer, the U.S. Coordinator for International Communications and Information Policy and facilitated by Deputy U.S. Coordinator Steven Lett. The meeting's agenda will focus on learning about the experiences of U.S. information and communications technologies (ICT) industry infrastructure manufacturers and service providers that responded to the earthquake in Haiti to understand: (1) What assistance U.S. ICT-related companies provided to help stabilize, maintain, or rebuild ICT and other vital capabilities in Haiti; (2) The experiences of U.S. ICT-related companies that volunteered assistance, and (3) The international disaster-response capabilities U.S. ICT-related companies have in place, or plan to implement.

Participation by members of the public, non-profit/non-governmental organizations and corporations is encouraged. In addition, presentations on the experiences of ICT-related enterprises/organizations in, or directly related to, Haiti relief and reconstruction are invited, but will be limited to five minutes. Planned presentations for the meeting must be received by the CIP meeting contact (contact information below) by June 30, along with an indication of any requirements for multimedia equipment. Written comments (apart from presentations and specifically not for distribution) may be submitted through the day of the meeting. Resource limitations may preclude acknowledging or replying to submissions. As time permits, an opportunity at the end of the meeting will be provided for an interactive discussion amongst participants.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-clearance. For placement on the pre-clearance list, please submit the following information no later than 5 p.m. on Tuesday, July 6, 2010. (Please note that this information is not retained by CIP and must therefore be re-submitted for any subsequent CIP-related meetings):

I. State that you are requesting pre-clearance to this meeting.

II. Provide the following information:

1. Name of meeting and its date and time
2. Visitor's full name
3. Date of birth
4. Citizenship
5. Acceptable forms of identification for entry into the U.S. Department of State include:
   - U.S. driver's license with photo
   - Passport
   - U.S. government agency ID
6. ID number on the form of ID that the visitor will show upon entry
7. Whether the visitor has a need for reasonable accommodation. Such requests received after June 30th might not be possible to fulfill.

Send the above information to Joseph Burton by fax (202) 647–7407 or email *BurtonKJ@state.gov*.

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

FOR FURTHER INFORMATION CONTACT: Joseph Burton, Foreign Affairs Officer, Office of Communications and Information Policy at (202) 647–5231 or *BurtonKJ@state.gov*.

General information about CIP is available: *http://www.state.gov/e/eeb/cip/*.

Dated: June 15, 2010.

Joseph Burton,

Communications and Information Policy, Department of State.

[FR Doc. 2010–14784 Filed 6–17–10; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration, DOT

[Docket No. FRA–2010–0005–N–14]

Notice and Request for Comments

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 8, 2010 (75 FR 18012).

DATES: Comments must be submitted on or before July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (*telephone:* (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 8, 2010, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 75 FR 18012. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden for the ICR being submitted for clearance by OMB as required by the PRA.

Title: Alleged Violation Reporting Form.

OMB Control Number: 2130–New.

Type of Request: Regular Approval of a New Collection of Information.

Affected Public: U.S. Residents.

Abstract: The Alleged Violation Reporting Form is a response to section 307(b) of the Rail Safety Improvement Act of 2008, signed into law by President George W. Bush on October 16, 2008, which requires Federal Railroad Administration (FRA) to "provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the Federal Railroad Administration." The Alleged Violation Reporting Form allows the general public to submit alleged violations directly to FRA. The form's goal is to allow FRA to collect information necessary to investigate the alleged violation and to provide follow up correspondence with the submitting party. The Alleged Violation Reporting Form collects the name, phone number and e-mail of the person submitting the alleged violations; the preferred method by which to contact the person; the railroad or company name that committed the alleged violation, the date and time the alleged violation occurred; the location the alleged violation occurred; and details about the violation. All information is voluntary. FRA will collect the information via a form on the FRA public Web site. FRA may share the information collected with FRA employees, State DOT partners, and law enforcement agencies.

Form Number(s): FRA F 6180.151.

Annual Estimated Burden Hours: 67 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: 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.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–14695 Filed 6–17–10; 8:45 am]

BILLING CODE 4910–06–P

Federal Register

Friday,
June 18, 2010

Part II

Department of Education

34 CFR Parts 600, 602, et al.
Program Integrity Issues; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 602, 603, 668, 682, 685, 686, 690, and 691

[Docket ID ED–2010–OPE–0004]

RIN 1840–AD02

Program Integrity Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to improve integrity in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) by amending the regulations for Institutional Eligibility Under the HEA, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and National Science and Mathematics Access to Retain Talent Grant (National Smart Grant) Programs.

DATES: We must receive your comments on or before August 2, 2010.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal.* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Jessica Finkel, U.S. Department of Education, 1990 K Street, NW., room 8031, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: For information related to gainful employment in a recognized occupation, John Kolotos. Telephone: (202) 502–7762 or via the Internet at: *John.Kolotos@ed.gov.*

For information related to the provisions related to the definition of credit hour, Marianna Deeken or Fred Sellers. Telephone: (206) 615–2583 or via the Internet at *Marianna.Deeken@ed.gov.* Telephone: (202) 502–7502 or via the Internet at: *Fred.Sellers@ed.gov.*

For information related to provisions on State authorization, Fred Sellers. Telephone: (202) 502–7502 or via the Internet at: *Fred.Sellers@ed.gov.*

For information related to the provisions on retaking coursework, Vanessa Freeman. Telephone: (202) 502–7523 or via the Internet at: *Vanessa.Freeman@ed.gov.*

For information related to the provisions for written agreements between institutions, Carney McCullough. Telephone: (202) 502–7639 or via the Internet at: *Carney.McCullough@ed.gov.*

For information on the provisions related to incentive compensation, Marty Guthrie. Telephone: (202) 219–7031 or via the Internet at: *Marty.Guthrie@ed.gov.*

For information related to the provisions on ability to benefit, Dan Klock. Telephone: (202) 377–4026 or via the Internet at *Dan.Klock@ed.gov.*

For information related to the provisions on misrepresentation, Vanessa Freeman. Telephone: (202) 502–7523 or via the Internet at: *Vanessa.Freeman@ed.gov.*

For information related to the provisions on satisfactory academic progress, Marianna Deeken. Telephone: (206) 615–2583 or via the Internet at: *Marianna.Deeken@ed.gov.*

For information related to the provisions on high school diplomas and verification of information on the Free Application for Federal Student Aid (FAFSA), Jacquelyn Butler. Telephone: (202) 502–7890, or via the Internet at: *Jacquelyn.Butler@ed.gov.*

For information related to the return of title IV, HEA funds calculation provisions for term-based modules or taking attendance, Jessica Finkel. Telephone: (202) 502–7647, or via the Internet at: *Jessica.Finkel@ed.gov.*

For information related to the provisions on timeliness and method of disbursement, John Kolotos. Telephone: (202) 502–7762, or via the Internet at: *John.Kolotos@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

As outlined in the section of this notice entitled *Negotiated Rulemaking,* significant public participation, through a series of three regional hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before August 2, 2010. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8031, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If

you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

On September 9, 2009, the Department published a notice in the **Federal Register** (74 FR 46399) announcing our intent to establish two negotiated rulemaking committees to prepare proposed regulations. One committee would develop proposed regulations governing foreign schools, including the implementation of the changes made to the HEA by the Higher Education Opportunity Act of 2008 (HEOA), Public Law 110–315, that affect foreign schools. The proposed regulations governing foreign schools will be published in the **Federal Register** at a future date. A second committee would develop proposed regulations to improve integrity in the title IV, HEA programs. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

Team I—Program Integrity Issues (Team I) met to develop proposed regulations during the months of November 2009 through January 2010.

The Department developed a list of proposed regulatory provisions, including provisions based on advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of three public hearings held on:

- June 15, 2009 at Community College of Denver in Denver, CO.
- June 18, 2009 at University of Arkansas in Little Rock, AR.
- June 22, 2009 at Community College of Philadelphia in Philadelphia, PA.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/negreg-summerfall.html#ph.*

Staff within the Department also identified issues for discussion and negotiation.

At its first meeting, Team I reached agreement on its protocols. These protocols provided that for each community identified as having interests that were significantly affected by the subject matter of the negotiations, the non-Federal negotiators would represent the organizations listed after their names in the protocols in the negotiated rulemaking process.

Team I included the following members:

Rich Williams, U.S. PIRG, and Angela Peoples (alternate), United States Student Association, representing students.

Margaret Reiter, attorney, and Deanne Loonin (alternate), National Consumer Law Center, representing consumer advocacy organizations.

Richard Heath, Anne Arundel Community College, and Joan Zanders (alternate), Northern Virginia Community College, representing two-year public institutions.

Phil Asbury, University of North Carolina, Chapel Hill, and Joe Pettibon (alternate), Texas A&M University, representing four-year public institutions.

Todd Jones, Association of Independent Colleges and Universities of Ohio, and Maureen Budetti (alternate), National Association of Independent Colleges and Universities, representing private, non-profit institutions.

Elaine Neely, Kaplan Higher Education Corp., and David Rhodes, (alternate), School of Visual Arts, representing private, for-profit institutions.

Terry Hartle, American Council on Education, and Bob Moran (alternate), American Association of State Colleges and Universities, representing college presidents.

David Hawkins, National Association for College Admission Counseling, and Amanda Modar (alternate), National Association for College Admission Counseling, representing admissions officers.

Susan Williams, Bridgeport University, and Anne Gross (alternate), National Association of College and University Business Officers, representing business officers.

Val Meyers, Michigan State University, and Joan Berkes (alternate), National Association of Student Financial Aid Administrators, representing financial aid administrators.

Barbara Brittingham, Commission on Institutions of Higher Education of the New England Association of Schools and Colleges, Sharon Tanner (1st alternate), National League for Nursing Accreditation Commission, and Ralph Wolf (2nd alternate), Western Association of Schools and Colleges, representing regional/programmatic accreditors.

Anthony Mirando, Nation Accrediting Commission of Cosmetology Arts and Sciences, and Michale McComis (alternate), Accrediting Commission of Career Schools and Colleges, representing national accreditors.

Jim Simpson, Florida State University, and Susan Lehr (alternate), Florida State University, representing work force development.

Carol Lindsey, Texas Guaranteed Student Loan Corp, and Janet Dodson (alternate), National Student Loan Program, representing the lending community.

Chris Young, Wonderlic, Inc., and Dr. David Waldschmidt (alternate), Wonderlic, Inc., representing test publishers.

Dr. Marshall Hill, Nebraska Coordinating Commission for Postsecondary Education, and Dr. Kathryn Dodge (alternate), New Hampshire Postsecondary Education Commission, representing State higher education officials.

Carney McCullough and Fred Sellers, U.S. Department of Education, representing the Federal Government.

These protocols also provided that, unless agreed to otherwise, consensus on all of the amendments in the proposed regulations had to be achieved for consensus to be reached on the entire NPRM. Consensus means that there must be no dissent by any member.

During the meetings, Team I reviewed and discussed drafts of proposed regulations. At the final meeting in January 2010, Team I did not reach consensus on the proposed regulations

in this document. With regard to gainful employment in a recognized occupation, this document addresses technical, reporting, and disclosure issues. The remaining issues under consideration that address the extent to which certain educational programs lead to gainful employment and the conditions under which those programs remain eligible for title IV, HEA program funds are not included in this NPRM.

Summary of Proposed Changes

These proposed regulations would address program integrity issues by:

- Requiring institutions to develop and follow procedures to evaluate the validity of a student's high school diploma if the institution or the Secretary has reason to believe that the diploma is not valid or was not obtained from an entity that provides secondary school education;
- Expanding eligibility for title IV, HEA program assistance to students who demonstrate they have the ability to benefit by satisfactorily completing six credits of college work, or the equivalent amounts of coursework, that are applicable toward a degree or certificate offered by an institution;
- Amending and adding definitions of terms related to ability to benefit testing, including "assessment center," "independent test administrator," "individual with a disability," "test," "test administrator," and "test publisher";
- Consolidating into a single regulatory provision the approval processes for ability to benefit tests developed by test publishers and States;
- Establishing requirements under which test publishers and States must provide descriptions of processes for identifying and handling test score abnormalities, ensuring the integrity of the testing environment, and certifying and decertifying test administrators;
- Requiring test publishers and States to describe any accommodations available for individuals with disabilities, as well as the process a test administrator would use to identify and report to the test publisher instances in which these accommodations were used;
- Revising the test approval procedures and criteria for ability to benefit tests, including procedures related to the approval of tests for speakers of foreign languages and individuals with disabilities;
- Revising the definitions and provisions that describe the activities that constitute substantial misrepresentation by an institution of the nature of its educational program, its financial charges, or the employability of its graduates;
- Removing the "safe harbor" provisions related to incentive compensation for any person or entity engaged in any student recruitment or admission activity, including making decisions regarding the award of title IV, HEA program assistance;
- Clarifying what is required for an institution of higher education, a proprietary institution of higher education, and a postsecondary vocational institution to be considered legally authorized by the State;
- Defining a *credit hour* and establishing procedures that certain institutional accrediting agencies must have in place to determine whether an institution's assignment of a credit hour is acceptable;
- Modifying provisions to clarify whether and when an institution must award student financial assistance based on clock or credit hours and the standards for credit-to-clock-hour conversions;
- Modifying the provisions related to written arrangements between two or more eligible institutions that are owned or controlled by the same person or entity so that the percentage of the educational program that may be provided by the institution that does not grant the degree or certificate under the arrangement may not exceed 50 percent;
- Prohibiting written arrangements between an eligible institution and an ineligible institution that has had its certification to participate in title IV, HEA programs revoked or its application for recertification denied;
- Expanding provisions related to the information that an institution with a written arrangement must disclose to a student enrolled in a program affected by the arrangement, including, for example, the portion of the educational program that the institution that grants the degree or certificate is not providing;
- Revising the definition of *unsubsidized student financial aid programs* to include TEACH Grants, Federal PLUS Loans, and Direct PLUS Loans;
- Codifying current policy that an institution must complete verification before the institution may exercise its professional judgment authority;
- Eliminating the 30 percent verification cap;
- Retaining the ability of institutions to select additional applicants for verification;
- Replacing the five verification items for all selected applicants with a targeted selection from items included in an annual **Federal Register** notice published by the Secretary;
- Allowing interim disbursements when changes to an applicant's FAFSA information would not change the amount that the student would receive under a title IV, HEA program;
- Codifying the Department's IRS Data Retrieval System Process, which allows an applicant to import income and other data from the IRS into an online FAFSA;
- Requiring the processing of all changes and corrections to an applicant's FAFSA information;
- Modifying the provisions related to institutional satisfactory academic progress policies and the impact these policies have on a student's eligibility for title IV, HEA program assistance;
- Expanding the definition of *full-time student* to allow, for a term-based program, repeated coursework taken in the program to count towards a full-time workload;
- Clarifying when a student is considered to have withdrawn from a payment period of enrollment for the purpose of calculating a return of title IV, HEA program funds;
- Clarifying the circumstances under which an institution is required to take attendance for the purpose of calculating a return of title IV, HEA program funds;
- Modifying the provisions for disbursing title IV, HEA program funds to ensure that certain students can obtain or purchase books and supplies by the seventh day of a payment period;
- Updating the definition of the term *recognized occupation* to reflect current usage; and
- Establishing requirements for institutions to submit information on program completers for programs that prepare students for gainful employment in recognized occupations.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Part 600 Institutional Eligibility Under the Higher Education Act of 1965, as Amended

Gainful Employment in a Recognized Occupation (§§ 600.2, 600.4, 600.5, 600.6, 668.6, and 668.8)

Statute: Sections 102(b) and (c) of the HEA define, in part, a proprietary institution and a postsecondary vocational institution, respectively, as

an institution that provides an eligible program of training that prepares students for gainful employment in a recognized occupation. Section 101(b)(1) of the HEA defines an institution of higher education, in part, as any institution that provides not less than a one-year program of training that prepares students for gainful employment in a recognized occupation.

One-Year Programs at Institutions of Higher Education

Current Regulations: § 600.4(a)(4)(iii) provides that a public or nonprofit institution may provide a training program of at least one academic year that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation. In addition, § 668.8(c)(3) provides that an eligible program at an institution of higher education may be at least a one-academic-year training program that leads to a certificate, degree, or other recognized credential and prepares students for gainful employment in a recognized occupation.

Proposed Regulations: The proposed regulations would amend §§ 600.4(a)(4)(iii) and 668.8(c)(3) by removing the reference to degree programs.

Reasons: In keeping with the statute, we would clarify in proposed §§ 600.4(a)(4)(iii) and 668.8(c)(3) that only certificate or credentialed nondegree programs of at least one academic year, that are offered by a public or nonprofit institution of higher education, are programs that must prepare students for gainful employment in a recognized occupation.

Recognized Occupation

Current Regulations: Section 600.2 defines a *recognized occupation* as an occupation that is listed in an "occupational division" of the latest edition of the *Dictionary of Occupational Titles,* published by the U.S. Department of Labor, or an occupation determined to be a recognized occupation by the Secretary in consultation with the Secretary of Labor.

Proposed Regulations: Proposed § 600.2 would define *recognized occupation* as an occupation identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget or an Occupational Information Network O* NET–SOC code established by the Department of Labor and available at *http://online.onetcenter.org* or its successor site.

Reasons: The definition of *recognized occupation* in proposed § 600.2 would simply replace an outdated reference to the *Dictionary of Occupational Titles* with current references to SOC codes established by the Office of Management and Budget or the Department of Labor.

Gainful Employment

Current Regulations: Sections 600.4(a)(4)(iii), 600.5(a)(5), and 600.6(a)(4) mirror the statutory provisions, and like the statute, do not define or further describe the meaning of the phrase "gainful employment."

Proposed Regulations: Under proposed § 668.6(a), an institution would annually submit information about students who complete a program that leads to gainful employment in a recognized occupation. That information would include, at a minimum, identifying information about each student who completed a program, the Classification of Instructional Program (CIP) code for that program, the date the student completed the program, and the amounts the student received from private educational loans and institutional financing plans.

In addition, under proposed § 668.6(b), an institution would be required to disclose on its Web site information about (1) the occupations that its programs prepare students to enter, along with links to occupational profiles on O*NET, (2) the on-time graduation rate of students entering a program, (3) the cost of each program, including costs for tuition and fees, room and board, and other institutional costs typically incurred by students enrolling in the program, (4) beginning no later than June 30, 2013, the placement rate for students completing each of those programs, as determined under § 668.8(g) or a State-sponsored workforce data system, and (5) the median loan debt incurred by students who completed each program in the preceding three years, identified separately as title IV, HEA loan debt and debt from private educational loans and institutional financing plans.

Reasons: The Department plans to use this information to continue to assess the outcomes of programs that lead to gainful employment in a recognized occupation. The proposed new requirement would enable the Department to further evaluate and monitor the outcomes of these programs. In addition, to better inform prospective students, proposed § 668.6(b) would require an institution to disclose on its Web site the cost, graduation and placement rates, job-related information for each of its programs, and debt levels of students who completed the program during the past three years. We seek comment on whether the proposed Web-based approach is the most appropriate way to ensure that prospective students obtain this information or whether we should consider other approaches. With regard to disclosing Federal and non-Federal loan debt, based on the information an institution would submit under proposed § 668.6(a), the Department would be able to provide the institution with the median title IV, HEA loan debt, by program, and the median debt from private loans and institutional financing plans by program. The institution would then disclose these amounts. While we believe that § 668.43 already requires an institution to disclose program cost information, we wish to make it an explicit requirement in this part of the regulations because our research showed that program cost information was not disclosed on the Web sites of many institutions.

Definition of a Credit Hour (§§ 600.2, 602.24, 603.24, and 668.8)

Statute: Section 481(a)(2) of the HEA defines an academic year for an undergraduate program, in part, as requiring a minimum of 24 semester or trimester credit hours or 36 quarter credit hours in a course of study that measures academic progress in credit hours or 900 clock hours in a course of study that measures academic progress in clock hours. Section 481(b) of the HEA defines an eligible program, in part, as a program of at least 600 clock hours, 16 semester hours, or 24 quarter hours or, in certain instances, a program of at least 300 clock hours, 8 semester hours, or 12 quarter hours. Sections 428(b)(1), 428B(a)(2), 428H(d)(1), 455(a)(1), and 484(b)(3) and (4) of the HEA specify that a student must be carrying at least one-half of the normal full-time work load for the student's course of study in order to qualify for any loan under parts B and D of title IV of the HEA. Section 401 of the HEA provides that a student's Federal Pell Grant must be adjusted based on the student's enrollment status and that a student must be enrolled at least half-time to be eligible for a second consecutive Federal Pell Grant in an award year. Section 496(a)(5)(H) of the HEA requires that an accrediting agency assess an institution's measure of program length. Section 487(c)(4) of the HEA requires that the Secretary publish a list of State agencies which the Secretary determines to be reliable authorities as to the quality of public

postsecondary vocational education in their respective States for the purpose of determining institutional eligibility for Federal student assistance programs.

Current Regulations: There is no definition of a credit hour in any current regulations for programs funded under the HEA; and the term is not defined in the regulations that set out the requirements for the Secretary's recognition of accrediting agencies or State agencies for the approval of public postsecondary vocational education. The regulations that address an institutional accrediting agency's, or State approval agency's, reviews and evaluations of an institution's assignment of credit hours are set out in 34 CFR part 602 for an accrediting agency and 34 CFR part 603 for a State approval agency.

In current § 668.8(k) and (l), the regulations provide the formula that certain undergraduate programs must use to convert the number of clock hours offered to the appropriate number of credit hours used for title IV, HEA aid calculations and the requirements for identifying the undergraduate programs subject to using the formula. For these programs, each semester or trimester hour must include at least 30 clock hours of instruction, and each quarter hour must include at least 20 hours of instruction. An institution must use the formula to determine if a program is eligible for title IV, HEA purposes unless (1) the institution offers an undergraduate program in credit hours that is at least two academic years in length and leads to an associate degree, a bachelor's degree, or a professional degree or (2) each course within the program is acceptable for full credit toward an associate degree, bachelor's degree, or professional degree offered by the institution, and the degree offered by the institution requires at least two academic years of study.

Proposed Regulations: Definition of a Credit Hour

The Department proposes to add to § 600.2 a definition of a *credit hour* that would measure credit hours in terms of the amount of time and work during which a student is engaged in academic activity using commonly accepted academic practice in higher education, and further would provide for institutionally established equivalencies as represented by learning outcomes and verified achievement.

Accrediting Agency Procedures

The Department proposes to amend current § 602.24 by adding a new paragraph (f). Proposed § 602.24(f) would describe the responsibilities of an accrediting agency to review and evaluate an institution's policies and procedures for the assignment of credit hours and the institution's application of its policies and procedures in assigning credit hours to its programs and courses. An accrediting agency would be required to make a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education. The proposed regulations in § 602.24(f) also would provide that an accrediting agency may use sampling or other methods in its reviews of programs at institutions, must take such actions that it deems appropriate to address any deficiencies that it identifies, and must notify the Secretary promptly of any systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution.

State Approval Agency Procedures

The Department proposes to amend current § 603.24 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c). For State agencies for the approval of public postsecondary education, proposed § 603.24(c) would provide for the same responsibilities as described for accrediting agencies regarding the review and evaluation of an institution's policies and procedures for the assignment of credit hours and the institution's application of its policies and procedures in assigning credit hours to its programs and courses.

Clock-to-Credit-Hour Conversion

Proposed § 668.8(l)(1) would revise the method of converting clock hours to credit hours to use a ratio of the minimum clock hours in an academic year to the minimum credit hours in an academic year, *i.e.,* 900 clock hours to 24 semester or trimester hours or 36 quarter hours. Thus, a semester or trimester hour would be based on at least 37.5 clock hours, and a quarter hour would be based on at least 25 clock hours. Proposed § 668.8(l)(2) creates an exception to the conversion ratio in proposed § 668.8(l)(1) if neither an institution's designated accrediting agency nor the relevant State licensing authority for participation in the title IV, HEA programs determines there are any deficiencies in the institution's policies, procedures, and practices for establishing the credit hours that the institution awards for programs and courses, as defined in proposed § 600.2. Under the exception provided by proposed § 668.8(l)(2), an institution may combine students' work outside of class with the clock-hours of instruction in order to meet or exceed the numeric requirements established in proposed § 668.8(l)(1). However, under proposed § 668.8(l)(2), the institution must use at least 30 clock hours for a semester or trimester hour or 20 clock hours for a quarter hour.

In determining whether there is outside work that a student must perform, the analysis must take into account differences in coursework and educational activities within the program. Some portions of a program may require student work outside of class that justifies the application of proposed § 668.8(l)(2). In addition, the application of proposed § 668.8(l)(2) may vary within a program depending on variances in required student work outside of class for different portions of the program. Other portions of the program may not have outside work, and proposed § 668.8(l)(1) must be applied. Of course, an institution applying only proposed § 668.8(l)(1) to a program eligible for conversion from clock hours to credit hours, without an analysis of the program's coursework, would be considered compliant with the requirements of proposed § 668.8(l).

Proposed § 668.8(k)(1)(ii) modifies a provision in current regulations to provide that a program is not subject to the conversion formula in § 668.8(l) where each course within the program is acceptable for full credit toward a degree that is offered by the institution and that this degree requires at least two academic years of study. Additionally, under proposed § 668.8(k)(1)(ii), the institution would be required to demonstrate that students enroll in, and graduate from, the degree program.

Proposed § 668.8(k)(2)(i) would provide that a program is considered to be a clock-hour program if the program must be measured in clock hours to receive Federal or State approval or licensure, or if completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue. Under proposed § 668.8(k)(2)(ii) and (iii), the program is also considered to be offered in clock hours if the credit hours awarded for the program are not in compliance with the definition of a credit hour in proposed § 600.2, or if the institution does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and, except as provided in current § 668.4(e), require attendance in the clock hours that are the basis for the credit hours awarded. The proposed regulations on which tentative agreement was reached did not include

the provision in proposed § 668.8(k)(2)(iii) that, except as provided in current § 668.4(e), an institution must require attendance in the clock hours that are the basis for the credit hours awarded. However, during the negotiations we had previously proposed to include such a provision.

Proposed § 668.8(k)(3) would provide that proposed § 668.8(k)(2)(i) would not apply if a limited portion of the program includes a practicum, internship, or clinical experience component that must include a minimum number of clock hours due to a State or Federal approval or licensure requirement.

Reasons: Definition of a Credit Hour

A credit hour is a unit of measure that gives value to the level of instruction, academic rigor, and time requirements for a course taken at an educational institution. At its most basic, a credit hour is a proxy measure of a quantity of student learning. The credit hour was developed as part of a process to establish a standard measure of faculty workloads, costs of instruction, and rates of educational efficiencies as well as a measure of student work for transfer students. While the credit hour was developed to provide some uniform measure, it may not consistently relate to comparable measures of time or workload within institutions or between different types of institutions. Most postsecondary institutions do not have specific policies or criteria to assign credit hours to coursework in a uniform manner.

In keeping with the original purpose of providing a consistent measure of at least a minimum quantity of a student's academic engagement, the proposed definition of a *credit hour* will establish a basis for measuring eligibility for Federal funding. This standard measure will provide increased assurance that a credit hour has the necessary educational content to support the amounts of Federal funds that are awarded to participants in Federal funding programs and that students at different institutions are treated equitably in the awarding of those funds.

We recognize, however, that other measures of educational content are being developed by institutions and do not intend to limit the methods by which an institution may measure a student's work in his or her educational activities. We, therefore, are including in paragraph (3) of the proposed definition of a *credit hour* a provision that an institution may provide institutional equivalencies for the amount of work specified in paragraph (1) of the proposed definition as represented in intended learning outcomes and verified by evidence of their achievement. Further, the institution's equivalencies must be in accordance with any process or conditions required by an institution's designated accrediting agency for title IV, HEA program participation, because these agencies are well positioned to provide oversight in this area.

During the negotiated rulemaking sessions, a few of the non-Federal negotiators were opposed to any proposal to define a *credit hour* because they believed that a definition would impinge upon an institution's ability to create innovative courses and teaching methods. They also argued that the proposed definition was too restrictive and inhibited the academic freedom of schools. Other non-Federal negotiators agreed that a definition was necessary and did not believe the Department's proposed definition would adversely impact institutions. These other non-Federal negotiators agreed with our position that the proposed definition of a *credit hour* would provide sufficient flexibilities for institutions and supported keeping it in the proposed regulations.

One significant change is proposed in the regulations to address a concern raised during the negotiated rulemaking sessions regarding a definition of a *credit hour.* The change is to recognize in paragraph (3) of the proposed definition that an institution would be able to establish reasonable equivalent measures of a credit hour. As is also the case with paragraphs (1) and (2) of the proposed definition, the measures must be reasonable and in accordance with the requirements of the institution's designated accrediting agency, or State agency for the approval of public postsecondary vocational education, for title IV, HEA program participation as well as for participation in other HEA programs. This change further ensures that the definition will allow institutions to adopt alternative measures of student work.

The proposed definition of a *credit hour* does not change our policy that we provide funding based only on credit hours that are the direct result of postsecondary student work. Thus, we do not currently, nor do we propose to, provide funding for credits awarded based on Advanced Placement (AP) or International Baccalaureate (IB) programs, tests or testing out, life experience, or similar competency measures.

No agreement was reached to amend § 600.2 to include a definition of a *credit hour* due to the belief of some non-Federal negotiators that a definition would limit an institution's ability to use alternative measures of student work.

Accrediting Agency Procedures

Section 496(a)(5) of the HEA requires that, to be recognized by the Secretary, an accrediting agency must have standards to evaluate an institution's or program's "measures of program length and the objectives of the degrees or credentials offered." Thus, accrediting agencies are required to make a judgment about program length and the amount of credit an institution or program grants for course work. Accrediting agency standards related to program length differ significantly in their specificity and these standards generally do not define what a credit hour is. This lack of specificity in standards covering student achievement and program length has inherent limitations and may result in inconsistent treatment of Federal funds.

We believe that the lack of more direct accrediting agency oversight in the assignment of credits to coursework may result in some institutions not being able to demonstrate that there is sufficient course content to substantiate the credit hours for certain programs. Such abuse may be more likely due to the expanded availability to a student of two Federal Pell Grants in an award year. We believe that the potential for such abuse and the inconsistent treatment of Federal funds would be significantly alleviated by establishing the proposed definition of credit hour in § 600.2 and providing in proposed § 602.24(f) that accrediting agencies must review (1) an institution's policies and procedures for the assignment of credit hours in accordance with the proposed definition in § 600.2 and (2) the institution's application of its policies and procedures in assigning credit hours to its programs and courses.

The negotiators reached tentative agreement on adding proposed § 602.24(f).

State Agency Procedures for the Approval of Public Vocational Education

The regulations concerning the recognition of State agencies for the approval of public vocational education were not discussed during the negotiations. We believe that § 603.24 should be amended to make changes comparable to the proposed regulations for the recognition of accrediting agencies. We believe these proposed changes are needed for the same reasons as we are proposing to amend part 602. The changes are also necessary for purposes of determining equivalencies

to a credit hour under paragraph (3) of the proposed definition of a *credit hour* in § 600.2 as well as for § 668.8(l) regarding credit-to-clock-hour conversions.

Credit-to-Clock-Hour Conversion

Section 668.8(k) and (l) of the current regulations that provide conditions and formulas for the conversion of clock hours to credit hours for undergraduate programs were adopted prior to the statutory change in the definition of an academic year for clock-hour programs. Under section 481(b) of the HEA, an academic year for a program must now provide for a minimum of 26 weeks of instructional time in a clock-hour program as opposed to the 30 weeks of instructional time required for credit-hour programs. However, undergraduate programs continue to include 900 clock hours, 24 semester or trimester hours, or 36 quarter credits. We are proposing to update the formula to reflect the statute's treatment of 900 clock hours over 26 weeks of instructional time as reflecting no outside student work and the 900 clock hours being directly proportional to 24 semester hours or 36 quarter credits.

As a result, proposed § 668.8(l)(1) would revise the minimum general standard for converting clock hours to credit hours to reflect the ratio of the minimum clock hours in an academic year to the minimum credit hours in an academic year. As some non-Federal negotiators noted, portions of some clock-hour programs require student work outside of class. Proposed § 668.8(l)(2) would, therefore, provide an exception to the standard in proposed § 668.8(l)(1) for coursework in a program that qualifies for a lesser rate of conversion based on additional student work outside of class. For coursework that includes student work outside of class in a qualifying program, an institution would take into account the amount of outside coursework to determine the appropriate number of clock hours to convert to a credit hour, but may not use less than the current requirements of 30 clock hours for a semester or trimester hour or 20 clock hours for a quarter hour.

We believe that changes are needed to the conditions in current § 668.8(k)(1) for determining that a program is not subject to the conversion formula in § 668.8(l). We have identified potential abuses with the provision that an institution's program is not subject to the conversion formula in § 668.8(l) if each course within the program is acceptable for full credit toward a degree that is offered by the institution and requires at least two academic years of study. Some institutions appear to have established degree programs in which few if any students enroll or graduate but which are the basis for claiming that all courses of another nondegree program are acceptable for full credit in the degree program. To address this abuse, proposed § 668.8(k)(1)(ii) would require the institution to demonstrate that students enroll in, and graduate from, the degree program. Proposed § 668.8(k)(2)(i) would provide that a program must be considered a clock-hour program if the program must be measured in clock hours to receive Federal or State approval or licensure or completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue. We believe such requirements show that the program is still fundamentally a clock-hour program and should not be treated as a credit-hour program for purposes of title IV, HEA program assistance. We also believe it is appropriate under proposed § 668.8(k)(2)(ii) and (iii) to require that a program must be considered to be offered in clock hours if an institution is failing either to award the credit hours that are in compliance with the definition of a credit hour in proposed § 600.2 or to ensure that students are attending at least the minimum number of clock hours that are the basis for the credit hours awarded for the program. A program that may qualify for conversion to credit hours is still fundamentally a clock-hour program that must meet additional requirements. If the provisions of proposed § 668.8(k)(1) and (2) are applicable, a program should not qualify for conversion to credit hours because the program's essential nature as a clock-hour program requires that it be measured in clock hours for other purposes or because it fails to be offered in a manner that supports the conversion.

In response to some non-Federal negotiators' concerns, proposed § 668.8(k)(3) would clarify the requirements in proposed § 668.8(k)(2)(i) by providing that proposed § 668.8(k)(2)(i) would not apply if a limited portion of a program such as a practicum, internship, or clinical experience component must be measured in clock hours due to a State or Federal approval or licensure requirement. We agree with the non-Federal negotiators that such a limited requirement should not be an impediment to the program qualifying for a clock-to-credit-hour conversion.

The negotiators reached tentative agreement on proposed § 668.8(l) and (k), except for proposed § 668.8(k)(2)(iii) which has been changed to provide that an institution must require attendance in the clock hours that are the basis for the credit hours awarded, except as provided in current § 668.4(e). We believe the change assures that the clock hours are being offered and that students are attending the clock hours that are the basis for the clock-to-credit-hour conversion.

State Authorization (§§ 600.4(a)(3), 600.5(a)(4), 600.6(a)(3), and 600.9)

Statute: Section 101(a)(2) of the HEA defines the term "institution of higher education" to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. Section 102(a) of the HEA provides, by reference to section 101(a)(2) of the HEA, that a proprietary institution of higher education and a postsecondary vocational institution must be similarly authorized within a State.

Current Regulations: The regulations do not define or describe the statutory requirement that an institution must be legally authorized in a State.

Proposed Regulations: Under proposed § 600.9, an institution would be legally authorized by a State through a charter, license, approval, or other document issued by a State government agency or State entity that affirms or conveys the authority to the institution to operate educational programs beyond secondary education. An institution would also be considered legally authorized in a State if the institution were authorized to offer programs beyond secondary education by the Federal Government or an Indian Tribe as that term is described in 25 U.S.C. 1802(2) or if it were exempt from State authorization as a religious institution under the State constitution.

The Secretary would consider an institution to be legally authorized by a State if (1) the authorization is given to the institution specifically to offer programs beyond secondary education, (2) the authorization is subject to adverse action by the State, and (3) the State has a process to review and appropriately act on complaints concerning an institution and enforces applicable State laws.

References to § 600.9 would be added for clarity in §§ 600.4(a)(3), 600.5(a)(4), and 600.6(a)(3).

Reasons: The HEA requires institutions to have approval from the States where they operate to provide postsecondary educational programs. State oversight through obtaining approval to offer postsecondary

education and by State regulatory agency ongoing activities plays an important role in protecting students, although there may be a lot of variation in how those responsibilities are exercised. One indicator of the importance of State oversight has been seen in the movement of substandard institutions and diploma mills from State to State in response to changing requirements. These entities set up operation in States that may initially provide very little oversight and operate until a State strengthens its oversight of those entities in response to complaints from the public. In some cases, those entities simply move to another State that appears to offer little oversight and repeats the process.

The Department historically viewed the requirement for State authorization for entities to offer postsecondary education as minimal, and would deem an entity that had been exempted by its State from State oversight to have such approval so long as it was able to operate within the State. Thus, in some States an institution was considered to be legally authorized to offer postsecondary education based on such methods as a business license or establishment as an eleemosynary organization.

Upon further review, we believe the better approach is to view the State approval to offer postsecondary educational programs as a substantive requirement where the State is expected to take an active role in approving an institution and monitoring complaints from the public about its operations and responding appropriately. The weakness of the historical approach of not requiring active State approval and oversight may have contributed to the recent lapse in the existence of California's Bureau for Private Postsecondary and Vocational Education. The Bureau served as the State's oversight and regulatory agency for private proprietary postsecondary institutions until the State legislature eliminated the Bureau. We were advised that the Bureau was permitted to lapse because the State determined that doing so would not immediately harm the institutions that participate in the title IV, HEA programs. During the period when there was no State agency authorizing private postsecondary institutions, these institutions continued to participate in the title IV, HEA programs under some voluntary agreements while the State legislature worked on creating a new oversight agency. The proposed regulations, had they been in effect at that time, would have required that the State keep in place the prior oversight agency, or to designate a different State agency to perform the required State functions during the transition to a new State oversight agency. Otherwise, under the provisions of proposed § 600.9(b), the affected institutions would have ceased to be considered legally authorized by the State for Federal purposes when the prior agency's existence lapsed and would have ceased to be eligible institutions.

Additionally, we are concerned that some States are deferring all, or nearly all, of their oversight responsibilities to accrediting agencies for approval of educational institutions, or are providing exemptions for a subset of institutions for other reasons. Since accrediting agencies generally require that an institution be legally operating in the State, we are concerned that the checks and balances provided by the separate processes of accreditation and State legal authorization are being compromised.

We initially proposed that State legal authorization be based on a charter, license, or other document issued by an appropriate State government agency providing the authority to an institution to operate educational programs beyond secondary education and grant degrees within the jurisdiction of the State or other documentation, issued by an appropriate State government agency that authorizes, licenses, or otherwise approves the institution to establish and operate within the State nondegree programs that provide education and training beyond secondary education. We also provided that State legal authorization could include reciprocal agreements between appropriate State agencies. In addition, for institutions in a State to be legally authorized, the State would be expected to monitor (1) institutional academic quality, potentially relying on accrediting agencies recognized by the Secretary; (2) an institution's financial viability; and (3) compliance with applicable State laws with respect to consumer protection and other matters of State oversight.

In response to concerns from the non-Federal negotiators, we clarified in proposed § 600.9(a) that legal authorization could not only be provided by an appropriate State agency, but also another State entity, *e.g.,* a State legislature or State constitution. We removed the references to monitoring the quality of educational programs and financial responsibility. We accepted the position of some of the non-Federal negotiators who argued that these additional State requirements could unnecessarily duplicate Federal or accrediting agency actions. Similarly we accepted the position of some of the non-Federal negotiators that States could enter into reciprocal agreements on an as needed basis without regulations.

Also, in response to recommendations of the non-Federal negotiators, we added provisions to clarify that an institution would be considered to be legally authorized in a State if the institution is authorized to offer educational programs beyond secondary education by the Federal Government or, as defined in 25 U.S.C. 1802(2), an Indian tribe or if it is exempt from State authorization as a religious institution under the State constitution. In proposed § 600.9(b), we also further revised the bases under which we would consider an institution to be legally authorized by a State. We would require that the authorization must be specifically to offer programs beyond secondary education and may not be merely of the type required to do business in the State. We believe that this provision would remove any ambiguity regarding the type of authorization acceptable to establish institutional eligibility to participate in Federal programs. The regulations also require an institution's legal authorization to be subject to adverse action by the State, and that a State has a process to review and appropriately act on complaints concerning an institution, and to enforce applicable State laws. We believe these additional conditions are necessary to establish minimal State oversight for institutions to be considered legally authorized to offer postsecondary education for purposes of qualifying as an eligible institution for Federal programs.

The committee did not reach agreement on this issue. A few negotiators objected to allowing States to continue to rely on an institution's status with an outside entity, for example, accredited status with a nationally recognized accrediting agency, as a basis for State legal authorization and were also concerned that the proposed regulations would no longer have a requirement that a State review an institution's fiscal viability. The regulations do not prohibit a State from relying in part upon an accrediting agency, but the State is still required to perform certain functions itself. For example, an institution's authorization must be subject to adverse action by a State agency or other State entity, and the State must have a process for a State agency to review and appropriately act on complaints concerning an institution.

Part 668 Student Assistance General Provisions Coursework (§ 668.2)

Statute: None.

Current regulations: None

Proposed regulations: The proposed regulations would amend the definition of "full-time student" in § 668.2 to allow repeated coursework to count towards a student enrollment status in term-based programs.

Reasons: The current policy provides that a student enrolled in a term-based program may not be paid for repeating a course unless the student will receive credit for the coursework in addition to any credits previously earned. The non-Federal negotiators were concerned that institutions are unable to track this type of information without doing a program audit of each individual student. We agreed and proposed to amend the definition of full-time to provide that such credits would count toward enrollment status and be eligible for payment under the title IV, HEA programs.

The negotiators reached tentative agreement on this issue.

Written Arrangements (§§ 668.5 and 668.43)

Statute: None.

Current Regulations: Under current § 668.5(a), an eligible institution may enter into a written agreement with another eligible institution, or with a consortium of eligible institutions, to provide all or part of an educational program. The educational program is considered to be an eligible program if it meets the requirements of § 668.8. There is no requirement in either § 668.5 or § 668.43 of the current regulations that institutions provide information on written arrangements to enrolled or prospective students.

Proposed Regulations: The Department proposes to amend current § 668.5(a) by revising and redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2). Proposed § 668.5(a)(1) would be based on the language that is in current paragraph (a), but it would be modified to make it consistent with the definition of an "educational program" in 34 CFR 600.2. Proposed new § 668.5(a)(2) would specify that if a written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the institution that grants the degree or certificate must provide more than 50 percent of the educational program. These clarifications are also intended to ensure that the institution enrolling the student has all necessary approvals to offer an educational program in the format in which it is being provided, such as through distance education, when the other institution is providing instruction under a written agreement using that method of delivery. Proposed § 668.5(c)(1) would expand the list of conditions that would preclude an arrangement between an eligible institution and an ineligible institution. Proposed §§ 668.5(e) and 668.43 would require an institution that enters into a written arrangement to provide a description of the arrangement to enrolled and prospective students.

Reasons: Under the definition of an "educational program" in 34 CFR 600.2, if an institution does not provide any instruction itself, but merely gives credit for instruction provided by other institutions, it is not considered to provide an educational program. The change reflected in proposed § 668.5(a)(1) would eliminate the inconsistency in these two provisions by clarifying that an institution may provide part, but not all, of an educational program under a written arrangement.

Proposed § 668.5(a)(2) would be added to address concerns that may arise when two institutions under common ownership enter into written arrangements with each other. One concern, for example, is that such written agreements between institutions under common ownership could be used to circumvent regulations governing cohort default rates and "90–10" provisions, which limit the percentage of revenue for-profit institutions may receive from the Federal student financial assistance programs, by having one institution provide substantially all of a program while attributing the title IV revenue and cohort default rates to the other commonly-owned institution. In other situations, campus-based institutions have been used as "portals" to attract students for online institutions under common ownership where students may not have expected the program to be offered by a different institution.

During the negotiated rulemaking sessions, the Department initially proposed draft regulations that would have required accrediting or State agency review of any written arrangement between an eligible institution and another eligible institution or consortium of eligible institutions if the portion of the educational program provided by the other institution under the written arrangement were more than 50 percent. Under this initial proposal, the institution's accrediting agency, or State agency, as applicable, would have been required to make a determination that the arrangement met the agency's standards for written arrangements. This initial proposal was based on discussion at the first negotiated rulemaking session that suggested most accrediting agencies already review a significant portion of their institutions' written arrangements, even those between or among eligible institutions. Subsequently, several non-Federal negotiators explained that, contrary to the Department's initial understanding, this type of review of written arrangements was not common practice. Some of the non-Federal negotiators expressed concerns that the proposed changes would increase workload and costs as well as impede the development of innovative programs at institutions where there is no evidence of the problems the Department seeks to address. After hearing these concerns, the Department reconsidered its initial proposal and focused its proposed regulatory changes more narrowly on the types of institutions and situations where problems have been identified.

The Department subsequently proposed regulatory language that would limit the portion of an educational program that could be provided under a written arrangement between two eligible for-profit institutions under common ownership or control to 25 percent.

While some non-Federal negotiators expressed support for the 25 percent limitation, a number of them expressed concern that the 25 percent limitation was too low. For example, one non-Federal negotiator questioned the rationale for limiting the percentage of an educational program provided by two eligible institutions under a written arrangement to 25 percent when, under certain circumstances, current regulations permit an ineligible institution to provide up to 50 percent of an educational program. Another non-Federal negotiator said that an institution should be responsible for at least 50 percent of the courses in a student's major. During the discussions, several non-Federal negotiators supported an overall limitation of 50 percent. One non-Federal negotiator expressed the view that non-profit institutions want to "own" the degrees they confer, and if an institution provides less than 50 percent of an educational program, it does not own the degree. Other non-Federal negotiators argued that a limitation of 75 percent would be more appropriate.

Non-Federal negotiators also expressed concerns that, as proposed, this restriction would have an impact on students' academic opportunities and

would limit access to students attending certain institutions. Specifically, they explained that the proposed restrictions on the portion of the educational program that could be provided by the other eligible institution could unnecessarily limit the number of online courses students could take, or make it difficult for students in the military who are deployed, and want to take their remaining courses at an online institution, to finish their educational programs. Both Department officials and some of the non-Federal negotiators pointed out that these outcomes are avoidable if the students in these situations transferred to the institution that was providing the preponderance of courses.

Based on these discussions, the Department modified the proposed regulatory language to refer to eligible institutions that are owned or controlled by the same individual, partnership, or corporation, because this language would be parallel to the language in current § 668.5(c)(3)(ii)(B). Some non-Federal negotiators expressed concern that the phrase "owned or controlled by the same individual, partnership, or corporation" could be read to apply to Jesuit institutions or other institutions under the control of a religious organization, or to institutions in a public system under the control of a board of governors. The Federal negotiator explained that it is not the Department's intention for either public or private, non-profit institutions to be covered by the proposed language because these institutions are not owned or controlled by other entities, and generally act autonomously.

The proposed additions to § 668.5(c)(1) would make it clear that educational programs offered under written arrangements between an eligible institution and an ineligible institution would not be considered eligible programs if the ineligible institution had had its certification to participate in the title IV, HEA programs revoked (*see* proposed § 668.5(c)(1)(iii)), its application for re-certification to participate in the title IV, HEA programs denied (*see* proposed § 668.5(c)(1)(iv)), or its application for certification to participate in the title IV, HEA programs denied (*see* proposed § 668.5(c)(1)(v)). These additions are consistent with the existing reference in the regulations to institutions that have been terminated from the title IV, HEA programs.

Finally, there was considerable discussion during the negotiated rulemaking sessions about the Department's proposal to require that institutions make information about written arrangements available to students. Several non-Federal negotiators said that information should be made available to prospective students, as well as to enrolled students, so prospective students could know before applying to an educational program whether any part of the program would be provided under a written arrangement. For this reason, proposed § 668.5(e) would make clear that any eligible institution providing educational programs under a written arrangement is required to provide the information described in proposed § 668.43(a)(12) to both prospective and enrolled students.

The committee also discussed at length what content the proposed disclosures should include. Several non-Federal negotiators requested that institutions be required to disclose the locations of the other institutions or organizations at which a portion of the educational program would be provided. We agreed with these non-Federal negotiators and incorporated this disclosure requirement in proposed § 668.43(a)(12)(ii).

There was also widespread support for requiring the disclosure of any additional costs that students might incur as a result of enrolling in an educational program provided, in part, under a written arrangement. There was much discussion about which costs would need to be disclosed. One non-Federal negotiator requested that institutions only be required to provide "estimated" costs, given that in some situations, such as study abroad programs, costs might change due to variability in living accommodations, changes in airfare for programs offered at distant locations, etc. We agreed with these suggestions and clarified in proposed § 668.43(a)(12)(iv) that the required disclosures include estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under a written arrangement described in § 668.5.

In proposed § 668.43(a)(12)(iii), we would require institutions to disclose the method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing so potential students are given accurate information. In response to a question raised at one of the negotiated rulemaking sessions, the Federal negotiator explained that the Department would expect an institution to disclose whether the instruction is offered on campus or on-line, or offered through a combination of methods.

During the discussions about the disclosure requirements in proposed §§ 668.5 and 668.43, there were a number of questions about what types of arrangements would be subject to these proposed requirements. The Department explained that the proposed disclosure requirements would apply to blanket, existing arrangements between or among institutions. Individual, student-initiated written arrangements would not be subject to the disclosure requirements in proposed §§ 668.5 and 668.43. Not only would such disclosures be impractical and excessively burdensome, but they would also be unnecessary: As a party to an individual, student-initiated written arrangement, the student would already have the information required to be disclosed under these proposed provisions. In addition, these proposed disclosure requirements would not apply to internships or externships because the Department does not consider these arrangements to be written arrangements under § 668.5. While it is reasonable to expect that institutions that offer or require internships and externships will provide students in affected programs with the types of information described in proposed § 668.43(a)(12), such programs would not be covered under this proposed requirement for institutional disclosure of written arrangements.

Some non-Federal negotiators contended that institutions should be required to display the information described in proposed § 668.43(a)(12) prominently on their Web sites. Other non-Federal negotiators did not support this idea, pointing out that § 668.43 contains a long list of disclosures, and to single out this one disclosure requirement for special treatment would suggest that it is more important than all the other institutional information disclosure requirements. They explained that this proposed requirement should be considered in the context of all the consumer disclosure requirements regarding information that students need to know when they are considering enrolling in an institution, and noted that from a practical standpoint, it is likely that institutions will post the required information on their Web sites. One non-Federal negotiator expressed the concern that there is already too much general information provided to students that they do not read, and suggested that institutions might find it most useful to include information on written arrangements in the context of individual programs of study.

While the Department wants to make sure students receive appropriate information so they can make informed decisions, the Department agrees with

the non-Federal negotiators who urged that institutions be given the discretion to determine the best way to disseminate the required information to their students.

The negotiators reached tentative agreement on this issue.

Incentive Compensation (§ 668.14(b))

Statute: Section 487(a)(20) of the HEA requires that the title IV, HEA program participation agreement prohibit an institution from making any commission, bonus, or other incentive payments based directly or indirectly on success in securing enrollments or financial aid to any persons or entities involved in student recruiting or admissions activities, or in making decisions about the award of student financial assistance. The statute states that this prohibition does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal financial assistance.

Current Regulations: Current § 668.14(b)(22)(i) incorporates the prohibition and exception reflected in section 487(a)(20) of the HEA. It prohibits an institution from making any commission, bonus, or other incentive payments based directly or indirectly on success in securing enrollments or financial aid to any persons or entities involved in student recruiting or admissions activities, or in making decisions about the award of student financial assistance. It also states that this restriction does not apply to the recruitment of foreign students living in foreign countries who are not eligible to receive Federal student aid.

Current § 668.14(b)(22)(ii) goes on to specify 12 "safe harbors"—12 activities and arrangements that an institution may carry out without violating the prohibition against incentive compensation reflected in section 487(a)(20) of the HEA and current § 668.14(b)(22)(i). The first safe harbor explains the conditions under which an institution may adjust compensation without that compensation being considered an incentive payment. The 12 safe harbors describe the conditions under which payments that could potentially be construed as based upon securing enrollments or financial aid are nonetheless not prohibited under section 487(a)(20) of the HEA and current § 668.14(b)(22)(i).

The payment or compensation plans covered by the safe harbors address the following subjects:

1. *Adjustments to employee compensation (current § 668.14(b)(22)(i)(A)).* Under this safe harbor, an institution may make up to two adjustments (upward or downward) to a covered employee's annual salary or fixed hourly wage rate within any 12-month period without the adjustment being considered an incentive payment, provided that no adjustment is based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. This safe harbor also permits one cost-of-living increase that is paid to all or substantially all of the institution's full-time employees.

2. *Enrollment in programs that are not eligible for title IV, HEA program funds (current § 668.14(b)(22)(i)(B)).* This safe harbor permits compensation to recruiters based upon enrollment of students who enroll in programs that are ineligible for title IV, HEA funds.

3. *Contracts with employers to provide training (current § 668.14(b)(22)(i)(C)).* This safe harbor addresses payments to recruiters who arrange contracts between an institution and an employer, where the employer pays the tuition and fees for its employees (either directly to the institution or by reimbursement to the employee).

4. *Profit-sharing bonus plans (current § 668.14(b)(22)(i)(D)).* Under this safe harbor, profit-sharing and bonus payments to all or substantially all of an institution's full-time employees are not considered incentive payments based on success in securing enrollments or awarding financial aid in violation of the prohibition in section 487(a)(20) of the HEA and current § 668.14(b)(22)(i). As long as the profit-sharing or bonus payments are substantially the same amount or the same percentage of salary or wages, and as long as the payments are made to all or substantially all of the institution's full-time professional and administrative staff, compensation paid as part of a profit-sharing or bonus plan is not considered a violation of the incentive payment prohibition.

5. *Compensation based upon program completion (current § 668.14(b)(22)(i)(E)).* This safe harbor permits compensation based upon students successfully completing their educational programs or one academic year of their educational programs, whichever is shorter.

6. *Pre-enrollment activities (current § 668.14(b)(22)(i)(F)).* This safe harbor states that clerical pre-enrollment activities, such as answering telephone calls, referring inquiries, or distributing institutional materials, are not considered recruitment or admission activities. Accordingly, under this safe harbor, an institution may make incentive payments to individuals whose responsibilities are limited to clerical pre-enrollment activities.

7. *Managerial and supervisory employees (current § 668.14(b)(22)(i)(G)).* This safe harbor states that the incentive payment prohibition in section 487(a)(20) of the HEA and current § 668.14(b)(22)(i) does not apply to managerial and supervisory employees who do not directly manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of title IV, HEA program funds.

8. *Token gifts (current § 668.14(b)(22)(i)(H)).* Under this safe harbor, an institution may provide a token gift not to exceed $100 to an alumnus or student provided that the gift is not in the form of money and no more than one gift is provided annually to an individual.

9. *Profit distributions (current § 668.14(b)(22)(i)(I)).* This safe harbor states that profit distributions to owners of the institution are not payments based on success in securing enrollments or awarding financial aid in violation of the prohibition in section 487(a)(20) of the HEA and current § 668.14(b)(22)(i) as long as the distribution represents a proportionate share of the profits based upon the individual's ownership interest.

10. *Internet-based activities (current § 668.14(b)(22)(i)(J)).* This safe harbor permits an institution to award incentive compensation for Internet-based recruitment and admission activities that provide information about the institution to prospective students, refer prospective students to the institution, or permit prospective students to apply for admission online.

11. *Payments to third parties for non-recruitment activities (current § 668.14(b)(22)(i)(K)).* This safe harbor states that the incentive compensation prohibition does not apply to payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, provided that none of the services involve recruiting or admission activities, or the awarding of title IV, HEA program funds.

12. *Payments to third parties for recruitment activities (current § 668.14(b)(22)(i)(L)).* Under this safe harbor, if an institution uses an outside entity to perform activities for it, including recruitment or admission activities, the institution may make incentive payments to the third party without violating the incentive payment prohibition in section 487(a)(20) of the HEA and current § 668.14(b)(22)(i) as long as the individuals performing the recruitment or admission activities are not compensated in a way that is

prohibited by section 487(a)(20) of the HEA and current § 668.14(b)(22)(i).

Proposed Regulations: The Department proposes to revise § 668.14(b)(22) to align it more closely with the statutory language from section 487(a)(20) of the HEA. Specifically, proposed § 668.14(b)(22)(i)(A) would restate the statutory provision in the HEA, which provides that to be eligible to participate in the Federal student financial aid programs authorized under title IV of the HEA, an institution must agree that it will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance. Proposed § 668.14(b)(22)(i)(B) would provide that the incentive compensation prohibition does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

The Department would delete the 12 safe harbors reflected in current § 668.14(b)(22)(ii). The Department would, however, clarify, in proposed § 668.14(b)(22)(ii), that eligible institutions and their contractors may make merit-based adjustments to employee compensation, provided that such adjustments are not based directly or indirectly upon success in securing enrollments or the award of financial aid.

Finally, in proposed § 668.14(b)(22)(iii), the Department would define the following key terms that would be used in proposed § 668.14(b)(22): *Commission, bonus, or other incentive payment, securing enrollments or the awards of financial aid,* and *enrollment.*

Proposed § 668.14(b)(22)(iii)(A) would define *commission, bonus, or other incentive payment* as a sum of money or something of value paid or given to a person or entity for services rendered.

Proposed § 668.14(b)(22)(iii)(B) would define *securing enrollments or the awards of financial aid* as activities that a person or entity engages in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students. Proposed § 668.14(b)(22)(iii)(B)(*1*) and (b)(22)(iii)(B)(*2*) would clarify that the term *securing enrollments or the awards of financial aid* includes recruitment contact in any form and excludes making a payment to a third party for student contact information for prospective students, respectively.

Proposed § 668.14(b)(22)(iii)(C) would define *enrollment* as the admission or matriculation of a student into an eligible institution.

Reasons: Consistent with comments made by a majority of the non-Federal negotiators, the Department believes that the language in section 487(a)(20) of the HEA is clear, and that the elimination of all of the regulatory safe harbors reflected in current § 668.14(b)(22)(ii) would best serve to effectuate congressional intent. The Department previously explained that it was adopting the safe harbors based on a "purposive reading of section 487(a)(20) of the HEA." 67 FR 51723 (August 8, 2002). Since that time, however, the Department's experience demonstrates that unscrupulous actors routinely rely upon these safe harbors to circumvent the intent of section 487(a)(20) of the HEA. As such, rather than serving to effectuate the goals intended by Congress through its adoption of section 487(a)(20) of the HEA, the safe harbors have served to obstruct those objectives. For example, the first safe harbor, which prohibits the payment of incentives based solely upon success in securing enrollments, has led institutions to establish, on paper, other factors that are purportedly used to evaluate student recruiters other than the sheer numbers of students enrolled. However, in practice, consideration of these factors has been minimal at best, or otherwise indiscernible. This has led the Department to expend vast resources evaluating the legitimacy of institutional compensation plans, and considerable time and effort has been lost by both the Department and institutions engaged in litigation. Moreover, the Department believes that students are frequently the victims of compensation plans that institutions have adopted within the ambit of the first safe harbor. When admissions personnel are compensated substantially, if not entirely, upon the numbers of students enrolled, the incentive to deceive or misrepresent the manner in which a particular educational program meets a student's need increases substantially. As a result, the Department believes that the existence of the safe harbors is a major impediment to ensuring that students are enrolled in educational programs that are meaningful to them. There was considerable discussion on this proposed approach during the negotiated rulemaking sessions.

At the outset of the discussions on incentive compensation during negotiated rulemaking, the Department reviewed each of the 12 safe harbors reflected in the current regulations and stated why the Department views them as either inappropriate or unnecessary:

1. *Adjustments to employee compensation.* The Department explained that this safe harbor has led to allegations in which institutions concede that their compensation structures include consideration of the number of enrolled students, but aver that they are not *solely* based upon such numbers. In some of these instances, the substantial weight of the evidence has suggested that the other factors purportedly analyzed are not truly considered, and that, in reality, the institution bases salaries exclusively upon the number of students enrolled. For this reason, the Department proposes to delete this safe harbor. After careful consideration, the Department has determined that removal of the safe harbor is preferable to trying to revise the safe harbor. For example, changing the word *solely* in this safe harbor to some other modifier, such as "primarily" or "substantially," would not correct the problem, as the evaluation of any alternative arrangement would merely shift to whether the compensation was "primarily" or "substantially" based upon enrollments.

2. *Compensation related to enrollment in programs that are not eligible for title IV, HEA program funds.* Section 487(a)(20) of the HEA provides that compensation may not be based upon success in securing enrollments whether the students receive title IV, HEA funds, or some other form of student financial assistance. This safe harbor provides an impetus to steer students away from title IV, HEA programs. The potential also exists for manipulation, as students who were initially enrolled in non-title IV, HEA eligible programs may then be re-enrolled in title IV, HEA eligible programs. As a result, the Department proposes to remove this safe harbor.

3. *Compensation related to contracts with employers to provide training.* Compensation permitted under this safe harbor includes compensation that is ultimately based upon success in securing enrollments, and is thus inconsistent with section 487(a)(20) of the HEA.

4. *Compensation related to profit-sharing bonus plans.* There is no statutory proscription upon offering employees either profit-sharing or a bonus; however, if either is based upon success in securing enrollments, it is not permitted. Therefore, this safe harbor is unnecessary.

5. *Compensation based on program completion.* The Department believes that this safe harbor permits compensation that is "indirectly" based

upon securing enrollments—that is, unless the student enrolls, the student cannot successfully complete an educational program. With the proliferation of short-time, accelerated programs, the potential exists for shorter and shorter programs, and increased efforts to rely upon this safe harbor to incentivize recruiters. Moreover, this safe harbor may lead to lowered or misrepresented admissions standards and program offerings, lowered academic progress standards, altered attendance records, and a lack of meaningful emphasis on retention. The Department has seen schools that have devised and operated grading policies that all but ensure that students who enroll will graduate, regardless of their academic performance. For these reasons, the Department believes it is appropriate to delete this safe harbor.

6. *Compensation related to pre-enrollment activities.* The Department does not believe that this safe harbor is appropriate. Individuals may not receive incentive compensation based on their success in soliciting students for interviews; soliciting students for interviews is a recruitment activity, not a pre-enrollment activity. In addition, because a recruiter's job description is to recruit, it would be very difficult for an institution to document that it was paying a bonus to a recruiter solely for clerical pre-enrollment activities. Such activities certainly contribute "indirectly," if not "directly," to the success in securing enrollments, and hence compensation based upon them is prohibited by the statute. Moreover, with the elimination of the safe harbor relating to adjustments to employee compensation, an unscrupulous actor could claim that the activities in which its recruiters engaged, and for which they were compensated, consisted of "clerical" or "pre-enrollment" activities, regardless of whether a student ultimately enrolled.

7. *Compensation related to managerial and supervisory employees.* The Department believes that this safe harbor provision is no longer appropriate because senior management may drive the organizational and operational culture at an institution, creating pressures for top, and even middle, management to secure increasing numbers of enrollments from their recruiters. As a result, these individuals should not be exempt from the ban on receiving incentive compensation.

8. *Compensation related to token gifts.* As at least one non-Federal negotiator noted, students oft-times do things with little reflection if it brings an immediate reward, and such things as a $100 gift card constitute a substantial incentive for many students. Further, the fair market value of an item might be considerably greater than its cost. A high value item for which the institution paid a minimal cost could not be considered a token gift. As a result, even the provision of token gifts to students and alumni is fraught with the potential for abuse, creating the need to remove this safe harbor, as well.

9. *Compensation based on profit distributions that are based on an individual's ownership interest.* Section 487(a)(20) of the HEA prohibits compensation, including profit distributions, that is based upon success in securing enrollments and the award of financial aid. It does not prohibit profit distributions based upon an individual's ownership interest. As a result, it is the Department's view that this safe harbor is unnecessary.

10. *Compensation related to Internet-based activities.* Technological advancements and developments in Internet-based activities since this safe harbor was adopted, and the frequency with which such activities are now relied upon, argue against the continued provision of this safe harbor. Moreover, with the elimination of the first safe harbor, it can be anticipated that an institution seeking to avoid compliance with section 487(a)(20) of the HEA will maximize its Internet-based recruitment activities. For this reason, the Department proposes to remove this safe harbor.

11. *Compensation to third parties for non-recruitment activities.* The Department believes that this safe harbor is no longer necessary. Proposed § 668.14(b)(22) states that a person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the awarding of title IV, HEA program funds may not be compensated directly or indirectly based upon the success in securing enrollments. Thus, there is no reason to provide any discussion of third-party activities as they relate to non-recruitment activities as a potential safe harbor.

12. *Compensation to third parties for recruitment activities.* This safe harbor expands the scope of the eleventh safe harbor to include "recruiting or admission activities," while providing the caveat that the compensation cannot be offered in an otherwise legally impermissible manner. As mentioned in regard to the eleventh safe harbor, section 487(a)(20) of the HEA expressly proscribes payments to "any persons or entities" based directly or indirectly on success in securing enrollments, so any further discussion of third party activities as they relate to recruitment activities is also unnecessary.

The Department believes that removal of these regulatory safe harbors is necessary to ensure that section 487(a)(20) of the HEA is properly applied. The Department has determined that these safe harbors do substantially more harm than good, and believes that institutions should not look to safe harbors to determine whether a payment complies with section 487(a)(20) of the HEA. Rather, the Department believes that institutions can readily determine if a payment or compensation is permissible under section 487(a)(20) of the HEA by analyzing—

(1) Whether it is a commission, bonus, or other incentive payment, defined as an award of a sum of money or something of value paid to or given to a person or entity for services rendered; and

(2) Whether the commission, bonus, or other incentive payment is provided to any person based directly or indirectly upon success in securing enrollments or the award of financial aid, which are defined as activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid.

If the answer to each of these questions is yes, the commission, bonus, or incentive payment would not be permitted under the statute. Therefore, the Department proposes to simplify its regulations to better align them with section 487(a)(20) of the HEA.

Most non-Federal negotiators favored the Department's proposal to remove the current safe harbors because they believe that the regulatory safe harbors have led to inappropriate incentive compensation practices by institutions that are prohibited by the HEA. The majority of the non-Federal negotiators indicated strong support for the removal of these safe harbors, believing that doing so would more accurately reflect congressional intent and protect students from abusive recruitment practices that have directly resulted when institutions have sought to circumvent, if not directly flaunt, section 487(a)(20) of the HEA.

The non-Federal negotiator who opposed the Department's proposed removal of the safe harbors and their replacement with certain definitions argued that the safe harbors are needed to explain the scope of the prohibition in section 487(a)(20) of the HEA, which was perceived as being unclear. Without the safe harbors, it was argued, institutions would not have a clear sense of what practices are permitted

and, therefore, would be more likely to unintentionally violate the prohibition in section 487(a)(20) of the HEA and § 668.14(b)(22). However, any merit to this argument is belied by the ease of the application of the two-part test the Department has offered that will demonstrate whether a compensation plan or payment complies with the statute and its implementing regulations.

A sub-caucus of non-Federal negotiators worked between the second session of negotiated rulemaking and the third session of negotiated rulemaking to develop draft regulatory language that would retain, but narrow the scope of, the safe harbors in the current regulations. There was much discussion regarding the sub-caucus' proposed draft language, as well as one final counter-proposal brought to the negotiating table.

A number of specific concerns were raised during these discussions. First and foremost, negotiators wanted to understand what the likely impact would be if the safe harbors were removed from the regulations. They questioned whether all previously permitted actions would now be prohibited. The Department explained its position: That, going forward, under the proposed regulations, institutions would need to re-examine their practices to ensure that they comply with proposed § 668.14(b)(22). To the extent that a safe harbor created an exception to the statutory prohibition found in section 487(a)(20) of the HEA, its removal would establish that such an exception no longer exists, and that the action that had been permitted is now prohibited.

Several negotiators were concerned that under the Department's proposal, institutions would be prohibited from paying merit-based increases to their financial aid or admissions personnel. In particular, some negotiators supported the inclusion of language that would permit an institution to make merit-based adjustments based on an employee's performance in relation to an institution's goals, such as those for enrollment, completion, or graduation.

The Department's proposed regulations continue to authorize merit-based compensation for financial aid or admissions staff. An institution could use a variety of standard evaluative factors as the basis for such an increase; however, consistent with section 487(a)(20) of the HEA, under proposed § 668.14(b)(22), it would not be permitted to consider the employee's success in securing student enrollments or the award of financial aid or institutional goals based on that success among those factors. Further, an increase that is based either directly or indirectly on individual student numbers would be prohibited. The Department believes that the language in proposed § 668.14(b)(22)(ii) makes this clear.

One negotiator felt strongly that it was critical to use the word "solely," or some other modifier, to limit the prohibition in proposed § 668.14(b)(22)(i) (*i.e.,* "It will not provide any commission, bonus, or other incentive payment based solely upon success * * *" rather than "It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success"). This negotiator said that the use of the word solely, or some other modifier, would be consistent with the use of that term solely in the first safe harbor reflected in current § 668.14(b)(22)(ii)(A) (*i.e.,* " * * * is not based *solely* on the number of students recruited, admitted, enrolled, or awarded financial aid"). As discussed earlier in this preamble, given the Department's experience with how the first safe harbor in current § 668.14(b)(22) has been abused, the Department does not believe that such a construction is warranted. It is the Department's view that, consistent with section 487(a)(20) of the HEA, incentive payments should not be based in any part, directly or indirectly, on success in securing enrollments or the awards of financial aid.

In addition, some negotiators advocated for an institution's ability to pay bonuses on the basis of students who complete their programs of instruction, as currently provided for in the fifth safe harbor. They believed that this category of students (*i.e.,* students who complete their programs), is different from the category of students who enroll, for which compensation may not be based. The Department does not agree. As previously stated, the Department believes that the regulations must clearly reinforce the statutory provision and exclude the possibility of basing any portion of a bonus on success in securing student enrollments or financial aid awards.

Several negotiators requested that the Department define the term "bonus" as a way to help institutions understand what types of compensation are appropriate. Accordingly, in proposed § 668.14(b)(22)(iii)(A), the Department proposes to define the term *commission, bonus, or other incentive payment* as a sum of money or something of value paid to or given to a person or an entity for services rendered. Linked to the language in proposed § 668.14(b)(22)(i)(A), this definition is unambiguous in prohibiting payment of any money or item of value on the basis of direct or indirect success in securing enrollments or the award of financial aid.

Several non-Federal negotiators asked for clarification about the extent to which supervisors and upper level administrators would be covered by proposed § 668.14(b)(22). The Department's position is that section 487(a)(20) of the HEA is clear that the incentive compensation prohibition applies all the way to the top of an institution or organization. Therefore, individuals who are engaged in any student recruitment or admissions activity or in making decisions about the award of student financial aid are covered by this prohibition.

One negotiator asked the Department to clarify how the prohibition reflected in proposed § 668.14(b)(22) would work in the case of an institution that partners with other institutions or organizations to receive shared services, an approach that some institutions are turning to for economic reasons. As an example, a group of institutions might share a centralized campus security team because doing so could be less expensive than having each institution set up its own team. If institutions use this model of shared services for financial aid purposes and the payment for the shared services is volume-driven (*e.g.,* an institution is billed based on the number of student files that are processed), the negotiator asked if institutions would comply with proposed § 668.14(b)(22). The Department does not believe that the proposed language would automatically preclude an institution's use of this type of arrangement, provided that payment is not based on success in securing enrollments or the awards of financial aid. In the normal course, the contractor would be paid for services rendered without violating the proposed regulations.

Several negotiators were concerned about the impact of the proposed language on an institution's Internet-based activities. Negotiators asserted that the HEA permits advertising and marketing activities by a third party, as long as payment to the third party is based on those who "click" and is not based on the number of individuals who enroll. The Department agrees and does not believe that the proposed regulatory language would prohibit such click-through payments.

The issue of token gifts prompted some discussion. Several negotiators asked the Department to clarify whether an institution that offers some type of payment to current students in exchange for their contact list would

violate proposed § 668.14(b)(22). The Department believes that this type of activity is permitted as long as the student is not paid or given an item of value on the basis of the number of students who apply or enroll. Most negotiators agreed with this position.

Finally, several non-Federal negotiators asked whether the Department would offer private letter guidance on conduct that may violate proposed § 668.14(b)(22). Accordingly, the Department believes the proposed language is clear and reflective of section 487(a)(20) of the HEA. The Department believes it will appropriately guide institutions as they evaluate compensation issues. To the extent that ongoing questions arise on a particular aspect of the regulations, the Department will respond appropriately. This response may include a clarification in a Department publication, such as the Federal Student Aid Handbook or a Dear Colleague Letter. The Department believes that rather than focusing clarifying guidance on the situation at a particular institution, any illuminating statements must be broadly applicable and distributed widely to all participating institutions. As a result, the Department does not intend to provide private guidance regarding particular compensation structures in the future and will enforce the law as written.

Negotiators did not reach agreement on this issue.

Satisfactory Academic Progress (§§ 668.16(e), 668.32(f), 668.34)

Statute: Section 484(a)(2) of the HEA requires that a student make satisfactory progress in the student's course of study in order to be eligible to receive title IV, HEA program funds. Section 484(c) of the HEA provides that a student is making satisfactory progress if the institution reviews the progress of the student at the end of each academic year, or its equivalent, and the student has a cumulative C average, or its equivalent, or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the student's second academic year. Section 484(c)(2) of the HEA provides that a student who has failed to maintain satisfactory progress and, subsequent to that failure, has academic standing consistent with the requirements for graduation, as determined by the institution, may again be determined eligible for assistance under title IV, HEA programs. Section 484(c)(3) of the HEA allows an institution to waive the satisfactory progress provisions for undue hardship based on the death of a relative of the student, the personal injury or illness of the student, or special circumstances as determined by the institution.

Current Regulations: Three sections in current regulations contain satisfactory academic progress requirements. Current § 668.16(e) specifies that for an institution to be considered administratively capable, it must, for the purpose of determining student eligibility, establish, publish and apply reasonable standards for measuring whether a student is maintaining satisfactory progress in his or her educational program.

Under current § 668.16(e), a satisfactory academic progress policy is considered reasonable if the standards are the same as or stricter than the institution's standards for students enrolled in the same educational program who are not receiving title IV, HEA program funds and contain both qualitative (grade-based) and quantitative (time-related) standards. Under current § 668.16(e)(3), the institution must apply the standards consistently to all students within each category of students, *e.g.,* full-time, part-time, undergraduate, and graduate students, and each educational program.

The policy must provide that the institution checks both qualitative and quantitative components of the standards at the end of each increment, which may not be longer than one half of the educational program or one academic year, whichever is less.

Current § 668.16(e)(5) and (e)(6) require that a satisfactory academic policy provide specific procedures under which a student may appeal a determination that the student is not making satisfactory academic progress and specific procedures for a student to re-establish that the student is making satisfactory academic progress.

Current § 668.32 contains general student eligibility requirements. Current paragraph (f) of this section specifies that to be eligible to receive title IV, HEA program assistance, a student must maintain satisfactory progress in his or her course of study under the institution's published satisfactory progress standards. These standards must comply with the provisions of § 668.16(e) and, if applicable, § 668.34.

Current § 668.34 specifies that a student who is enrolled in a program of study that is longer than two academic years must, at the end of the second year, have a grade point average (GPA) of at least a "C" or its equivalent, or have academic standing that is consistent with the institution's graduation requirements. Under current § 668.34(c), an institution may find that a student is making satisfactory academic progress, even if the student does not meet these requirements, if the student's failure to meet these requirements is based upon the death of a relative of the student, an injury or illness of the student, or other special circumstances. Current § 668.34(e) requires an institution to review a student's academic progress at the end of each year, at a minimum.

Proposed regulations: The proposed regulations would restructure the satisfactory academic progress requirements. Proposed § 668.16(e) (Standards of administrative capability) would be revised to include only the requirement that an institution establish, publish, and apply satisfactory academic progress standards that meet the requirements of § 668.34. The remainder of current § 668.16(e) would be moved to proposed § 668.34 such that it, alone, describes all of the required elements of a satisfactory academic progress policy as well as how an institution would implement such a policy. The references in paragraph § 668.32(e) would be updated to conform the section with the changes proposed to §§ 668.16(e) and 668.32.

Proposed § 668.34(a) would specify the elements an institution's satisfactory academic policy must contain to be considered a reasonable policy. Under the proposed regulations, institutions would continue to have flexibility in establishing their own policies; institutions that choose to measure satisfactory academic progress more frequently than at the minimum required intervals would have additional flexibility (*see* proposed § 668.34(a)(3)).

All of the policy elements in the current regulations under §§ 668.16(e) and 668.34 would be combined in proposed § 668.34. In addition, proposed § 668.34(a)(5) would make explicit the requirement that institutions specify the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, and provide for measurement of a student's pace at each evaluation. Under proposed § 668.34(a)(6), institutional policies would need to describe how a student's GPA and pace of completion are affected by transfers of credit from other institutions. This provision would also require institutions to count credit hours from another institution that are accepted toward a student's educational program as both attempted and completed hours.

Proposed § 668.34(a)(7) would provide that, except as permitted in § 668.34(c) and (d), the policy requires that, at the time of each evaluation, if

the student is not making satisfactory academic progress, the student is no longer eligible to receive title IV, HEA assistance.

Proposed § 668.34(a)(8) would require institutions that use "financial aid warning" and "financial aid probation" statuses (concepts that would be defined in proposed § 668.34(b)) in connection with satisfactory academic progress evaluations to describe these statuses and how they are used in their satisfactory academic progress policies. Proposed § 668.34(a)(8)(i) would specify that a student on financial aid warning may continue to receive assistance under the title IV, HEA programs for one payment period despite a determination that the student is not making satisfactory academic progress. Financial aid warning status may be assigned without an appeal or other action by the student. Proposed § 668.34(a)(8)(ii) would make clear that an institution with a satisfactory academic progress policy that includes the use of the financial aid probation status could require that a student on financial aid probation fulfill specific terms and conditions, such as taking a reduced course load or enrolling in specific courses.

Proposed § 668.34(a)(9) would require an institution that permits a student to appeal a determination that the student is not making satisfactory academic progress to describe the appeal process in its policy. The policy would need to contain specified elements. Proposed § 668.34(a)(9)(i) would require an institution to describe how a student may re-establish his or her eligibility to receive assistance under the title IV, HEA programs. Under proposed § 668.34(a)(9)(ii), a student would be permitted to file an appeal based on the death of a relative, an injury or illness of the student, or other special circumstances. Under proposed § 668.34(a)(9)(iii), a student would be required to submit, as part of the appeal, information regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that would allow the student to demonstrate satisfactory academic progress at the next evaluation.

Proposed § 668.34(a)(10) would require the satisfactory academic progress policy of an institution that does not permit students to appeal a determination that they are not making satisfactory academic progress to describe how a student may regain eligibility for assistance under the title IV, HEA programs.

Proposed § 668.34(a)(11) would require that an institution's policy provide for notification to students of the results of an evaluation that impacts the student's eligibility for title IV, HEA program funds.

In proposed § 668.34(b), we would define several important terms that are used in this section:

We would define the term *appeal* as a process by which a student who is not meeting the institution's standards petitions the institution for reconsideration of the student's eligibility for title IV, HEA program funds.

The term *financial aid probation* would be defined as a status assigned by an institution to a student who fails to make satisfactory academic progress and who has appealed and has had eligibility for aid reinstated.

The term *financial aid warning* would be defined as a status assigned to a student who fails to make satisfactory academic progress at an institution that evaluates academic progress at the end of each payment period.

We would add a definition of the term *maximum timeframe,* which would be based entirely on the description of maximum timeframe in current § 668.16(e)(2)(ii).

Proposed § 668.34(c) and (d) would specify that an institution's policy may provide for disbursement of title IV, HEA program funds to a student who has not met an institution's satisfactory academic standards in certain circumstances.

Proposed § 668.34(c) would permit an institution that measures satisfactory academic progress at the end of each payment period to have a policy that would permit a student who is not making satisfactory academic progress to be placed automatically on financial aid warning, a newly defined term.

Finally, under proposed § 668.34(d), at an institution that measures satisfactory academic progress annually, or less frequently than at the end of each payment period, a student who has been determined not to be making satisfactory academic progress would be able to receive title IV, HEA program funds only after filing an appeal and meeting one of two conditions: (1) The institution has determined that the student should be able to meet satisfactory progress standards after the subsequent payment period, or (2) the institution develops an academic plan with the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

Reasons: Recent questions from institutions and reviews of institutional satisfactory academic progress policies have raised concerns about the effectiveness of institutions' satisfactory academic policies, even those that comply with the Department's current regulatory criteria. For example, it has become evident that the use of automatic probationary periods has resulted in some students receiving title IV, HEA aid for as long as 24 months even though they are not meeting the institution's satisfactory academic progress standards. Moreover, it is also clear that institutions use a variety of terms—warning, probation, amnesty—to describe situations in which a student is not making satisfactory academic progress, but nevertheless has been determined eligible to receive assistance under the title IV, HEA programs. Repeated uses of these statuses, or use of a combination of these statuses, applied sequentially, may lead to prolonged periods during which students who are not making satisfactory academic progress nevertheless continue to receive title IV, HEA program funds.

The proposed changes to §§ 668.16(e), 668.32, and 668.34 are designed to implement a more structured, comprehensive, and consistent approach to the development and implementation of institutional satisfactory progress policies.

During the discussions at the negotiated rulemaking sessions, the Department explained the problems it has identified and solicited information on current institutional policies and recommendations from the non-Federal negotiators on ways to amend the current regulations that would curtail abuses while retaining flexibility for institutions. The Department used this information in developing the proposed regulations.

In the following paragraphs, we describe the Department's rationale for the specific substantive changes proposed to the satisfactory academic progress regulations.

First we propose to expand the elements required for an institution's satisfactory academic progress policy to include a description and specific treatment of transfer credits, a description of financial aid warning and probationary statuses (if applicable), a requirement to notify students of the results of a satisfactory progress review that impacts their eligibility for title IV, HEA program assistance, specific information required for appeals (if the institution permits appeals), and if an institution does not permit appeals, how students may re-establish eligibility for title IV, HEA program funds. Having a clear understanding of an institution's satisfactory progress policy will help

students understand the institution's academic expectations and will increase the likelihood of their academic success.

We also propose to make changes to the regulatory language concerning the frequency with which an institution measures the satisfactory academic progress of its students. During negotiated rulemaking, several of the non-Federal negotiators stressed the importance of early intervention in helping students meet their educational goals. The Department agrees with this approach; however, because section 484(c) of the HEA requires institutions to evaluate a student's progress at the end of each academic year or the equivalent, the Department is limited in its ability to have institutions evaluate students' progress more frequently (for example, at the end of each payment period). To encourage institutions to evaluate a student's academic progress more frequently, the Department proposes regulatory language that would offer additional flexibility to institutions that measure satisfactory academic progress at the end of each payment period. Proposed § 668.34(c) would permit institutions that review student progress at the end of each payment period to place students on financial aid warning for one payment period, which would encourage institutions to provide additional support to students in a timely manner and would help students be successful.

We would define the term *financial aid warning* (as well as the term *financial aid probation*) in proposed § 668.34(b) to promote consistent application of these types of designations among institutions that use these designations in connection with their satisfactory academic progress reviews. The term *financial aid warning* would be defined as a status conferred automatically and without action by a student, while the term *financial aid probation* would be defined as a status conferred after a student has submitted an appeal that has been granted. The financial aid warning designation would be available only at an institution that measures satisfactory academic progress at the end of each payment period. Defining each status would help all institutions to clearly distinguish when a student may continue to receive title IV, HEA funds and under what conditions. By defining these terms to describe the eligibility of the student to receive future disbursements, we can help ensure that students are treated consistently and equitably regardless of the institution they attend.

We also would add some regulatory language to ensure that institutional satisfactory academic progress policies specify the circumstances under which a student may appeal a determination that the student is not making satisfactory academic progress and is not eligible to receive title IV, HEA funds for the subsequent term. The proposed regulations would not require institutions to permit students to appeal, but they would specify that students may appeal only under certain circumstances. Several non-Federal negotiators asserted that their institutions had established the practice of granting appeals only to students who could explain how the circumstances that had caused their academic problems had changed. These negotiators explained that in their experience, if the root problem was not addressed successfully, the student was just setting himself or herself up for failure the next term. These non-Federal negotiators made a compelling argument for this approach; therefore, we have incorporated it in proposed § 668.34(c)(8)(ii) (*i.e.,* the student must submit information regarding why the student failed to make satisfactory academic progress and what has changed in the student's situation that will allow the student to demonstrate satisfactory academic progress in the next evaluation).

There was also discussion during the negotiated rulemaking sessions regarding what aspect of failure to meet satisfactory academic progress standards a student could appeal. The non-Federal negotiators generally agreed that failure to meet both the qualitative and quantitative standards may be appealed under current regulations, and that this should be true under the proposed regulations as well. The Department agrees. There was also discussion about whether failure to meet the maximum timeframe has been subject to appeal in the past, and whether it would be permitted under the proposed regulations. Under the current regulations, a student can appeal his or her failure to complete his program in the maximum timeframe. The Department believes a student should continue to be able to appeal a determination that the student has failed or will fail to meet the maximum timeframe requirements. We note that the proposed regulations provide flexibility to institutions to help address the needs of a student who is likely to exceed the maximum timeframe. An institution could work with the student to develop an academic plan that would require the student to meet the institution's graduation requirements by a specific point in time.

Some non-Federal negotiators asked whether the proposed regulations would permit institutions to have satisfactory academic policies that provide for academic amnesty. One of the examples given was of an individual who had an unsuccessful academic career 10 years ago and now wants to reenroll. The Department's position is that in such a situation, it would be appropriate for the institution to require the individual to submit an appeal that explains the change in circumstances from when the student failed to make satisfactory academic progress 10 years ago. Under proposed § 668.34(d), an institution's satisfactory academic progress policy could provide for such students to submit an appeal and develop an academic plan with the institution that would specify milestones the student would be expected to meet. As in other situations where a student has had academic difficulty and been placed on financial aid probation, the institution would have the option of placing certain restrictions on the student, such as limiting the number of hours taken or specifying a certain sequence of courses.

We propose to require institutions that do not permit students to appeal a determination that they are not making satisfactory academic progress to inform students how they may re-establish eligibility. This regulatory provision would be consistent with the language in section 484(c)(2) of the HEA, which provides that a student who has failed to maintain satisfactory progress and, subsequent to that failure, has academic standing consistent with the requirements for graduation, as determined by the institution, may again be determined eligible for assistance under title IV, HEA programs.

Throughout the discussions during the negotiated rulemaking sessions, non-Federal negotiators raised questions about whether the statutory requirement that an institute review a student's academic progress at the end of each academic year or its equivalent is tied to the student's academic year, the award year, the calendar year, or the institution's defined academic year. It became apparent that most institutions that review student progress annually, review all students at a specific point in time, such as at the end of the spring term or spring payment period. The Department agrees that this is an appropriate and reasonable institutional policy for an institution that reviews academic progress annually.

Finally, there was some discussion during the negotiated rulemaking sessions about whether a student's work completed during a summer term is subject to evaluation. The Department's position is that any evaluations of satisfactory academic progress,

regardless of the frequency with which they are conducted, must include all work completed by the student since the last review. The Department welcomes comments as to the clarity of the proposed language in this regard.

Evaluating the Validity of High School Diplomas (§ 668.16(p))

Standards of Administrative Capability (§ 668.16(p))

Statute: None.

Current Regulations: The current regulations do not define the term "high school diploma" or otherwise include provisions regarding the evaluation of the validity of a student's high school diploma. While the term *recognized equivalent of a high school diploma* is defined in 34 CFR 600.2 (Definitions), the term "high school diploma" is not defined anywhere in the HEA or its implementing regulations. The current regulations do, however, refer to high school diplomas in the context of determining institutional eligibility as well as student eligibility for the title IV, HEA programs.

First, 34 CFR 600.4(a)(2) (Institutions of higher education) requires an institution of higher education participating in the Federal student aid programs to admit as regular students only individuals who have obtained a high school diploma or its recognized equivalent, or who are beyond the age of compulsory school attendance in the State in which the institution is located.

In order to be eligible to receive title IV, HEA aid, current § 668.32(e) (Student eligibility) requires a student to have a high school diploma or its recognized equivalent, have completed secondary school in a home school setting, or pass an independently administered examination approved by the Secretary.

Proposed Regulations: Under proposed § 668.16(p), an institution would be required to develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

Reasons: We propose adding paragraph (p) to § 668.16 to provide that it is the institution's responsibility to evaluate the validity of the diploma if either the institution or the Secretary believes that a closer examination of the diploma is warranted. This proposed change is designed to ensure that students who report having high school diplomas and obtain title IV, HEA aid in fact have valid high school diplomas. The language reflected in this proposed provision is also intended to address the Government Accountability Office recommendation raised in its August 17, 2009 report that the Secretary should provide institutions of higher education with information and guidance on determining the validity of high school diplomas for use in gaining access to Federal student aid.

During the negotiated rulemaking sessions, we initially proposed draft regulatory language that would have required institutions to evaluate the credentials of secondary schools for purposes of determining whether high school diplomas issued from the schools were valid. As part of this evaluation, institutions would have been required to maintain three listings of secondary schools (schools that are acceptable, schools that are unacceptable, and schools that require further evaluation) based on regulatory criteria for determining the acceptability of their credential for title IV, HEA program purposes.

Many non-Federal negotiators expressed concern over this proposed draft regulatory language. Several non-Federal negotiators stated that K–12 issues, including defining high school diploma, should be handled at the State level. Some non-Federal negotiators also objected to requiring institutions to research the legitimacy of the high school diploma a student presents and to maintain lists of secondary schools based on this research. They argued that these activities would be unduly burdensome. Instead, many non-Federal negotiators argued that the Department should assume responsibility for maintaining a centralized list of secondary schools that institutions could use to determine whether a student's high school diploma was valid.

Based on concerns raised by the non-Federal negotiators, the Department agreed to establish and maintain a list of secondary schools. We believe that such a solution moves us appropriately toward our goal of uncovering questionable high school diplomas, while imposing a minimal burden on institutions.

In furtherance of this approach, the Department has begun the process of adding two questions to the FAFSA for the 2011–2012 award year:

(1) What is the name of the secondary school or entity that provided the student's secondary school program of study?

(2) What is the State that awarded the student's high school diploma?

The Department intends to use the information it collects from students in response to these questions to help identify whether each student has a valid high school diploma. If, in response to these questions on the FAFSA, a student lists a secondary school or entity that does not match the list of secondary schools maintained by the Department, or if the student does not provide the name of the secondary school or entity or the State that issued the diploma, the Department may select the student's FAFSA for further review by the institution to determine if the student has a valid high school diploma before the student can receive any title IV, HEA aid. Therefore, in cases where the student is selected for review because the Secretary questions the validity of his or her high school diploma, institutions are expected to determine the validity of the high school diploma. Under proposed § 668.16(p), institutions also would be responsible for determining the validity of a high school diploma if the institution has reason to believe that the diploma is invalid or was not obtained from an entity that provides secondary school education. To determine the validity of a student's high school diploma, an institution would need to follow the procedures it develops to evaluate the validity of diplomas. These procedures could include, for example, obtaining a copy of the student's diploma.

We intend to provide more specific guidance to institutions on developing and following procedures for evaluating the validity of high school diplomas through the Federal Student Aid Handbook or through other means. This guidance will address such issues as what procedures an institution might use to determine the validity of a high school diploma.

A non-Federal negotiator expressed concern that the proposed regulations do not go far enough to address fraud committed at an institution. This negotiator suggested that the proposed regulations should be further modified to indicate that officials at an institution should be aware and held accountable for fraudulent activities committed at the institution. We did not accept this suggestion because the Department has other avenues to address fraudulent activities. We noted that the Department has successfully litigated cases where institutions are held responsible for regulatory violations of its employees.

We were able to reach tentative agreement on this issue.

Return of Title IV, HEA Program Funds (§§ 668.22(a), 668.22(b), and 668.22(f))

Treatment of Title IV, HEA Program Funds When a Student Withdraws From Term-Based Programs With Modules or Compressed Courses (§ 668.22(a) and (f))

Statute: None.

Current Regulations: In accordance with § 668.22, when a recipient of title IV, HEA aid withdraws from an institution, the institution must determine the amount of title IV, HEA aid that the student earned for the period the student attended. For term-based programs, a student is paid aid for each term. The regulations address the institution's and the student's responsibilities when a student does not finish the term (*i.e.,* withdraws from all courses in the term) and specifies how to calculate how much aid the student earned for attending part of the term prior to withdrawing. The regulations do not, however, specifically address the treatment of term-based programs, in which courses are less than the length of the term, under the return of title IV funds calculation. In Dear Colleague Letter GEN–00–24, published in December 2000, the Department established the policy that a student who completes only one module or compressed course, within a term in which he or she is expected to continue attendance in additional coursework, is not considered to have withdrawn under the return calculation.

Proposed Regulations: The proposed changes to § 668.22(a)(2) would clarify when a student is considered to have withdrawn from a payment period or period of enrollment. In the case of a program that is measured in credit hours, the student would be considered to have withdrawn if he or she does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing. In the case of a program that is measured in clock hours, the student would be considered to have withdrawn if he or she does not complete all of the clock hours in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing.

The proposed change to § 668.22(f)(2)(i) would clarify that, for credit hour programs, in calculating the percentage of the payment period or period of enrollment completed, it is necessary to take into account the total number of calendar days that the student was scheduled to complete prior to withdrawing without regard to any course completed by the student that is less than the length of the term.

These proposed regulations would affect all programs with courses that are less than the length of a term, including, for example, a semester-based program that has a summer nonstandard term with two consecutive six-week sessions within the term.

Reasons: The Department proposes these changes to ensure more equitable treatment between students who withdraw from programs that are measured in credit hours, regardless of whether those programs span the full length of the term, or are programs with modules or compressed courses.

Under the guidance provided in Dear Colleague Letter GEN–00–24, we have equated completing one compressed course or module with completing one course taken over the span of the term. Under this guidance, a student who was scheduled to take several modules or compressed courses in a term but dropped out after completing only one course (for example, a 5-week course in a 15-week term) was not viewed as having withdrawn from the term. Accordingly, while we required an institution to recalculate the student's Federal Pell Grant payment as a result of any reduction in enrollment status under § 690.80(b)(2)(ii) when the student did not begin attendance in subsequent classes in the term, we did not require the school to perform a return calculation under § 668.22.

Based on this guidance, a student who completed only a one- or two-week course in a 15-week term and then ceased attendance for the term would NOT be considered to have withdrawn from the term under the return of title IV requirements. The institution or student or both would keep aid intended for a 15-week period of time when the student only attended the term for as little as one week.

For a number of reasons, we have reconsidered our prior guidance. First, this change would provide a more equitable treatment of students who are attending for comparable periods of time during a semester because a student's aid is based on, and intended to cover, in whole or in part, not only tuition and fees for the term, but the student's living expenses for the term. Title IV, HEA aid is provided for the entire term, and section 484B of the HEA provides that these same amounts are earned on a prorata basis for the first 60 percent of the term. Second, a student who only attends one module or compressed course and then ceases to be enrolled without attending other modules or compressed courses he or she is scheduled to attend in the term is withdrawing before completing the term, and the portion of the term completed should be considered to determine how much of the title IV, HEA aid the student earned. Third, the prior guidance has resulted in abusive cases where institutions have created term-based programs with a very short initial module or course of as little as one week in length so that institutions can keep all of the title IV, HEA aid for students who withdraw after that point.

During the negotiations, the non-Federal negotiators raised concerns about the proposed approach, believing that it would unfairly penalize students. The negotiators also raised concerns about the possibility of additional burden from a significant increase in the number of return to title IV funds calculations that an institution might have to perform, as well as about the inability of many institutions to track the number of students who are taking these types of compressed courses.

The non-Federal negotiators presented three options to address their concerns by limiting the applicability of the proposed treatment based upon the relative amounts of the modules that students completed before withdrawing. The first option was to exclude students who completed the same enrollment status for which they were originally paid title IV, HEA aid. The second option suggested by the non-Federal negotiators was to exclude students who completed 50 percent of the credits that were awarded and 50 percent of the projected enrollment time. The third option was to only apply the proposed regulations to compressed coursework that was shorter than a "to-be-determined" percent of the payment period; the non-Federal negotiators did not reach agreement as to what the appropriate percentage should be.

We appreciate the concerns of the non-Federal negotiators, but we do not agree with the proposed alternatives. By recognizing that students who are taking module classes are expected to earn their title IV, HEA aid over time on a prorata basis, those students are subject to those requirements up to the point where they complete more than 60 percent of the period. We continue to believe that the proposed changes are necessary to ensure the equitable application of these provisions for all students, regardless of the academic calendar of the programs that students are attending.

Withdrawal Date for a Student Who Withdraws From an Institution That Is Required To Take Attendance (§ 668.22(b))

Statute: Section 484B(c)(1) of the HEA requires institutions and students to return unearned portions of title IV,

HEA grant or loan assistance (other than funds received under the Federal Work-Study Program) when a student withdraws during a payment period or period of enrollment. The statute defines the term the "day the student withdrew" differently for institutions that are required to take attendance and for those not required to take attendance. For an institution that is required to take attendance, the "day the student withdrew" is determined by the institution from its attendance records. For an institution that is not required to take attendance, the "day the student withdrew" is the date that the institution determines that (1) the student began the withdrawal process prescribed by the institution; (2) the student otherwise provided official notification to the institution of the intent to withdraw; or (3) in the case of a student who does not begin the withdrawal process or otherwise notify the institution of the intent to withdraw, the date that is the midpoint of the payment period for which title IV, HEA program funds were disbursed or a later date documented by the institution.

Current regulations: Section 668.22(b)(3) provides the requirements for determining whether an institution is required to take attendance for an educational program. Under § 668.22(b)(3), an institution is required to take attendance if an outside entity (such as the institution's accrediting agency or a State agency) requires that the institution take attendance, as determined by the entity. In this case, the student's withdrawal date is the last date of academic attendance, as determined by the institution from its attendance records.

Proposed regulations: The proposed revisions to § 668.22(b)(3) would clarify the programs for which institutions are required to take attendance. An institution would be required to take attendance if an outside entity or the institution itself has a requirement that its instructors take attendance, or if the institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program. In addition, the proposed regulations would remove the provisions in § 668.22(b)(3)(i) and (ii) that it is the entity that determines whether there is a requirement to take attendance since the new provision looks at the substance of the information being collected rather than the characterization of that information or process by the entity.

Proposed § 668.22(b)(3)(ii) would clarify that if an institution is required to take attendance by an outside entity or requires its instructors to take attendance for only some of its student, then it must use its attendance records to determine a withdrawal date for those students.

Proposed § 668.22(b)(3)(iii) would incorporate in the regulations current nonregulatory guidance regarding an institution that is required to take attendance, or requires that attendance be taken, for a limited period of time, such as for the first two weeks of courses or until a "census date." These proposed provisions would specify that an institution must use its attendance records to determine a withdrawal date for a student who withdraws during that limited period. A student in attendance at the end of that limited period who subsequently stops attending during the payment period would be treated as a student for whom the institution was not required to take attendance.

Proposed § 668.22(b)(3)(iv) would also incorporate in the regulations current nonregulatory guidance that if an institution is required to take attendance, or requires that attendance be taken, on a specified date to meet a census reporting requirement, the institution is not considered to take attendance.

Reasons: These proposed changes would provide a more accurate determination of how much title IV, HEA aid a student earned who withdrew from an institution during a period when an instructor or other institution employee or procedure was required to monitor student attendance. The non-Federal negotiators had a number of concerns with respect to our proposals regarding whether an institution is required to take attendance and regarding the proposed requirement that these institutions must use their records in determining a student's withdrawal date in a return to title IV calculation. The non-Federal negotiators pointed out that having to determine a more exact date of withdrawal, as opposed to assuming a 50 percent point, would be more burdensome. They also noted that attendance does not necessarily accurately reflect academic activity, and also stated that they cannot ensure that faculty members will keep accurate and up-to-date attendance records. While we can appreciate these concerns, we continue to believe that the best date available should be used to determine the amount of time that a student was in attendance. Using the best date available would support the fair treatment of students and avoid the potential for fraud and abuse of Federal funds.

Proposed § 668.22(b)(3)(iii) would address instances where institutions take attendance for the period of time between the beginning of classes and the deadline for adding or dropping classes. Where a student withdraws and an institution's records show that the student stopped attending during that period, that is the best information available for determining how much aid the student earned. This proposed regulation reflects current guidance about whether such institutions were viewed as being required to take attendance for this limited period, and this change in the text will help clarify that requirement. The non-Federal negotiators expressed concern that students who appear to have stopped attending during a census period may have subsequently attended other classes before withdrawing. Institutions have the option under § 668.22(c)(3) to use a student's participation in an academically related activity to show that the student continued to be enrolled to a point where the institution was no longer required to take attendance.

Proposed § 668.22(b)(3)(iv) also would incorporate in the regulations our current nonregulatory guidance that an institution is not required to use attendance records for return of title IV, HEA aid purposes if it is only required to take attendance on a specific date. We would welcome comments on whether this proposed regulation should be further clarified to specify that it applies only for one calendar date, or, for one class that meets during a small range of dates, for example, for one day for any class that met during a particular week, rather than "a specific date."

Verification and Updating of Student Aid Application Information (Subpart E of Part 668)

Application Information

Current subpart E of part 668 governs the verification and updating of the FAFSA information used to calculate an applicant's Expected Family Contribution (EFC) for purposes of determining an applicant's need for student financial assistance under title IV of the HEA. In general, financial need is defined as the difference between the applicant's cost of attendance (COA) and EFC (*see* section 471 of the HEA). Based on the need analysis formula established in part F of the HEA, the EFC is the amount that an applicant and the applicant's family can reasonably be expected to contribute toward the

applicant's cost of attendance at an institution of higher education.

These proposed regulations would implement statutory changes made to part F of the HEA by the HEOA and further align these regulations with enhancements that have been made to the Federal Student Aid (FSA) application processing system. In the following paragraphs we describe the substantive changes we propose to make to subpart E of part 668 and the reasons for the changes. These proposed changes include—

- Revising the subpart E heading to reflect that an applicant and an institution have updating responsibilities in addition to completing specific verification responsibilities;
- Removing, redefining, and adding definitions;
- Codifying current policy that an institution must complete verification before exercising any authority under professional judgment;
- Removing the 30 percent cap on the number of applicants selected by the Secretary that an institution must verify in order to move towards a more targeted verification system;
- Restructuring the exclusions from verification section;
- Requiring any changes to a student's dependency status be updated throughout the award year, including changes resulting from a change in the student's marital status;
- Updating the section heading under § 668.56 and replacing the five items that an institution currently is required to verify for all applicants selected for verification with a targeted verification process that is specific to each applicant selected as described in a **Federal Register** notice published annually by the Secretary;
- Codifying the Department's Internal Revenue Service (IRS) Data Retrieval Process, which allows an applicant to import income and other data from the IRS into an online FAFSA;
- Updating the IRS deadline granted for extension filers;
- Clarifying when an institution is required to reverify the adjusted gross income (AGI) and taxes paid by an applicant and his or her spouse or parents for individuals with an IRS tax filing extension;
- Expanding the information a tax preparer must provide on the copy of the filer's return that has been signed by the preparer;
- Describing in an annual **Federal Register** notice other documentation that an applicant must provide for the information that is selected for verification;
- Allowing interim disbursements when changes to an applicant's FAFSA information would not change the amount the applicant would receive under title IV, HEA;
- Requiring all corrections to be submitted to the Secretary for reprocessing;
- Removing all allowable tolerances;
- Applying the cash management procedures for proceeds received from a Subsidized Stafford Loan or Direct Subsidized Loan on behalf of an applicant; and
- Describing the liability to an institution that disburses title IV, HEA aid to an applicant without receiving a corrected Student Aid Report (SAR) or Institutional Student Information Record (ISIR) within an established deadline.

Tentative agreement was reached on these proposed regulations during the negotiated rulemaking.

General (§ 668.51)

Statute: Section 487(a)(5) of the HEA provides that an institution may participate in a title IV, HEA program if the institution enters into a written program participation agreement with the Secretary. A program participation agreement conditions the initial and continued participation of an eligible institution in any title IV, HEA program upon compliance with the provisions of part 668, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet.

Current Regulations: Current § 668.51(a) describes the scope and purpose of subpart E of part 668. Current § 668.51(b) requires that if the Secretary or an institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information. Under current § 668.51(c), institutions participating in the Federal Stafford Loan Program that are not located in a State are exempted from the provisions of subpart E of part 668.

Proposed Regulations: Proposed § 668.51 would remain largely unchanged from current § 668.51. We propose to revise § 668.51(a) to refer to "student financial assistance under the subsidized student financial assistance programs" rather than to "student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Federal Pell Grant, ACG, National SMART Grant, campus-based, Federal Stafford Loan, Federal Direct Stafford/Ford Loan programs." In addition, in paragraph (c) of proposed § 668.51, we would refer to "participating institutions" rather than "institutions participating in the Federal Stafford Loan Program."

Reasons: Throughout the proposed regulations, including in this proposed § 668.51, we propose to remove all the program names and regulatory citations for the ACG and National SMART Grant programs because the authority to make grants under these programs will expire at the end of the 2010–2011 award year, before these proposed regulations become effective. In making this change, we also determined that it would be appropriate to refer to the title IV, HEA programs affected by this subpart more generally as "subsidized student financial assistance programs" and "unsubsidized student financial assistance programs," as appropriate. We would define these terms in proposed § 668.52.

Definitions (§ 668.52)

Statute: In 2008, the HEOA amended the definition of the term *total income* in section 480(a) of the HEA to provide that, when calculating total income, the Secretary may use income and other data from the second preceding tax year to carry out the FAFSA simplification efforts used for the estimation and determination of financial aid eligibility. This provision also allows the sharing of data between the IRS and the Secretary with the consent of the taxpayer as discussed later under proposed § 668.57.

Current Regulations: Current § 668.52 includes definitions of key terms used in this subpart including *base year, edits, institutional student information record,* and *student aid application.*

Proposed Regulations: Proposed § 668.52 would (1) remove the definitions of *base year, edits,* and *student aid application;* (2) revise the definition for *institutional student information record (ISIR);* and (3) add definitions for the terms *Free Application for Federal Student Aid (FAFSA), specified year, Student Aid Report (SAR), subsidized student financial assistance programs,* and *unsubsidized student financial assistance programs.*

Reasons: We propose to delete the definitions of the terms *base year, edits,* and *student aid application* because these terms would no longer be used in these proposed regulations.

We propose to define the term *Free Application for Federal Student Aid (FAFSA)* and to use this term "FAFSA information"—rather than application—throughout subpart E of part 668 in order to clarify that the information we

seek to verify includes not only the information provided in the initial FAFSA form submitted by an applicant, but also any subsequent transactions sent to the Secretary for processing that originated from the information reported on the initial FAFSA (*i.e.,* corrections).

We propose to revise the definition of the term *institutional student information record (ISIR)* to make it consistent with the definition of ISIR in 34 CFR 690.2(c) of the Federal Pell Grant Program regulations. By establishing this definition in this subpart, we would make the term generally applicable to all title IV, HEA programs that are subject to the requirements in subpart E of part 668.

We propose to define the term *specified year* to assist in the implementation of section 480(a) of the HEA, which gives the Secretary the option of using income and other data from the second preceding tax year to calculate the statutorily defined EFC that determines the applicant's eligibility for, and amount of, Federal aid. While the Department does not plan to exercise this option for the 2011–2012 award year, we believe it is appropriate to modify the regulations at this time to allow for this flexibility in the future.

Under the current process for completing the FAFSA, an applicant, the parents of a dependent applicant, or the spouse of an applicant are required to use base year income and tax information to respond to questions used to calculate the statutorily defined EFC that determines the applicant's eligibility for, and amount of, Federal aid *i.e.,* grants, loans and work-study assistance. Under the new flexibility offered to the Secretary in section 480(a) of the HEA, applicants could use income and other data from the second preceding tax year—rather than only the base year. For example, an applicant completing the FAFSA for the 2013–2014 award year could use income and other related data pertaining to January 1, 2011–December 31, 2011 (the second preceding tax year) in addition to the data the Secretary currently collects from the base year (January 1, 2012–December 31, 2012).

Allowing the use of data from an earlier tax year would help with the significant calendar difference between when an applicant may file a FAFSA and when the data is available from the filed income tax return. This is because the FAFSA application process begins on January 1, and it is unlikely that tax return information would be available for the majority of financial aid applicants who complete their FAFSA in the weeks, and in some cases months, before the general tax-filing deadline of April 15. The proposed definition of *specified year* would allow the Department to use a single term that, depending on the context in which it is used, means (1) the base year (*i.e.,* the calendar year preceding the first calendar year of an award year) or (2) the year before the base year.

We propose to add a definition of the term *Student Aid Report (SAR)* and simplify the repeated references to it in these proposed regulations.

We propose to add definitions for the terms *subsidized student financial assistance programs* and *unsubsidized student financial assistance programs* to group similar title IV, HEA programs together (*i.e.,* subsidized programs versus unsubsidized programs). By doing so, we would simplify the repeated references to the numerous affected programs in these proposed regulations.

Policies and Procedures—Professional Judgment (§ 668.53(c))

Statute: Section 479A of the HEA specifically gives the financial aid administrator the authority to use professional judgment to make adjustments to the cost of attendance or to the values of the items used in calculating the EFC to reflect a student's special circumstances.

Current Regulations: Current § 668.53 requires institutions to establish and use written policies and procedures for verifying information contained in the FAFSA. Current § 668.53(a)(1) through (5) describes the items that must be included in the policies and procedures. Current § 668.53(b) requires that an institution's procedures provide that the institution furnish to each application selected for verification an explanation of the documentation needed to satisfy the verification requirements and the applicant's responsibilities with respect to the verification of applicant information.

Proposed Regulations: Except for minor technical and conforming changes, proposed § 668.53(a) and (b) would remain largely unchanged from current § 668.53(a) and (b). We propose to add paragraph (c) to this section. Under proposed § 668.53(c), an institution's written policies and procedures for verifying information contained in a FAFSA must provide that verification for an application selected for verification is completed prior to the institution exercising professional judgment authority as permitted under section 479A of the HEA to make changes to the applicant's COA or to the value of the data items used to calculate the EFC.

Reasons: Proposed § 668.53(c) would codify as a requirement the Department's longstanding policy that an institution must complete verification before exercising professional judgment under section 479A of the HEA.

Selection of FAFSA Information for Verification (§ 668.54)

Statute: None.

Current Regulations: Current § 668.54(a) provides that an institution is not required to verify the information from more than 30 percent of its applicants for title IV, HEA assistance in any award year. Under current § 668.54(a)(2)(ii), an institution may only include those applicants selected for verification by the Secretary in its calculation of the 30 percent total number of applicants. Under current § 668.54(a)(3), if an institution has reason to believe that any information on an application used to calculate an EFC is inaccurate, it must require the applicant to verify the information that it has reason to believe is inaccurate.

Except for information already verified under a previous application, if an applicant is selected for verification, each additional application he or she submits for the award year must also be verified (*see* current § 668.54(a)(4)).

Current § 668.54(a)(5) provides that an institution or the Secretary may require an applicant to verify any data elements that the institution or the Secretary specifies.

Under current § 668.54(b)(1), the Secretary excludes an applicant who dies during the award year from verification.

In addition, under current § 668.54(b)(2), the Secretary excludes the following categories of applicants from verification if the institution has no reason to believe that the information reported by the applicant is incorrect:

- An applicant or his or her parents who are legal residents of the Commonwealth of the Northern Mariana Islands, Guam, or American Samoa; or a citizen of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (current § 668.54(b)(2)(i)).
- An applicant who is incarcerated (current § 668.54(b)(2)(ii)).
- A dependent applicant whose parents are residing in a country other than the United States and cannot be contacted by normal means of communication (current § 668.54(b)(2)(iii)).
- An applicant who is a recent immigrant (current § 668.54(b)(2)(iv)).

• An applicant whose parents' address is unknown and cannot be obtained by the applicant (current § 668.54(b)(2)(v)).

• A dependent applicant, both of whose parents are deceased or are physically or mentally incapacitated (current § 668.54(b)(2)(vi)).

• An applicant who does not receive assistance for reasons other than his or her failure to verify the information on the application (current § 668.54(b)(2)(vii)).

• An applicant who previously completed verification at another institution (current § 668.54(b)(2)(viii)).

Finally, under current § 668.54(b)(3), the Secretary excludes the following categories of applicants from verification:

• An applicant whose spouse is deceased (current § 668.54(b)(3)(i)).

• An applicant whose spouse is mentally or physically incapacitated (current § 668.54(b)(3)(ii)).

• An applicant whose spouse is residing in a country other than the United States and cannot be contacted by normal means of communication (current § 668.54(b)(3)(iii)).

• An applicant whose spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant (current § 668.54(b)(3)(iv)).

Proposed Regulations: The Department proposes to require an institution to verify an applicant's FAFSA information for all applicants that are selected for verification by the Secretary (*see* proposed § 668.54(a)). Under proposed § 668.56(a), the Secretary would publish an annual **Federal Register** notice that would describe the information that an institution and an applicant may be required to verify for those applicants selected for verification. In proposed § 668.54(a)(2), we would retain the provisions requiring an institution to verify the accuracy of FAFSA information it has reason to believe is inaccurate. In proposed § 668.54(a)(3), we would continue to provide institutions with the flexibility to verify any FAFSA information that an institution specifies.

Under § 668.54(b), we would restructure the exclusions from verification to make clear the provisions that are applicable to all applicants, and those that are specific to dependent or independent applicants. We also would remove the following categories of applicants from the list of verification exclusions:

• An applicant or his or her parents who are legal residents of the Commonwealth of the Northern Mariana Islands, Guam, or American Samoa; or a citizen of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

• An applicant who is incarcerated.

• An applicant who is a recent immigrant.

• A dependent applicant, both of whose parents are deceased or are physically incapacitated.

• An independent applicant's spouse who is physically incapacitated.

Proposed § 668.54(b)(2) and (b)(3) would list the circumstances under which the parents' or spouse's information is not subject to verification unless the institution has reason to believe the parents' or spouse's information reported by the applicant is incorrect.

Reasons: The proposed changes to § 668.54 are needed to align this section of the regulations with modifications that the Department proposes to make to the verification selection process. Specifically, the Department proposes to remove the 30 percent limitation of the total number of applicants selected for verification and target the selection criteria based on the most error prone data items that are specific to each applicant selected.

Based on years of data analysis compiled from random samples of FAFSA submissions and the IRS Statistical Study and Quality Assurance Program analysis, we have made improvements to the verification process that will better identify and select those applicants whose FAFSA information is most error prone. For this reason, we propose to remove the 30 percent limitation on the number of applicants an institution is required to verify.

During negotiated rulemaking, some non-Federal negotiators expressed concern that the removal of the 30 percent limitation on the number of applicants an institution is required to verify would significantly increase an institution's workload. Other non-Federal negotiators stated that many institutions currently verify 100 percent of those applicants the Department selects for verification.

Although some institutions may experience an increase in the number of applicants that are selected for verification under the new process, institutions would no longer be required to verify all five items for each applicant selected. Instead the information that an institution would be required to verify would be specific to each applicant selected (*see* proposed § 668.56(b)). For example, one applicant may be required to verify the five items required under the current regulations (because the Secretary includes them in the **Federal Register** notice published under § 668.56(a) and specifies that those items must be verified for that one applicant) while another applicant may only be required to verify AGI and household size (because the Secretary includes these two items in the **Federal Register** notice published under § 668.56(a) and specifies that these are the only items that must be verified for this applicant).

Moreover, we expect information obtained through the IRS Data Retrieval process to significantly reduce institutional burden as discussed later under proposed § 668.57. For example, if one of the items selected for verification for an applicant includes data that the applicant imported from the IRS, we likely would not require the institution to verify that item.

We are proposing to restructure paragraph (b) to clarify under what circumstances an institution is not required to verify the FAFSA information of: (1) the applicant; (2) the parents of a dependent applicant; or (3) the spouse of an independent applicant. In instances where FAFSA information from the parents or a spouse is not required, we would still expect an institution to verify any information that would be applicable to the applicant.

We are also proposing to modify a number of exclusions that are included in the current regulations. Previously, if the parent of a dependent student, or the spouse of an independent student, could not be located because their address was unknown, verification was not required. Given the shift to routinely contacting people using e-mail and cell phone numbers, lack of a physical mailing address no longer precludes contact and communication. We believe it would be more appropriate to provide an exclusion from verification only in circumstances where the parents or spouse cannot be located because their contact information is unknown. We are also proposing to eliminate the provision that a dependent student need not provide parental information if both parents are deceased or are physically incapacitated. If both parents are deceased, the student would be an independent student, not a dependent student. Parents who are physically incapacitated, but not mentally incapacitated, should be able to provide the documentation required for verification under most circumstances.

Updating Information—Changes in Dependency Status (§ 668.55(c))

Statute: None.

Current Regulations: Current § 668.55 describes the information in an application that applicants must update

when there is a change and when and how these changes must be made.

Under current § 668.55(a)(2), an institution need not require an applicant to verify information in the applicant's FAFSA if the applicant previously submitted a FAFSA for that award year, the applicant updated the FAFSA information, and no change in the information has taken place since the last update.

Current § 668.55(a)(3) requires applicants to update their dependency status on the FAFSA at any time the status changes throughout the award year, except when the change in dependency status results from a change in the student's marital status.

Under current § 668.55(b), updating the family household size and number of family members enrolled in college is required for students selected for verification and is updated as of the time verification is completed.

Current § 668.55(c) describes an institution's responsibilities when an applicant has received Federal financial assistance for an award year, the applicant submits another application for Federal financial assistance, and the applicant is required to update household size or the number of household family members attending postsecondary educational institutions on the subsequent application.

Current § 668.55(d) provides that if an applicant's dependency status changes after the applicant applies to have his or her EFC calculated for an award year, the applicant must file a new application for that award year reflecting the applicant's new dependency status regardless of whether the applicant is selected for verification.

Proposed Regulations: We propose to revise § 668.55 to require an applicant to update all changes in dependency status that occur throughout the award year, including changes resulting from a change in the applicant's marital status, regardless of whether the applicant is selected for verification. With this proposed change, which would be reflected in proposed paragraph (c) of § 668.55, we would make a number of other changes to this section to remove language that implements the marital status exception in the current regulations, including removing current § 668.55(a)(3) and revising § 668.55(b).

We would remove current § 668.55(c).

Reasons: We propose to simplify § 668.55 and to make the updating requirement for dependency status consistent with the other changes we propose to make to § 668.58(a)(3)(i) and § 668.59(a). We believe these changes would help ensure that the amount of assistance received by an applicant is based on the best available information.

During negotiated rulemaking, there was much discussion about identifying in the regulations a specific time by which an institution would need to require an applicant to update his or her family household size, number of family members enrolled in college, and dependency status in the applicant's FAFSA. Non-Federal negotiators wanted the updating requirements to be date specific because of concerns that institutions would be continually revising an applicant's aid package throughout the award year. To address these concerns, we considered a number of alternatives:

- *Allow updating up to the beginning of the award year (i.e., July 1, 2011 for the 2011–2012 award year).* We have not adopted this alternative in the proposed regulations because this date would not take into account those applicants who apply later in the processing year.
- *Require updating by the later of July 1 or the date of verification, after which updating would become optional.* We have not adopted this alternative in the proposed regulations because it would not allow a student who transfers to an institution after this deadline to update his or her application information to reflect his or her current status unless the institution selects the student for verification.
- *Allow updating until the end of the first payment period.* We have not adopted this alternative in the proposed regulations because it would result in inconsistent treatment between students at institutions that have open enrollment with multiple start dates and students at institutions whose enrollment is based on a traditional calendar.

Other time periods considered included allowing updating half way through the award year, throughout the award year, up to the first day of an applicant's enrollment at an institution, through an institution's academic year, or by the end of the calendar year similar to the precedent set by the IRS for changes to income tax data. After considerable discussion, we determined that no single date would be ideal for all situations.

Therefore, we propose no substantive change to the current requirement, reflected in § 668.55(b), that if an applicant is selected for verification, the applicant must update information as to the family household size and the number of family members enrolled in postsecondary institutions at the time of verification.

We propose to eliminate the marital status exception and to require all applicants to update changes to dependency status that occur throughout the award year regardless of whether the applicant was selected for verification to provide more accurate information for determining an applicant's need for assistance. It is important to note that the applicant is responsible for notifying an institution when there is a change that affects his or her dependency status and not the responsibility of the institution to initiate the updating of this data item. However, an institution must resolve discrepancies in the information that the institution receives from different sources with respect to a student's application for financial aid under the title IV, HEA programs in accordance with § 668.16(f).

Finally, we propose to delete current § 668.55(c) to remove an obsolete process that required applicants to complete a correction application if his or her dependency status changes.

Information To Be Verified (§ 668.56)

Statute: None.

Current Regulations: Under current § 668.56 an institution must require an applicant selected for verification to submit acceptable documentation to verify or update the following items, if applicable, used to determine the applicant's EFC:

- Adjusted gross income (AGI);
- U.S. income tax paid;
- Number of family members in the household;
- Number of family members in the household enrolled at least half-time in postsecondary educational institutions; and
- Untaxed income and benefits.

Current § 668.56(b) through (e) provides a number of exclusions from verification of the number of family members in the household, the number of family members enrolled in college and untaxed income and benefits under certain circumstances.

Proposed Regulations: The Department proposes to amend the section heading for § 668.56 by replacing the term "Items" with the term "Information".

We also propose to eliminate from the regulations the five items that an institution currently is required to verify for all applicants selected for verification. Instead, pursuant to proposed § 668.56(a), for each award year, the Secretary would specify in a **Federal Register** notice the FAFSA information and documentation that an institution and an applicant may be required to verify. The Department would then specify on an individual student's SAR and ISIR what

information must be verified for that applicant.

We would also remove current § 668.56(c) through (e).

Reasons: Due to several statutory changes that remove untaxed income and benefits items from the FAFSA and need analysis formula and with the importing of data as part of the IRS Data Retrieval process, we believe it is no longer necessary to require all selected applicants to verify AGI, U.S. taxes paid, the number of family members in the household size, number of family members enrolled in college, and untaxed income and benefits. Therefore, in § 668.56, we propose to remove the list of items to be verified as well as the exclusions from verification contained in current § 668.56(b) through (e). Instead, we propose to target verification based on the most error prone data items that are specific to each applicant selected.

During negotiated rulemaking, the non-Federal negotiators supported this targeted approach of selecting specific items for verification. In particular, they stated that including dependency status as a verifiable item would help alleviate the difficulties institutions experience with inappropriate designations of dependency status.

In implementing this proposed section, we expect that the **Federal Register** notice may, at least initially, include the five items included for verification under current § 668.56 as well as other items the Department deems necessary to ensure the accuracy of the data being reported. With this approach, not all applicants selected for verification would have to verify all the information identified in the notice. For each applicant, the Department would identify on an applicant's SAR or ISIR the specific FAFSA information that requires further review applicable to that applicant.

We intend to publish the **Federal Register** notice described in proposed § 668.56 as early as possible to give institutions sufficient time to make any system changes that may be necessary to verify the information the Secretary may require under the notice. (Note that the notice referred to under proposed § 668.56 is not the same notice referred to under proposed § 668.60(c)(1).)

Acceptable Documentation (§ 668.57(a)(2), (a)(4)(ii)(A), (a)(5), (a)(7), and (d))

Statute: Section 484(q) of the HEA gives the Secretary authority, in cooperation with the Secretary of Treasury, to obtain from the IRS the AGI, Federal income taxes paid, filing status, and exemptions reported on the Federal income tax return by an applicant, or any other individual whose financial information is required on the FAFSA. Under this provision of the HEA, as a condition of a student receiving title IV, HEA assistance, the Secretary may require an applicant, the parents of a dependent applicant, or the spouse of an applicant to provide consent in order for the IRS to disclose the necessary information.

Current Regulations: Current § 668.57 specifies the documentation an institution must obtain from an applicant to verify an applicant's household size, number of family members enrolled in college, AGI, U.S. income tax paid, and certain untaxed income and benefits.

Current § 668.57(a) describes the documentation that an institution must require an applicant selected for verification to provide to verify the AGI, income earned from work, and U.S. income tax paid listed on the applicant's FAFSA.

Under current § 668.57(a)(2), if the applicant selected for verification does not have a copy of his or her tax return, an institution may require an applicant to submit a copy of an IRS form which lists tax account information.

As alternate documentation to verify an applicant's AGI, income earned from work or taxes paid, the applicant may provide the institution with a copy of IRS Form 4868 that was filed with the IRS for the base year requesting an extension to file income tax return, or a copy of the extension beyond the automatic four-month extension granted to the applicant by the IRS (*see* current § 668.57(a)(4)(ii)(A)). Once the return is filed, the applicant must provide the institution with a copy of the tax return pursuant to current § 668.57(a)(5). When the institution receives a copy of the tax return that was filed, the institution could, but is not required to, re-verify the applicant's AGI and taxes paid. Under current § 668.60, if the tax return was not collected, the institution and the student are liable for any funds disbursed.

Under current § 668.57(a)(7), an institution may accept the tax preparer's signature or stamp instead of the filer's signature on the tax return.

Current § 668.57(b) describes the documentation that an institution must require an applicant selected for verification to provide to verify the number of family household members that is listed on the applicant's FAFSA.

Current § 668.57(c) describes the documentation that an institution must require an applicant selected for verification to provide to verify the number of family household members enrolled in postsecondary institutions that is listed on the applicant's FAFSA.

Current § 668.57(d) describes the documentation that an institution must require an applicant selected for verification to provide to verify any untaxed income and benefits listed on the applicant's FAFSA.

Proposed Regulations: We propose to make a number of technical and conforming changes throughout § 668.57. We also propose to make the following substantive changes:

Proposed § 668.57(a)(2) would allow an institution to accept, in lieu of an income tax return or an IRS form that lists tax account information, the electronic importation of data obtained from the IRS into an applicant's online FAFSA.

We also propose to amend § 668.57(a)(4)(ii)(A) to accurately reflect that, upon application, the IRS grants a six-month extension beyond the April 15 deadline rather than the four-month extension currently stated in the regulations.

Under proposed § 668.57(a)(5), an institution may require an applicant who has been granted an extension to file his or her income tax return to provide a copy of that tax return once it has been filed. If the institution requires the applicant to submit the tax return, it must reverify the AGI and taxes paid of the applicant and his or her spouse or parents when the institution receives the return.

Proposed § 668.57(a)(7) would clarify that an applicant's income tax return that is signed by the preparer or stamped with the preparer's name and address must also include the preparer's Social Security Number, Employer Identification Number or the Preparer Tax Identification Number.

Proposed § 668.57(b) and (c) would remain substantively unchanged.

We would delete current § 668.57(d) regarding acceptable documentation for untaxed income and benefits and replace it with new proposed § 668.57(d). This new section would provide that if an applicant is selected to verify other information specified in an annual **Federal Register** notice, the applicant must provide the documentation specified for that information in the **Federal Register** notice.

Reasons: Generally, our proposed changes to § 668.57 are intended to implement section 484(q) of the HEA, update and clarify the language to ensure that it accurately reflects the IRS documentation and processes to which it refers and is consistent with the other changes we propose to make to subpart E of part 668.

Our goal with the implementation of the IRS Data Retrieval Process in proposed § 668.57(a)(2) is to relieve burden on institutions by no longer requiring verification of the information that is imported from the IRS to populate a student's online FAFSA or requiring institutions to collect the documentation for those items. For instance, an institution would no longer be required to verify an applicant's and his or her family's AGI and taxes paid or collect income tax returns for students who import that data from the IRS.

Under current § 668.57(a)(5), an institution that requires an applicant who was granted an extension to file his or her income tax return to submit to the institution his or her completed return once it was filed, has the option of re-verifying the AGI and taxes paid by the applicant and his or her spouse or parents when the institution receives the copy of the return. Under these proposed regulations, if an institution requires an applicant that is granted an extension to file his or her income tax return to submit a copy of the return that was filed, the institution must act on the return received by re-verifying the AGI and taxes paid by the applicant and his or her spouse or parents.

During the negotiated rulemaking sessions, we initially proposed removing current § 668.57(a)(7), which allows a tax preparer to sign an applicant's income tax return. Some non-Federal negotiators indicated that administrative burden would be reduced if an institution could continue to accept a tax preparer's signature or stamp in lieu of the filer's signature on the tax return. Based on concerns raised by the non-Federal negotiators, we agreed to retain this provision in the proposed regulations, but to clarify that an applicant's income tax return must include the preparer's Social Security Number, Employer Identification Number or the Preparer Tax Identification Number in addition to his or her signature or a stamp of the preparer's name and address.

Except for minor technical and conforming changes, proposed § 668.57(b) and (c) would remain largely unchanged from current § 668.57(b) and (c).

We would delete current § 668.57(d) regarding acceptable documentation for untaxed income and benefits because several statutory changes would eliminate any consideration of untaxed income and benefits from the need analysis formula to determine an applicant's eligibility for assistance under the title IV, HEA programs. Instead, we would require an applicant selected to verify other information specified in an annual **Federal Register** notice to provide the documentation identified as acceptable in the **Federal Register** notice. We propose to add this paragraph to allow the Secretary the flexibility to identify in an annual **Federal Register** notice other documentation that can be used to verify FAFSA information.

Interim Disbursements (§ 668.58(a)(3))

Statute: None.

Current Regulations: Current § 668.58 sets out the conditions under which an institution may, but is not required to, disburse title IV, HEA program funds to an applicant before the applicant completes verification.

Under current § 668.58(a)(2)(ii)(A), if an institution does not have reason to believe that an applicant's FAFSA information is inaccurate, it may choose to disburse only one disbursement of title IV, HEA program funds to the applicant before he or she completes verification.

Proposed Regulations: Proposed § 668.58 would largely reflect the substance of current § 668.58 except that we would make a number of technical and conforming changes throughout the section and we would add a new paragraph (a)(3). Under proposed § 668.58(a)(3), an institution would be allowed to disburse title IV, HEA program funds after verification is completed but before receiving the corrected SAR or ISIR if the changes to an applicant's FAFSA information would not change the amount the applicant would receive under a title IV, HEA program. If an institution chooses to make a disbursement before receiving the corrected SAR or ISIR, it must ensure that all corrections are submitted to the Department to avoid any liability for a disbursement made without receiving a corrected SAR or ISIR within the established deadline as discussed under proposed § 668.61(c).

Reasons: During the negotiated rulemaking sessions, some non-Federal negotiators expressed concern that applicants would be harmed if their disbursements were delayed until the institution received a corrected SAR or ISIR. To address these concerns, we propose to add paragraph (a)(3) to § 668.58. This new provision would permit institutions to make interim disbursements of title IV, HEA program funds prior to receiving an applicant's corrected SAR or ISIR within the established deadline date. By adding this provision, we would increase institutional flexibility in disbursing title IV, HEA program funds.

Consequences of a Change in an Applicant's FAFSA Information (§ 668.59)

Statute: None.

Current Regulations: For the Federal Pell Grant, Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs, if the information on an application changes as a result of verification, the institution must require the applicant to resubmit his or her application information to the Department for corrections (*see* current § 668.59(a)(1)).

Under current § 668.59(a)(2), an institution is not required to make an applicant resubmit his or her application information if the errors are nondollar items used to calculate the applicant's EFC or the errors in the dollar amount are within a $400 tolerance.

Current § 668.59(b) provides that if an institution does not recalculate an applicant's EFC under the provisions of § 668.59(a), the institution must disburse the applicant's Federal Pell Grant, ACG, or National SMART Grant award based on the applicant's original EFC.

If an institution recalculates an applicant's EFC because of a change in application information resulting from verification, the institution must require the applicant to resubmit his or her application to the Secretary; recalculate the applicant's Federal Pell Grant, ACG, and National SMART Grant award based on the EFC on the corrected SAR or ISIR and disburse any additional funds, if additional funds are payable, once the applicant provides the institution with the corrected SAR or ISIR.

If an institution determines, after verification, that the change in application information increases the applicant's award, the institution may disburse the applicant's Federal Pell Grant, ACG, and National SMART Grant based on the original EFC without requiring the applicant to resubmit his or her application information and disburse any additional funds under the increased award reflecting the new EFC if the institution receives the corrected SAR or ISIR, except as provided under current § 668.60(b).

For the campus-based, Federal Stafford Loan and Federal Direct Stafford Loan programs, if the information on an application changes as a result of verification, the institution must recalculate the applicant's EFC, and adjust the applicant's financial aid package to reflect the new EFC if the

new EFC results in an over award of campus-based funds or decreases the applicant's recommended loan amount (*see* current § 668.59(c)(1)). Under current § 668.59(c)(2), an institution is not required to recalculate an applicant's EFC or adjust his or her aid package if the errors are nondollar items used to calculate the applicant's EFC; or the errors in the dollar amount is within a $400 tolerance.

Under current § 668.59(d), if the institution selects an applicant for verification for an award year who previously received a Subsidized Stafford Loan or Direct Subsidized Loan for that award year, and as a result of verification the loan amount is reduced, the institution must eliminate the amount in excess of the student's need by returning funds to the lender or by reducing or cancelling subsequent disbursements.

An institution must forward the applicant's name, social security number, and other relevant information to the Department if the applicant received funds based on information that may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy (*see* current § 668.59(e)).

Proposed Regulations: We propose to revise § 668.59 by removing all allowable tolerances and requiring instead that an institution submit to the Department all changes to an applicant's FAFSA information resulting from verification for those applicants receiving assistance under any of the subsidized student financial assistance programs (*see* proposed § 668.59(a)).

Under proposed § 668.59(b), for the Federal Pell Grant program, once the applicant provides the institution with the corrected SAR or ISIR, the institution would be required to recalculate the applicant's Federal Pell Grant and disburse any additional funds, if additional funds are payable. If the applicant's Federal Pell Grant would be reduced as a result of verification, the institution would be required to eliminate any overpayment by adjusting subsequent disbursements or reimbursing the program account by requiring the applicant to return the overpayment or making restitution from its own funds (*see* proposed § 668.59(b)(2)(ii)).

Proposed § 668.59(c) would provide that, for the subsidized student financial assistance programs, excluding the Federal Pell Grant Program, if an applicant's FAFSA information changes as a result of verification, the institution must recalculate the applicant's EFC and adjust the applicant's financial aid package on the basis of the EFC on the corrected SAR or ISIR.

With the exception of minor technical edits, proposed § 668.59(d), which describes the consequences of a change in an applicant's FAFSA information, would be substantively the same as current § 668.59(d).

Finally, we would remove current § 668.59(e), the provision that requires an institution to refer to the Department unresolved disputes over the accuracy of information provided by the applicant if the applicant received funds on the basis of that information.

Reasons: Some non-Federal negotiators objected to the Department's proposal to require that all corrections to an applicant's FAFSA information be submitted to the Department for reprocessing. They argued that this approach would increase burden on both institutions and applicants with minimum impact on an applicant's EFC and the amount of assistance the applicant is eligible to receive. They recommended that the Department require the submission of corrections only for applicants receiving a Federal Pell Grant or if the corrections would change an applicant's EFC. They did not object to removal of the tolerances. Negotiators who offered their views indicated they did not use the tolerances.

The Department believes that allowing any errors in financial and nonfinancial information would undermine our efforts to make decisions based on the best available information. We believe that requiring all changes to an applicant's FAFSA data to be submitted to the Department will enhance particularly our ability to identify error-prone applications. We removed the tolerances because a change in an applicant's FAFSA information could have a major impact on an applicant's EFC, which would either reduce or increase an applicant's Federal student aid awards. Taken together, the removal of the tolerances and the requirement to report any errors in FAFSA data would ensure that the Department can rely on accurate data for applicant selection, EFC calculation, cross-year edits, and data analysis and would make certain that applicants receive the Federal student aid funds for which they are eligible.

Although proposed § 668.59(a) would require an institution to submit only changes affecting students receiving subsidized student financial assistance, institutions are encouraged to submit all changes in any student's FAFSA information because those changes could impact the type of aid for which a student qualifies. For example, an applicant who was initially eligible only for unsubsidized assistance may qualify for subsidized assistance based on corrected FAFSA information.

Proposed § 668.59(b) would require an institution to recalculate the applicant's Federal Pell Grant award based on the EFC on the corrected SAR or ISIR and to disburse any additional funds only after receiving a corrected SAR or ISIR. This requirement would ensure that if the amount of the applicant's Federal Pell Grant increases as a result of verification, the applicant would receive any additional funds only after providing the institution with a corrected SAR or ISIR. If the Federal Pell Grant award decreased as a result of verification, the institution would be required to apply the procedures specified in § 668.61(a) to eliminate any overpayment. We are proposing changes to the current regulatory requirements to ensure that all applicants receive the Federal Pell Grant funds for which the applicants are eligible and to ensure that the Department's database reflects the information upon which any disbursements are based.

Under § 668.59(c), the current exceptions to the requirement to recalculate an applicant's EFC and adjust subsidized financial aid awards other than Pell—for nondollar items and tolerance of net income changes under $400—would be eliminated to ensure that all applicants receive the amounts for which they are eligible and that the Department's database reflects the information upon which any disbursements are based.

Finally, we propose to remove current § 668.59(e) because it refers to an obsolete operational unit in the Department that resolved verification discrepancies reported by an institution.

Deadlines for Submitting Documentation and the Consequences of Failing To Provide Documentation (§§ 668.60(b)(1)(ii), (b)(3) (c)(1), and (d))

Statute: None.

Current Regulations: Current § 668.60 contains the regulatory requirements concerning the deadlines for submitting documentation when a student is selected for verification and the consequences of failing to provide documentation.

Current § 668.60(b)(1)(ii) provides that if an applicant fails to provide the requested documentation within a reasonable time period established by the institution or the Secretary, the institution must return to the lender or Secretary, as applicable, any Federal Stafford Loan or Direct Subsidized Loan proceeds that otherwise would be payable to the applicant.

Current § 668.60(b)(3) provides that an institution may not withhold any Federal Stafford Loan proceeds from an applicant for more than 45 days for an applicant that fails to provide the requested documents for verification within the time period established by the institution. Under this provision, if the applicant does not complete verification within 45 days, the institution must return the proceeds to the lender.

Current § 668.60(c)(1) grants an extension of the submission deadline for students who must resubmit a verified SAR or ISIR when the SAR or ISIR must be corrected. Under this provision, when an extension is granted, the student is paid from the original SAR or ISIR or the corrected SAR or ISIR depending upon which SAR or ISIR yields the lower award.

Current § 668.60(d) provides that the Secretary may determine not to process any subsequent application for Federal Pell Grant, ACG, or National SMART Grant program assistance, and an institution, if directed by the Secretary, may not process any subsequent application for campus-based, Federal Direct Stafford/Ford Loan, or Federal Stafford Loan program assistance of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

Proposed Regulations: Proposed § 668.60 would largely retain the substance of current § 668.60. In addition to minor clarifying changes, we propose to remove paragraphs (b)(1)(ii) and (b)(3) of § 668.60.

We would replace current § 668.60(b)(3) with a provision that would require an institution to follow the cash management procedures under § 668.166(a) or § 668.166(b), or under § 668.167(c), (which incorporates the provisions of § 668.167(b) by reference), if the institution has received proceeds from a Subsidized Stafford Loan and Direct Subsidized Loan and an applicant does not complete verification within the time period specified. A description of these cash management procedures follows.

Under § 668.166(a), any proceeds from a Direct Subsidized Loan that an institution has not disbursed to students by the end of the third business day following the date the institution received those funds is considered excess cash. Under § 668.166(b), an institution is allowed to maintain excess cash for seven days in an amount not to exceed one percent of the total amount of funds it drew down in the previous year. In instances where the Department finds that an institution maintains excess cash for an amount or time period greater than that allowed, an institution may be subject to adverse actions (*e.g.,* reimbursing the Secretary the cost incurred for providing the excess cash to the institution, or providing funds to the institution under the reimbursement or cash monitoring payment method) (*see* § 668.166(c)).

For Subsidized Stafford Loans, § 668.167(b)(1) requires an institution to return to a lender loan proceeds if the institution does not disburse the funds to a student or parent within (a) 10 business days following the date the institution receives the loan funds if the institution receives the funds by EFT and master check on or after July 1, 1997 but before July 1, 1999; (b) 3 business days following the date the institution receives the loan funds if the institution receives the funds by EFT and master check on or after July 1, 1999; or (c) 30 days after the institution receives the loan funds by check. For funds that are not disbursed within the specified timeframe, § 668.167(b)(2) requires the institution to return the funds to the lender no later than 10 business days after the last day those funds are required to be disbursed. If the borrower establishes eligibility before the institution returns the loan funds to the lender, the institution may disburse those funds to the borrower (*see* § 668.167(b)(3)).

In proposed § 668.60(c)(1), we would remove the language that requires a student to receive the lowest amount of a Federal Pell Grant if the student submits a valid SAR or valid ISIR after verification while the student was no longer enrolled.

Proposed § 668.60(d) and (e) contain only editorial changes from the corresponding current regulations.

Reasons: We propose to remove paragraph (b)(1)(ii) of § 668.60. This paragraph refers to an outdated process that prohibits an institution from certifying the student's loan application or processing a check, and requires the check payable to the student to be returned to the lender for any student who does not provide the required verification information within the required reasonable time.

The proposed changes to § 668.60(b)(3) are needed to update these regulations to be consistent with the Department's current cash management policy.

In proposed § 668.60(c)(1), we would remove the limit placed on students that complete verification while no longer enrolled at an institution. We made this change because students should be permitted to receive the correct amount of Federal Pell Grant regardless of when they complete verification.

Recovery of Funds (§ 668.61(c))

Statute: None.

Current Regulations: Current § 668.61 describes the institution's obligation to recover funds if the institution discovers, as a result of the verification process, that an applicant received or would receive more financial aid than the applicant was eligible to receive.

Proposed Regulations: Proposed § 668.61 would retain the substance from current § 668.61, except that we would add a paragraph (c) that would require an institution to reimburse the program account using its own funds if it disbursed subsidized student financial assistance to an applicant without receiving his or her corrected SAR or ISIR within the established deadlines under § 668.60.

Reasons: We propose this change to § 668.61 to clarify what would happen if institutions did not submit corrections and to emphasize the liability an institution could face if subsidized student financial assistance is disbursed under § 668.58(a)(3) (interim disbursements) and the institution does not receive a corrected SAR or ISIR by the deadline date established in the notice of deadline dates for receipt of applications, reports, and other records published annually pursuant to § 668.60.

Some non-Federal negotiators argued that the proposed requirement to make institutions liable for funds disbursed in accordance with § 668.58(a)(3) is unreasonable given that the interim disbursement would not result in an applicant receiving an overpayment of title IV, HEA program funds.

Section 668.58(a)(3) was added at the request of non-Federal negotiators who wanted institutions to have the flexibility to disburse title IV, HEA program funds to students without having to wait for a corrected SAR or ISIR when a student's award did not change after completing verification. Under this provision, the disbursement would be allowed if the institution ensured that all corrections were submitted to the Department for reprocessing.

Therefore, we believe it is appropriate to hold institutions liable for disbursing aid if corrections are not submitted to the Department in a timely manner to allow the institution to receive the corrected SAR or ISIR within the deadlines established in § 668.60. This provision would also help in our efforts to obtain accurate information for data analysis and identification of error prone applications.

Moreover, an institution is not required to make an interim disbursement of title IV, HEA program funds to an applicant. However, if an institution exercises this option, it assumes liability for the funds disbursed.

Misrepresentation (Subpart F of Part 668)

Statute: Section 487 of the HEA provides that institutions participating in the title IV, HEA programs shall not engage in substantial misrepresentation of the nature of the institution's educational program, its financial charges, or the employability of its graduates.

General

Current regulations: Current subpart F of part 668 sets forth the types of consumer information statements and communications by an eligible entity that constitute misrepresentation. The regulations prohibit any substantial misrepresentation made by an institution regarding the nature of its educational program, its financial charges, or the employability of its graduates.

Proposed regulations: In the following paragraphs, we explain in detail the changes we propose to make to subpart F of part 668.

Reasons: We propose to make changes to subpart F of part 668 to strengthen the Department's regulatory enforcement authority against eligible institutions that engage in substantial misrepresentations. The Department oft-times receives complaints from students who allege that they were the victims of false promises and other forms of deception when they were considering their postsecondary educational opportunities. We believe that helping students to make sound decisions regarding their educational pursuits is essential to maintaining the integrity of the title IV, HEA programs.

For these reasons, we propose to revise subpart F of part 668 by making changes based on information the Department has received and comments from participants in the negotiated rulemaking meetings.

Scope and Special Definitions (§ 668.71)

Current regulations: Current § 668.71(a) describes the scope of subpart F of part 668 as establishing the standards and rules by which the Secretary may initiate a proceeding under subpart G of part 688 against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges, or the employability of its graduates.

Current § 668.71(b) provides definitions for the terms *misrepresentation, prospective students,* and *substantial misrepresentation.*

Proposed regulations: We propose to restructure § 668.71 so that paragraph (a) describes the actions the Secretary may take if the Secretary determines that an eligible institution has engaged in substantial misrepresentation.

Paragraph (b) of proposed § 668.71 would—

- Describe generally what types of activities constitute substantial misrepresentation;
- Provide that an eligible institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement, makes a substantial misrepresentation regarding the eligible institution, including about the nature of its educational program, its financial changes, or the employability of its graduates; and
- Clarify that substantial misrepresentations are prohibited in all forms.

Current § 668.71(b) would be redesignated as proposed § 668.71(c) and we would make a number of revisions to the definition of the term *misrepresentation:*

- We would clarify that a misrepresentation is any false, erroneous, or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary.
- Within this definition, we would also define what we mean by the term "misleading statement;" we would clarify that a misleading statement includes any statement (which is any communication made in writing, visually, orally, or through other means) that has the capacity, likelihood, or tendency to deceive or confuse.
- Finally, we would retain the express reference in the definition of *misrepresentation* to the dissemination of a student endorsement or testimonial that a student gives under duress. We would expand this language to also refer to the dissemination of a student endorsement or testimonial that a student gives because the institution required the student to make such an endorsement or testimonial to participate in a program.

Reasons: We propose to restructure § 668.71 to lay out more clearly the scope of subpart F of part 668.

In new paragraph (b) of proposed § 668.71, we would clarify that an eligible institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement, makes a substantial misrepresentation regarding the eligible institution. We believe it is appropriate to hold the eligible institution accountable in these instances because the integrity of the title IV, HEA programs requires that institutions are responsible for the actions of their representatives and agents.

Proposed § 668.71(b) would also state that substantial misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution. We propose to add this language because of the importance of these materials and activities in communicating to students and prospective students information regarding the nature of the institution's educational programs, its financial charges, and the employment opportunities available to the institution's graduates.

In the revised definition of the term *misrepresentation,* we would again state that a misrepresentation is any false, erroneous, or misleading statement made not only by the eligible institution, but also any false, erroneous, or misleading statement made by one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement. As discussed earlier in this preamble, we believe that it is appropriate to hold eligible institutions accountable for misrepresentations made by representatives and agents to ensure program integrity.

We propose to broaden the definition of misrepresentation to include false, erroneous, or misleading statements made directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. We propose to broaden the concept of misrepresentation to include both direct and indirect false, erroneous or misleading statements because students, prospective students, members of the public, and others can be significantly

harmed by indirect false, erroneous, or misleading statements. For example, an institution could be deemed to engage in misrepresentation if it falsely advertised an exceptional placement rate. Further, the institution could also be deemed to engage in misrepresentation if an individual heard an advertisement containing the false placement rate and relayed the information to a potential student. In this example, the potential student received the information indirectly but the information could still have the capacity, likelihood, or tendency to deceive or confuse.

In an effort to give the field more guidance on what the Department means by misrepresentation, we propose to provide more detail in the definition. Because the definition of *misrepresentation* turns on the meaning of the term a "statement", we would clarify that a misleading statement includes any statement (which is any communication made in writing, visually, orally, or through other means) that has the capacity, likelihood, or tendency to deceive or confuse. We believe that fleshing out the definition of *misrepresentation* would help institutions determine whether statements they (or their representatives or any ineligible institution, organization, or person with whom they have an agreement) make constitute a misrepresentation under subpart F of part 668. Moreover, by providing more detail in the definition of *misrepresentation,* we believe that the regulations would be clearer as to the difference between misrepresentations, on the one hand, and substantial misrepresentations, on the other. This subpart would prohibit substantial misrepresentations only and those would continue to be defined as any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

Finally, we would add language to the definition of misrepresentation regarding the dissemination of a student endorsement or testimonial that a student gives because the institution required the student to make such an endorsement or testimonial to participate in a program. We propose to add this language because we are concerned about the potential of such testimonials to mislead students or prospective students.

Nature of Educational Program (§ 668.72)

Current regulations: Current § 668.72 describes the types of false, erroneous, or misleading statements about an institution's educational program that would be prohibited as misrepresentations under subpart F of part 668.

Proposed Regulations: Proposed § 668.72 would retain the list of the types of misrepresentation regarding the nature of an institution's educational program that is included in current § 668.72, but would expand this list. First, in proposed § 668.72(a), we would expand the types of programmatic false statements that would be prohibited as misrepresentations under this section. Specifically, false, erroneous, or misleading statements about programmatic and specialized accreditation—not only institutional accreditation—would be expressly covered as misrepresentations.

Second, in proposed § 668.72(b)(2), we propose to add language on the conditions under which an institution will accept credits earned at another institution.

Third, in proposed § 668.72(c), we would revise the language regarding misrepresentations about whether successful completion of a course of instruction qualifies a student to receive a local, State, or Federal license or a non-governmental certification required as a precondition for employment, or to perform the functions required of an employee in the occupation for which the program is represented to prepare students. We would broaden this language to clarify that a prohibited misrepresentation includes false, erroneous, or misleading statements regarding whether completion of a given course of study will qualify a student "to apply to take or to take an examination required to receive" a needed license or certification as a precondition of employment in an occupation for which the program is represented to prepare its students (rather than only qualifying a student to receive such a license or certification).

In addition, we would refine the language in § 668.72(c)(2) to clarify that institutions must not make false, erroneous, or misleading statements regarding whether completion of a given course of study will qualify a student to perform certain functions in the State in which the program or institution is located, or to meet additional conditions that the institution knows, or reasonably should know, are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students.

Finally, we would add to the list of the types of misrepresentations regarding the nature of an institution's educational program, any misrepresentation regarding:

- The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment (*see* proposed § 668.72(d)).
- Whether the institution's courses have been the subject of unsolicited testimonials or endorsements by vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or governmental officials for governmental employment (*see* proposed § 668.72(e)).
- The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study (*see* proposed § 668.72(m)).
- Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate State educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate State educational agency, any failure by an eligible institution to disclose this fact in any advertising or promotional materials that reference such degree (*see* proposed § 668.72(n)).

Reasons: The Department believes it is critical that potential students have a clear understanding about any educational program in which they may enroll. Each institution has a responsibility to provide complete and accurate information about the programs it offers. For this reason, we are proposing numerous changes to § 668.72. Many of these proposed changes are based on discussions during the negotiated rulemaking sessions and the concerns raised by non-Federal negotiators during those discussions.

Several non-Federal negotiators believed that institutions should make potential or current students aware of institutional accreditation or any specific programs at the institution that have accreditation before students enroll in the program. Some negotiators also argued that an institution's failure to disclose a lack of accreditation should constitute misrepresentation under § 668.72. The Department agrees that students need accurate information about the types, sources, nature, and extent of institutional, programmatic or specialized accreditation an institution or program has. Proposed § 668.72(a) would expressly prohibit institutions from making false, erroneous, or

misleading statements concerning these matters.

Some non-Federal negotiators expressed concern that students should understand the conditions under which their transfer credits would count towards a degree program before they left another program or institution. The Department agrees and proposes to add § 668.72(b)(2) to expressly prohibit misrepresentations about the conditions under which an institution will accept credits earned at another institution.

Some non-Federal negotiators expressed concern about the extent of information that institutions "reasonably" should know. For example, they argued that it is unrealistic to expect institutions to have knowledge about each State's licensure requirements.

The Department agrees. Proposed § 668.72(c)(2), therefore, would specifically refer to licensure and certification information for the State in which the program or institution is located, as well as conditions generally needed to secure employment in a particular occupation.

We would add proposed § 668.72(d), regarding misrepresentations concerning the requirements for successfully completing the course of instruction and the circumstances that would constitute grounds for terminating the student's enrollment, because potential and current students need to be able to make informed decisions regarding course completion and situations that may lead to their inability to complete the program of instruction they choose to pursue.

In proposed § 668.72(e), we would expressly include as prohibited any misrepresentations regarding whether an institution's courses have been the subject of unsolicited testimonials or endorsements because potential and current students should not be mislead into pursuing a particular program of instruction based upon purported (but not actual) recommendations and endorsements.

We would add proposed § 668.72(m) and (n), regarding misrepresentations concerning any fact related to the degree, diploma, certificate of completion, or similar document to be awarded to a student upon course completion, as well as whether the academic, professional, or occupational degree that the institution confers upon completion has been authorized by the appropriate State educational agency. We propose adding these provisions because potential and current students need to know the truth regarding the credential they will receive before committing to attend a particular postsecondary institution.

Nature of Financial Charges (§ 668.73)

Current regulations: Current § 668.73 describes prohibited false, erroneous, or misleading statements related to the cost of the program and financial aid that is available to potential and current students.

Proposed regulations: Proposed § 668.73 would retain the list of the types of misrepresentation regarding the nature of an institution's financial charges that are in current § 668.73, but also would add the following:

- Misrepresentation regarding the cost of the program and the institution's refund policy if the student does not complete the program (*see* proposed § 668.73(c)).
- Misrepresentation regarding the availability or nature of any financial assistance offered to students, including a student's loan repayment responsibility, regardless of program completion or subsequent employment (*see* proposed § 668.73(d)).
- Misrepresentation regarding a student's right to apply for or reject any particular type of financial aid or other assistance (*see* proposed § 668.73(e)).

Reasons: Several non-Federal negotiators expressed concern about whether students clearly understand the cost of their educational program. Other non-Federal negotiators emphasized the difficulty of estimating program costs and cautioned the Department against making the regulations too specific in this regard. The Department agrees it is a serious problem if students who enroll in a program do not have the necessary information about the cost of the program or the institution's refund policy. For this reason, the Department proposes to add proposed § 668.73(c) to highlight that misrepresentations about the cost of an institution's program or its refund policy are prohibited.

In addition, some non-Federal negotiators pointed out as a significant problem the fact that some students do not understand the financial aid options available to them when they enroll in a program. Others expressed concern that students may feel pressure to apply for credit financing to pay for the cost of their educational program.

The Department strongly believes that students, potential students, and parents must have relevant information to make informed decisions about the type of financial aid that is available to the student. By prohibiting institutions from making misrepresentations regarding the availability or nature of the financial aid offered to students, as well as a student's right to reject any particular type of financial aid (*see* proposed § 668.73(d) and (e), respectively), the Department seeks to ensure that students are provided with the accurate information they need to make informed choices about the type of financial aid they use to fund their education.

Employability of Graduates (§ 668.74)

Current regulations: Current § 668.74 lists what constitutes misrepresentation by an institution regarding the employability of its graduates.

Proposed regulations: Proposed § 668.74 would retain the list of the types of misrepresentation regarding the employability of graduates that is in current § 668.74. In addition to the types of misrepresentations already included in the regulations, we would add the following:

- Misrepresentations relating to the institution's knowledge about the current or likely future conditions, compensation, or employment opportunities for its graduates (*see* proposed § 668.74(c)).
- Misrepresentations relating to whether employment is being offered by the institution or that a talent hunt or contest is being conducted (*see* proposed § 668.74(d)).
- Misrepresentations relating to other requirements that are generally needed in order to be employed in certain fields (*see* proposed § 668.74(f)).

Reasons: During the negotiated rulemaking sessions, the non-Federal negotiators appeared to be in agreement that students should be fully informed about their likely employment options once they complete a course of study. Several non-Federal negotiators, however, expressed concern about how best to address this issue in the regulations. In particular, given the uncertainty of the economic climate, they were concerned about the possibility of having an enforcement action brought against them even in instances when they provided students and the public with the best available information about likely employment options, which, in retrospect, were overly optimistic. The Department believes that proposed § 668.74 appropriately highlights the types of information about employability that institutions need to monitor carefully when advertising or otherwise promoting their educational programs. Institutions must disclose clear information about the employability of graduates from a program, including likely compensation, and other requirements necessary to perform the job for which the educational program prepares students, to help give students the knowledge they need to make

informed decisions about potential career paths.

Relationship With the Department of Education (§ 668.75)

Current regulations: Current § 668.75 describes the Department's procedures for reviewing allegations or complaints regarding misrepresentation claims.

Proposed regulations: We are proposing to delete current § 668.75 (Procedures) and replace it with new § 668.75 (Relationship with the Department of Education). Proposed § 668.75 would prohibit an institution, its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement from making statements that suggest the U.S. Department of Education approves or endorses the quality of an institution's educational program simply because the institution is eligible to participate in the title IV, HEA programs.

Reasons: We propose to remove current § 668.75 because these procedures have not been used to take enforcement actions against institutions for making substantial misrepresentations. Instead, when the Department determines that there has been a misrepresentation by an institution, its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement, the Department has used its other administrative remedies to take the appropriate actions against the institution without relying upon the procedures described in current § 668.75. Proposed § 668.71(a) addresses the types of actions the Department anticipates it may take in response to a violation of subpart F of part 668.

We propose to add new § 668.75 because the Secretary has been made aware of instances where institutions have misled the public by mentioning the U.S. Department of Education in their advertising in a manner that implies that the Department endorses the quality of these institutions' educational programs. The Department does not approve of this behavior and considers it to be a misrepresentation. For this reason, the proposed regulations would expressly forbid this type of activity.

Ability To Benefit (668.32 and Subpart J of Part 668)

Statute: Section 484(d) of the HEA describes the circumstances under which a student who does not have a high school diploma or the equivalent may establish eligibility for title IV, HEA program funds. Under this provision, a student who does not have a high school diploma or the equivalent may establish eligibility for title IV, HEA program funds by: (1) Taking an ability to benefit (ATB) test approved by the Secretary; (2) being enrolled in an institution that participates in an approved State process; or (3) by completing a secondary school education in a home school setting that is treated as a home school or private school under State law. In 2008, this section of the HEA was amended by adding section 484(d)(4), which provides that a student shall be determined by an institution of higher education as having the ability to benefit from the education or training offered by the institution of higher education upon satisfactory completion of six credit hours or the equivalent coursework that are applicable toward a degree or certificate offered by the institution.

Student Eligibility (§ 668.32(e))

Current Regulations: Paragraph (e) of current § 668.32 provides that, in order to be eligible for title IV, HEA program funds, a student must: (1) Have a high school diploma or its recognized equivalent; (2) have obtained a passing score on an ATB test administered in accordance with subpart J of part 668; (3) have been enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of part 668; or (4) have been home-schooled and have obtained a secondary school completion credential for home school or, if State law does not require a home-schooled student to obtain such a credential, have completed a secondary school education in a home school setting that qualifies as an exemption from compulsory attendance requirements under State law.

Proposed Regulations: We propose to revise § 668.32(e) by adding new paragraph (e)(4) to provide that a student is eligible to receive title IV, HEA program assistance if the student has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution.

Reasons: We propose to add new paragraph (e)(4) to § 668.32 to incorporate the new method for students to show that they have the ability to benefit, which was added to the section 484(d) of the HEA in 2008. Under this new statutory provision, students who satisfactorily complete six credits of college work, or the equivalent amounts of coursework, that are applicable to a degree or certificate offered by the school qualify to receive title IV, HEA program funds. In proposing regulations to implement this statutory change, the Department took into consideration extensive discussions at the negotiated rulemaking sessions.

The Department explained during negotiated rulemaking that its proposal was based on the statutory language that students would need to earn six credit hours or the equivalent. The statute does not distinguish among semester, trimester or quarter hours, nor does it suggest an equivalent number of clock hours. Under the proposed regulations and the statute, all credit hour students, whether earning semester, trimester, or quarter hours would need to be enrolled for six hours—the number of hours that would be equivalent to enrollment on a half-time basis for one term. A student who completed 6 semester hours, 6 trimester hours, or 225 clock hours would be completing one quarter of an academic year. The Federal negotiator noted the apparent inconsistency between the statutory language regarding the new ATB provision, which requires satisfactory completion of six credit hours or the equivalent coursework, and the definition of an "academic year", which is defined as a period of time during which a full-time undergraduate student is expected to complete 24 semester or trimester hours, 36 quarter hours, or 900 clock hours. Several non-Federal negotiators expressed their belief that completion of six hours of program leading to a certificate or degree was a much better indicator of an individual's ability to benefit from a program than passing an ATB test.

Some of the discussion at the negotiated rulemaking sessions focused on whether a student should be required to complete the specified credit hours or clock hours in the program in which the student planned to enroll and for which the student applied to receive title IV, HEA program funds. The Department noted that the provision was based on an experimental site program which tested and established the effectiveness of permitting students to display the ability to benefit based on successful completion of six semester hours in any program leading to a degree or certificate. One non-Federal negotiator expressed concern that unless the hours completed were in the intended program, the coursework might not be rigorous enough, and the provision would not be effective as a means of demonstrating the student's ability to

benefit from the program in which they intend to enroll. Several non-Federal negotiators voiced their view that the statutory language did not impose that kind of limitation. They pointed out that students often start a program and change their mind; therefore, the simplest approach to the provision would be the best. The Department agrees, but expects that the credit hours completed would be part of an eligible program offered by the institution and would show that the student has the ability to benefit from the postsecondary educational program in which the student is enrolled or intends to enroll.

One non-Federal negotiator expressed concern that some institutions might reduce or waive tuition for the portion of the program required to demonstrate the ability to benefit, while not requiring the student to complete coursework at a sufficiently challenging level, thereby nullifying the impact of the provision and setting a student up for failure. Other non-Federal negotiators pointed out that if an institution did not waive or reduce tuition, a student who did not yet qualify for aid might be forced to take out a high interest private loan to pay for the initial 6 credit hours or 225 clock hours needed to establish student eligibility.

In response to a question regarding whether the option to demonstrate the ability to benefit from the educational or training program by passing an approved test or successfully completing six credit hours or the equivalent was at the discretion of the student or the institution, the Department noted that the provision relates to establishing eligibility for assistance under the title IV, HEA programs. It is a financial aid requirement, not an admissions requirement. An institution may have a policy that it does not admit any students who do not have a high school diploma or the equivalent. There is no requirement that an institution determine a student's eligibility for title IV, HEA program funds on the basis of either passing an ATB test or successfully completing coursework.

There was considerable discussion during the negotiated rulemaking sessions regarding whether a student who established student eligibility under one of the ATB provisions could be paid for the payment period in which eligibility was established. The Department's position is that a student who establishes eligibility for title IV, HEA program funds by passing an ATB test during a payment period may be paid for the entire payment period. However, if a student establishes title IV, HEA eligibility by completing six credit hours, or the equivalent, eligibility is not established until after the end of the payment period, and the student may not be paid for the payment period during which the student took the requisite coursework. Furthermore, to establish eligibility under the new ATB provision, a student in a credit hour program must earn six credit hours; a student who enrolls in six credit hours but receives a failing grade for one or more of those credits has not successfully completed six credit hours. Similarly, a student in a clock hour program must have attended 225 clock hours and been graded on those 225 clock hours to establish eligibility.

Scope (§ 668.141)

Current Regulations: Current § 668.141 describes the scope of subpart J of part 668 of the current regulations. Current subpart J sets forth: (1) The provisions under which a student who does not have a high school diploma or the equivalent may establish eligibility for title IV, HEA program funds either by taking an ATB test approved by the Secretary or by being enrolled in an institution that participates in an approved State process; and (2) the criteria and procedures for approval of ATB tests, the requirements for independent administration of approved tests, the requirements for maintaining the Secretary's approval of ATB tests, and the procedures for the Secretary's approval of alternate State processes.

Proposed Regulations: Section 668.141 would be revised to reference the new requirements that we propose to add to subpart J of part 668. Specifically, we would redesignate current paragraph (b)(4) of § 668.141 as paragraph (b)(6) and add new paragraphs (b)(4) and (b)(5). Proposed § 668.141(b)(4) would reference the information on test anomaly studies that the test publishers and States must submit as part of their test submission, and proposed § 668.141(b)(5) would reference the proposed requirements that test publishers and States have a process to identify and follow up on test score irregularities, take corrective action when irregularities have occurred, and report the names of decertified test administrators to the Secretary.

Reason: These proposed changes to § 668.141 would align the description of the subpart's scope with the substantive changes the Department proposes to make to this subpart. These proposed changes are discussed in more detail in the following sections.

Special Definitions (§ 668.142)

Definition of Assessment Center

Current regulations: Current § 668.142 contains a definition of the term *assessment center.*

Proposed regulations: The proposed definition of assessment center would largely track the current definition of that term. We propose only to clarify in the definition that an assessment center uses test administrators who, by definition, have been certified by the test publisher or State to administer ATB tests approved by the Secretary under this subpart.

Reasons: We propose to require, as part of this definition, that the individuals who administer ATB tests in assessment centers be certified by the test publisher, or the State, as appropriate. Test publishers have indicated that they have encountered situations at assessment centers where there has been high staff turnover, and individuals giving tests are not familiar with the requirements and procedures. The Department solicits comments on whether it would be appropriate or advisable to permit specified test administrators in the assessment center to train other individuals at that assessment center to administer ATB tests.

Definition of Independent Test Administrator

Current regulations: None.

Proposed regulations: We propose to add a definition of the term *independent test administrator* to § 668.142. Under this proposed definition, an independent test administrator would be a test administrator who administers tests at a location other than an assessment center and who—

(1) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other institution;

(2) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(3) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution, its affiliates, or its parent corporation or of any other institution, or a member of the family of any of these individuals; and

(4) Is not a current or former student of the institution.

This definition would be based largely on the description of prohibited relationships of independent test administrators contained in current § 668.151(b)(2).

Reasons: The proposed regulations would distinguish between "test administrators," defined in § 668.142, and "independent test administrators." For this reason, the Department proposes to add a definition of the term *independent test administrator* and, as discussed later in this preamble, to revise the current definition of *test administrator.*

The concept of an independent test administrator is not new. Current § 668.151(b)(2) describes the circumstances under which a test given by a test administrator is considered to be "independently administered". We used much of this language in crafting the definition of the term *independent test administrator.*

During the negotiated rulemaking discussions, some of the non-Federal negotiators expressed confusion about the difference between test administrators and independent test administrators. They suggested adding language to make it clear that an independent test administrator is a test administrator who "administers tests at a location other than an assessment center" in addition to meeting the other requirements. We agreed with this recommendation. Therefore, the proposed regulations would specify, as part of the definition of *independent test administrator,* that an independent test administrator is a test administrator who administers tests at a location other than at an assessment center.

Definition of Individual With a Disability

Current regulations: Current § 668.142 contains a definition of the term *disabled student.*

Proposed regulations: Proposed § 668.142 would replace the term "disabled student" with the term "individual with a disability." We would largely retain the current definition, except we would make clear that the term refers to a person (not only a student) who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Reasons: The Department proposes to use the term *individual with a disability,* rather than *disabled student,* because that is the term more commonly used in the disability community and is consistent with the usage of the term by other programs administered by the Department. In addition, this proposed revision would clarify that the defined term applies to individuals who are not yet students as well as to individuals who are already enrolled in institutions participating in the title IV, HEA programs.

Definition of Test

Current regulations: None.

Proposed regulations: We propose to add a definition of the term *test* to § 668.142. Under this proposed definition, a *test* would be a standardized test, assessment or instrument that has formal protocols regarding the administration of the test that include the use of parallel, equated forms, testing conditions, time allowed for the test, and standardized scoring. The definition also would clarify that tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees and that tests may include adaptive instruments that use computerized algorithms for selecting and administering items in real time provided that, for such instruments, the size of the item pool and the method of item selection ensures negligible overlap in items across retests.

Reasons: We propose to add a definition of the term *test* to § 668.142 because, as one non-Federal negotiator pointed out during our discussions, our current ATB regulations define the terms *test item, test administrator* and *test publisher,* but do not define the term *test.* The proposed definition is based on the definition of *test* in 34 CFR 462.4 of the Department's Measuring Educational Gain in the National Reporting System for Adult Education regulations.

Definition of Test Administrator

Current regulations: Current § 668.142 defines a *test administrator* as an individual who may give tests under subpart J of part 668.

Proposed regulations: We propose to revise the definition of the term *test administrator* to mean an individual who (1) is certified by the test publisher or the State to administer tests approved under subpart J of part 668 and to protect the test and test results from improper disclosure or release, and (2) is not compensated on the basis of test outcomes.

Reasons: We propose to revise this definition to clarify that a test administrator must be certified by the test publisher or the State, and that a test administrator is responsible for keeping both the tests and the test results secure from improper disclosure or release. The proposed definition would also clarify that a test administrator may not be compensated on the basis of test outcomes. The non-Federal negotiators were generally in favor of including this additional clarity in the definition.

Definition of Test Publisher

Current regulations: Current § 668.142 defines a *test publisher* as an individual, organization, or agency that owns a registered copyright of a test, or is licensed by the copyright holder to sell or distribute a test.

Proposed regulations: We propose to revise the definition of a *test publisher* by providing that a test publisher may be authorized by the copyright holder to represent the copyright holder's interest regarding the test, rather than specifying that the individual or organization must be licensed the right to sell or distribute the test by the copyright holder.

Reasons: One non-Federal negotiator recommended making this revision to the definition of *test publisher.* This non-Federal negotiator explained that this definitional change is appropriate because the term test publisher should include agencies or organizations that may represent the copyright holder's interest in the test, but may not be licensed by the copyright holder. The Department agrees.

Approval of State Tests or Assessments (§ 668.143)

Current regulations: Current § 668.143 describes the procedures for the Secretary's approval of State tests or assessments.

Proposed regulations: We propose to move the requirements governing the submission of tests by States in current § 668.143 to proposed § 668.144 (Application for test approval). With this change, we would reserve § 668.143 for future use.

Reason: We propose to combine the requirements from current §§ 668.143 and 668.144 into a single section because the test publisher and State submission processes have common elements. To the extent we propose to make changes to the submission requirements for States (and test publishers), we discuss those changes in the discussion relating to proposed § 668.144.

Application for Test Approval (§ 668.144)

Current regulations: Current § 668.144 describes the approval process for tests submitted by test publishers. The current regulations do not require test publishers to describe their process for

certifying test administrators, their test anomaly analysis, or the types of accommodations available for individuals with disabilities. In current regulations, the requirements for approval of State tests or assessments are contained in a separate section, § 668.143.

Proposed regulations: We propose to clarify and expand the requirements in current §§ 668.143 and 668.144 and include all of the requirements for test approval in one section, proposed § 668.144. Paragraphs (a) and (b) of proposed § 668.144 would describe the general requirement for test publishers and States to submit to the Secretary any test they wish to have approved under subpart J of part 668. Paragraph (c) of proposed § 668.144 would describe the information that a test publisher must include with its application for approval of a test. Paragraph (d) of proposed § 668.144 would describe the information a State must include with its application when it submits a test to the Secretary for approval.

In proposed § 668.144(c), we would largely retain the test publisher application requirements contained in current § 668.144(c). In addition to making some minor technical changes to these requirements, we would revise paragraphs (c)(8) and (c)(11)(iv)(B). Under proposed paragraph (c)(8), test publishers would be required to provide documentation of periodic reviews of the content and specifications of all tests submitted to the Secretary for approval (not just tests first published five years before submission), to ensure that the tests reflect secondary school level verbal and quantitative skills.

Under the revisions reflected in proposed § 668.144(c)(11)(iv)(B), a test publisher would be required to include, in its technical manual, evidence that the test was normed using a contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States instead of a contemporary population representative of persons who are beyond the usual age of compulsory school attendance in the United States.

We would remove paragraph (c)(14), which required a test publisher to include, for performance-based tests or tests containing performance-based sections, a description of the training or certification required of test administrators and scorers by the test publishers.

We would then redesignate paragraphs (c)(15) and (c)(16) of § 668.144 as proposed paragraphs (c)(14) and (c)(15) and add new proposed paragraphs (c)(16) through (c)(18). Proposed § 668.144(c)(16) would require test publishers to include in their applications a description of their test administrator certification process. In proposed § 668.144(c)(17), we would require test publishers to include in their applications a description of the test anomaly analysis the test publisher will conduct and submit to the Secretary. Finally, proposed § 668.144(c)(18) would require test publishers to include in their applications a description of the types of accommodations available for individuals with disabilities, including a description of the process used to identify and report when accommodations for individuals with disabilities were provided.

Proposed § 668.144(d) would be added to describe what States must include in their test submissions to the Secretary. While this provision would replace the content in current § 668.143, its language would be revised to be parallel, where appropriate, to the test publisher submission requirements in current § 668.144. In addition to paralleling most of the current requirements for test publisher test submissions, proposed § 668.144(d) would also include the new requirements proposed to be added to the test publisher submissions. A description of those new provisions follows:

Both test publishers and States would be required to submit a description of their test administrator certification process that indicates how the test publisher or State, as applicable, will determine that a test administrator has the necessary training, knowledge, skills, and integrity to test students in accordance with the test publisher's requirements and how the test publisher or the State will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release (*see* proposed § 668.144(c)(16) (test publishers) and § 668.144(d)(7) (States)).

The proposed regulations would require both test publishers and States to submit a description of the test anomaly analysis they will conduct. This analysis would need to include a description of how they will identify potential test irregularities and make a determination that test irregularities have occurred; an explanation of corrective action to be taken in the event of test irregularities; and information on when and how the Secretary, test administrator, and institutions will be notified if a test administrator is decertified (*see* proposed § 668.144(c)(17) (test publishers) and § 668.144(d)(8) (States)).

Under proposed § 668.144(c)(18) and (d)(9) respectively, both test publishers and States would be required to describe any accessible technologies that are available to individuals with disabilities, and the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided.

Reasons: Because many of the requirements for approval of tests, whether submitted by test publishers or States, are parallel, the non-Federal negotiators suggested, and the Department agreed, that it would be appropriate to combine State submission requirements, currently addressed in § 668.143, and the test publisher submission requirements, currently addressed in § 668.144 in a single regulatory provision. For this reason, we combined and, where appropriate, standardized the language for the submission requirements for both States and test publishers in proposed § 668.144.

We propose to make a number of changes to the test publisher submission requirements, reflected in § 668.144(c). First, we propose to revise § 668.144(c)(8) because we believe it is important for test publishers to periodically review the content and specifications of all tests (not only those tests first published five years before submission) to ensure that they reflect secondary school level verbal and quantitative skills. In addition, we propose to revise § 668.144(c)(11)(iv)(B) to require that a test publisher's technical manual, which must be submitted as part of its test submission, include evidence demonstrating that the test was normed using a sample that is representative of the population of persons who have earned a high school diploma in the United States. We propose this change because the purpose of this subpart is to implement the statutory provisions that provide an alternative means for students who do not have a high school diploma or the equivalent to establish eligibility for the title IV, HEA programs. To determine the ability of such students to benefit from a postsecondary education or training program, passing scores on ATB tests should be based only on the scores of test takers who have a high school diploma, not the scores of test takers who are beyond the age of compulsory attendance but who may not have completed high school.

We also propose to delete the requirements relating to performance-based tests or tests containing

performance-based sections, reflected in current § 668.144(c)(14), because no performance-based tests have ever been submitted to the Secretary for approval and, therefore, we believe the provision is unnecessary.

Finally, we are proposing to add three requirements to both the test publisher and State test submission requirements.

First, we propose to include, in proposed § 668.144(c)(16) and (d)(7), a requirement that test publishers and States, respectively, describe their test administrator certification process, including how they will determine that a test administrator has the necessary training, knowledge, skills, and integrity to test students. We believe that it is important for test publishers and States to provide this information with their test submissions to demonstrate that adequate screening procedures are used. Throughout the negotiated rulemaking discussions on the ATB provisions, one of the non-Federal negotiators voiced the belief that test publishers should be required to determine the "integrity" of the test administrators they certify. Other non-Federal negotiators questioned how test publishers or States would evaluate a test administrator's integrity and expressed concern that if such a requirement were in the regulations, it would be too prescriptive. We have included in proposed § 668.144(c)(16)(i) and (d)(7)(i) a requirement that test publishers and States describe how they will determine that a test administrator has the integrity necessary to administer tests. The Department does not intend to impose unnecessary or ill-defined burdens; therefore, we are specifically soliciting feedback on the proposal to require test publishers and States to describe how they will determine that test administrators have integrity, in addition to the training, skills, and knowledge necessary to administer tests.

Second, we propose to include, in proposed § 668.144(c)(17) and (d)(8), a requirement that test publishers and States submit a description of the test anomaly analysis they will conduct and how they will identify potential test irregularities and make a determination that test irregularities have occurred. We propose these requirements to promote some transparency in the screening process that is being used.

Third, we propose to include, in proposed § 668.144(c)(18) and (d)(9), a requirement that test publishers and States describe the types of accommodations available for individuals with disabilities and the process for identifying and reporting to the test publisher or the State when accommodations for individuals with disabilities were provided. This additional information is necessary for scoring and norming purposes.

Test Approval Procedures (§ 668.145)

Current regulations: Current § 668.145 describes both procedures for the review of tests submitted by test publishers and the circumstances under which the Secretary's approval may be withdrawn.

Proposed regulations: We propose to revise § 668.145 to extend the test approval procedures to tests submitted by States. We would make a number of non-substantive technical changes to this section as well.

Proposed § 668.145(c)(1) would specify that the approval of a test begins five years from the date the notice of approval for the test is published in the **Federal Register.** Under proposed § 668.145(d)(1), test approval could be revoked if a test publisher or State violated any terms of the agreement described in § 668.150 or if the test publisher or State substantially changed the test and did not resubmit the test, as revised, for approval. Proposed § 668.145(d)(2) would provide that revocation would become effective 120 days from the date the notice of revocation was published in the **Federal Register** or an earlier date specified by the Secretary in a notice published in the **Federal Register.**

Reasons: Consistent with the changes reflected in proposed § 668.144, we would amend § 668.145 to make the test approval procedures applicable to States as well as to test publishers, where appropriate. In proposed § 668.144(c)(1), we would specify that the approval period, not to exceed five years, would start on the date the notice of approval is published in the **Federal Register**. We propose to provide that the approval period commences on this date, rather than on the date the Secretary provides written notice to the test publisher of approval, because the public will be able to determine the effective date from the notice and that might be relevant information for institutions.

One of the non-Federal negotiators suggested expanding the reasons for revocation to include substantially changing a test without resubmitting it to the Department. The Department agreed. For this reason, we would add language to proposed § 668.145(d)(1) to provide that test approval could be revoked if a test publisher or State substantially changed the test and did not resubmit the test, as revised, for approval.

Finally, in proposed § 668.145(d)(2), we would provide that a revocation of test approval would become effective 120 days after the date the notice of revocation is published in the **Federal Register** or an earlier date specified by the Secretary in a notice published in the **Federal Register**. We propose this change to ensure that the public has access to this information.

Criteria for Approving Tests (§ 668.146)

Current regulations: Current § 668.146 sets forth the criteria the Secretary uses to evaluate and approve tests submitted under subpart J of part 668. Under this provision, in order for a test to be approved, a test publisher must provide specified information and norm the test with groups of sufficient size to produce defensible standard errors of the mean, with groups not composed disproportionately of any race or gender, and with a contemporary population representative of persons who are beyond the usual age of compulsory school attendance in the United States.

Proposed regulations: We propose to revise § 668.146 to provide that the criteria for approving tests apply to tests submitted by States as well as test publishers. In addition, we propose to make a number of small technical and conforming changes to this section. Finally, in proposed § 668.146(c)(4)(ii), we require that States and test publishers norm their tests with a contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States.

Reasons: Consistent with the changes we propose to make to § 668.144, we propose to amend § 668.145 to ensure that the criteria for approving tests apply to States as well as to test publishers, where appropriate.

We propose to amend § 668.146(c)(4)(ii) to ensure that tests are being normed with a contemporary sample of persons who have earned a high school diploma in the United States, rather than persons who are beyond the usual age of compulsory school attendance in the United States. The purpose of this subpart is to implement the statutory provisions that provide an alternative means for students who do not have a high school diploma or the equivalent to establish eligibility for the title IV, HEA programs. Therefore, to determine the ability of such students to benefit from a postsecondary education or training program, pass scores should be based only on the scores of test takers who have a high school diploma, not the scores of test takers who are beyond the age of compulsory attendance but who may not have completed high school.

Passing Scores (§ 668.147)

Current regulations: Under current § 668.147, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean for students with high school diplomas who have taken the test within three years before the test was submitted for approval.

Proposed regulations: Proposed § 668.147 would specify that passing scores are based on the mean score of a sample of individuals who have taken the test during the three years before it was submitted. The sample would need to be representative of the population of high school graduates in the United States.

Reasons: The proposed changes to § 668.147 would specify that the passing score is based on the mean score of a sample of high school graduates who have taken the test. This change would make it clear that a sample of test takers would be used, and that the test takers whose scores are used need not be students.

Additional Criteria for the Approval of Certain Tests (§ 668.148)

Current regulations: Current § 668.148 specifies additional criteria for approval of tests that are performance-based, developed for non-native speakers of English, modified for use for persons with disabilities, and computer-based.

Proposed regulations: Proposed § 668.148 would largely track current § 668.148. In addition to making technical updates and conforming changes (*e.g.,* updating references to documents incorporated by reference and updating defined terms to use those terms proposed in this document), we propose to remove the criteria for approval of performance-based tests, reflected in current § 668.148(a)(1). We also propose to revise the regulatory provision relating to tests developed for non-native speakers of English who are enrolled in a program that is taught in their native language to provide that if the test is in a language other than Spanish, it must be accompanied by a recommendation for a provisional passing score based upon performance of a sample of test takers representative of non-English speaking individuals who speak a language other than Spanish and who have a high school diploma. The sample upon which the recommended provisional passing score would be based would need to be large enough to produce stable norms. In addition, we would provide, in proposed § 668.148(b)(2), that the recommended passing scores for tests designed solely to measure the English language competence of non-native speakers of English would need to be based on the mean score of test takers beyond the age of compulsory school attendance who completed (rather than entered) specified programs.

Reasons: We propose to remove the regulatory provision related to performance-based tests because, as mentioned earlier in this preamble discussion, no performance-based tests have ever been submitted to the Secretary for approval.

The change proposed in the regulatory provision relating to tests developed for non-native speakers of English who are enrolled in a program that is taught in their native language (other than Spanish) is intended to provide that the provisional passing scores are based on a sample of test takers whose native language is not Spanish and who have a high school diploma. This is parallel to the proposed change in § 668.144(c)(11)(iv)(B).

Finally, the change reflected in proposed § 668.148(b)(2), which would require basing recommendations for passing scores for tests to measure English language competence on scores of test takers that have completed, rather than entered, specified educational and training programs, is designed to be consistent with changes throughout these proposed regulations. The Department specifically seeks input on the possible impact of this change due to the potential for unintended consequences.

Special Provisions for the Approval of Assessment Procedures for Individuals With Disabilities (§ 668.149)

Current regulations: Current § 668.149 (Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available) describes the special procedures that apply when testing persons with disabilities and students whose native language is not English and who are not fluent in English under subpart J of part 668.

Proposed regulations: We propose to restructure § 668.149 to focus only on the special provisions for the approval of assessment procedures for individuals with disabilities. We would remove current § 668.149(b), which describes the procedures for automatic test approval for tests provided in a student's native language for students whose native language is not English.

Reasons: We propose to revise § 668.149 to make clear the respective responsibilities of test publishers (or States, where appropriate) and test administrators when using special assessment procedures for individuals with disabilities.

We expect test administrators who administer tests under this section to ensure there is documentation of the test-taker's need for a modified test and to comply with the provisions of § 668.149(c)(2). We would encourage a test administrator to coordinate with the institution's disability support services center, or other institutional or State staff who have knowledge of an individual's need for a modified test to ensure that an appropriate test is given.

We propose to remove the regulatory language concerning the use of foreign language tests, because historically there have been no submissions of foreign language tests for approval. Moreover, pursuant to the current regulations, because there are no currently approved foreign language tests, any foreign language test that has not been rejected by the Secretary is considered automatically to be approved even if it has not been submitted to the Secretary for approval. Under the current regulatory framework, therefore, test publishers and States lack an incentive to submit tests in foreign languages for the Secretary's approval. Continuing under the current regulations in § 668.149(b) would allow test publishers and States to circumvent the ATB test approval process; therefore, we propose its removal. With the removal of "Students whose native language is not English" from § 668.149(b), foreign language tests would be required to be submitted through the established test approval procedures in §§ 668.145 and 668.148.

During the negotiated rulemaking discussions, some of the non-Federal negotiators thought it might be advisable to have a transition period before removing the special provisions in current § 668.149(b). In light of this suggestion, the Department is soliciting comments on whether a transition period is necessary and, if one is necessary, how long should it be.

Agreement Between the Secretary and a Test Publisher or a State (§ 668.150)

Current regulations: The current regulations require test publishers to enter into an agreement with the Secretary before an institution may use the test publisher's test to determine a student's eligibility for title IV, HEA program funds. Current § 668.150(b) describes the specific provisions that must be included in the agreement. Current § 668.150(c) contains the regulations governing the Secretary's termination of an agreement.

Proposed regulations: Proposed § 668.150 would provide that States, as

well as test publishers, must enter into agreements with the Secretary in order to have their tests approved.

We would also revise this section to require both test publishers and States to comply with a number of new requirements that would be added to the agreement with the Secretary. These requirements would include:

- Requiring the test administrators that they certify to provide them with certain information about whether they have been decertified (*see* proposed § 668.150(b)(2)).
- Certifying only test administrators who have not been decertified within the last three years (*see* proposed § 668.150(b)(3)(iii)).
- Re-evaluating the qualifications of a test administrator who has been decertified by another test publisher or State (*see* proposed § 668.150(b)(5)).
- Immediately notifying the test administrator, the Secretary, and institutions when the test administrator is decertified (*see* proposed § 668.150(b)(6)).
- Reviewing test results of tests administered by a decertified test administrator and immediately notifying affected institutions and students (*see* proposed § 668.150(b)(7)).
- Providing copies of test anomaly analysis every 18 months instead of every 3 years (*see* proposed § 668.150(b)(13)).
- Providing access to test records or other documents related to an audit, investigation, or program review of an institution, the test publisher, or a test administrator (*see* proposed § 668.150(b)(14)).
- Reporting to the Secretary any credible information indicating that a test has been compromised (*see* proposed § 668.150(b)(15)).
- Reporting to the Office of Inspector General of the Department of Education any credible information indicating that a test administrator or institution may have engaged in fraud or other criminal misconduct (*see* proposed § 668.150(b)(16)).
- Requiring a test administrator who provides a test to an individual with a disability who requires an accommodation in the test's administration to report to the test publisher or the State the nature of the disability and the accommodations that were provided (*see* proposed § 668.150(b)(17)).

Reasons: Many of the requirements we propose to add to the required provisions in agreements between the Secretary and test publishers (and, under the proposed regulations, States) are based on recommendations the Department received from the Government Accountability Office (GAO). GAO issued a report in August 2009 that cited the Department for weak oversight of the ATB test requirements; in its report, GAO provided recommendations to the Department to strengthen controls over the ATB testing process and to amend the ATB regulations. Specifically, the GAO identified the following problems with the current regulations:

- Current regulations require test publishers to conduct test score analyses only every three years. This means it is possible for test administrators who are administering tests improperly to go undetected for up to three years.
- While the current regulations require that test publishers decertify test administrators who fail to administer tests properly, they do not require test publishers to report to the Department on implementation of their decertification process.
- Current regulations do not specifically require test publishers to follow up on test score irregularities or report any corrective actions to the Department. Therefore, the Department has no way of knowing whether actual violations occurred or how the test publishers dealt with any violations they identified.

In response to the first problem identified by GAO, we propose to require, in proposed § 668.150(b)(13), that test publishers conduct test score analyses every 18 months, instead of every 3 years. This change would reduce the possibility that test administrators who are administering tests improperly would go undetected. The Department initially proposed that test anomaly analysis be submitted 18 months after test approval, then annually thereafter. However, after hearing the discussion of the benefits and drawbacks of more frequent analysis, the Department agrees that receiving test score analyses every 18 months after approval would address its concerns.

The second problem identified by GAO was that current regulations do not require test publishers to report to the Department on implementation of their decertification process. The Department seeks to address this problem in proposed § 668.150(b)(6), which would require test publishers and States to immediately notify the test administrator, the Secretary, and the institutions where the test administrator previously administered approved tests, when the test publisher or the State decertifies a test administrator.

The decertification of test administrators and the draft regulatory language the Department offered to address this problem generated a considerable amount of discussion during the negotiated rulemaking sessions. The Department initially proposed draft regulatory language that would require test publishers and States to review the tests results of the tests administered by a decertified test administrator and determine which tests were invalid. During the discussion at negotiated rulemaking, it became clear that the focus of the proposed regulations should be on a determination of whether the tests were administered improperly, rather than on a determination of whether the tests were invalid. For this reason, proposed § 668.150(b)(7)(i) would require test publishers and States to review the test results of tests administered by decertified test administrators to determine which tests may have been administered improperly. Proposed § 668.150(b)(7)(ii) would require that test publishers and States immediately notify the affected institutions and students when they determine that tests were improperly administered. The Department is committed to providing guidance to test publishers, States, and institutions regarding how to handle situations where tests have been determined to be improperly administered and to working with the test publishers and the States on notification letters to institutions and students.

Some non-Federal negotiators said it was important for all students who had been given an ATB test by a decertified test administrator to be notified. Other non-Federal negotiators believed this was not necessary. The Department solicits comments on whether notification to all potentially affected institutions, students, or prospective students should take place when a test administrator is decertified, regardless of whether there has been a determination that the tests given to those students or prospective students were improperly administered.

Some non-Federal negotiators expressed the opinion that once a test administrator was decertified, he or she should not be able to be recertified, and that the Department should keep a list of decertified test administrators. The discussion of this topic at negotiated rulemaking caused the Department to examine options for the appropriate length of time for decertification, the impact of a decertification by one test publisher or State on the certification of that test administrator by other test publishers or States, and the extent of notifications.

The Department's position is that the decertification process should not be any more complicated than necessary. As there is no provision for a third party to appeal a decertification, we do not believe it is appropriate for a test administrator who is decertified by one test publisher to be decertified forever—without the ability to be certified by any test publisher again.

Therefore, we propose a number of regulatory changes to ensure that States and test publishers have rigorous certification and decertification processes. Specifically, we would require, at the front end of the certification process, that a test publisher (or State) obtain a statement from potential test administrators indicating that they are not currently decertified and agreeing that they will notify the test publisher or State if they become decertified by another entity (*see* proposed § 668.150(b)(2)). We would then provide, under proposed § 668.150(b)(3)(iii), that a decertified test administrator would not be able to get a new certification again until three years after his or her decertification. We believe that these provisions would address the potential problem of having a decertified test administrator obtain certification from another test publisher and getting certified.

In the case of a test administrator who has been certified by more than one test publisher (or State) but then is decertified by one test publisher (or State), we would not require the immediate and automatic decertification of the test administrator by other test publishers (or States). Instead, as reflected in proposed § 668.150(b)(5), we would require that other test publishers re-evaluate the qualifications of the test administrator to determine whether it is appropriate to continue the test administrator's certification.

The Department is proposing this approach to avoid the problem of one entity's actions having an inappropriate negative impact on another entity. It is conceivable that the cause for decertification by one test publisher or State would be unlikely to arise at a different test publisher or State because of different procedures. Also, in the context of test publishers, this approach would avoid the potential for one test publisher being able to affect the services of a competitor.

The third problem identified by GAO (*i.e.,* the fact that the current regulations do not require any follow-up on test score irregularities or corrective action) is addressed by a number of proposed provisions. In addition to proposed § 668.150(b)(7), which we discussed earlier, § 668.150(b)(15) would require that a test publisher or State immediately report to the Secretary any credible information indicating that a test has been compromised. Proposed paragraph (b)(16) of § 668.150 would require that test publishers and States immediately report to the Department's Office of Inspector General any credible information indicating that a test administrator or institution may have engaged in fraud or other criminal misconduct.

Finally, in proposed § 668.150(b)(17), we would require that test administrators notify test publishers (and States) if they provide any accommodations to individuals with disabilities. We believe that adding this requirement is appropriate because it would allow test publishers and States to take this information into account when norming tests in the future.

Administration of Tests (§ 668.151)

Current regulations: Current § 668.151 requires institutions to select a test administrator to give approved tests and to use results from an approved test publisher or assessment center. This provision also describes the conditions under which a test is considered to be independently administered.

Proposed regulations: Proposed § 668.151(a) would largely mirror the language in current § 668.151(a), except that, in paragraph (a)(1), we would remove the reference to tests approved under § 668.143 and we would refer to "test administrator", rather than "certified test administrator." As discussed elsewhere in this preamble, we have moved much of the language from current § 668.151(b) to the definition of the term *independent test administrator* in proposed § 668.142. As revised, proposed § 668.151(b)(1) would retain the current provision that the Secretary considers a test to be independently administered if it is given at an assessment center by a test administrator who is an employee of the center. In proposed § 668.151(b)(2), we would add language to provide that the Secretary also considers a test to be independently administered if it is given by an independent test administrator (defined in § 668.142) who maintains tests at a secure location and submits the test for scoring by the test publisher or the State or, for a computer-based test, a record of the test scores, within two business days of administering the test.

Proposed § 668.151(c) and (d) would largely track current § 668.151(c) and (d) except that we would update these paragraphs so that they would apply to both States and test publishers. In addition, we would revise proposed § 668.151(d)(3) to ensure that it is consistent with the changes reflected in proposed § 668.151(b)(2) and § 668.152(b)(2). We are proposing to remove § 668.152(d)(6) because the requirement is covered in proposed § 668.150(b)(14).

Finally, in proposed § 668.151(g)(4), we would require institutions to keep a record of each individual who took an ATB test and the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State. If the individual who took the test has a disability and is unable to be evaluated by the use of an approved ATB test, or requested or required a testing accommodation, the institution would be required, under proposed § 668.151(g)(5), to maintain documentation of the individual's disability and of the testing arrangements provided.

We would also make minor technical and conforming changes throughout this section.

Reasons: The minor changes reflected in proposed § 668.151(a) would be made to make the provision consistent with other changes in the proposed regulations. Specifically, we remove the reference to § 668.143 because we are not including that provision in the proposed regulations, and we refer to "test administrator" because, by definition, a test administrator must be certified (*see* proposed definition of *test administrator* in § 668.142).

In proposed § 668.151(b)(2), we would add a requirement to address the need to maintain tests in a secure location. This topic generated a great deal of discussion during the negotiated rulemaking sessions. After the second negotiated rulemaking session, the Department proposed draft language that would have required test publishers to maintain tests at a secure location, somewhere other than at the institution at which the tests are being administered.

Those non-Federal negotiators who had expressed the belief that tests should not be kept at an institution, unless the institution had an assessment center, were supportive of this proposal. Some of the other non-Federal negotiators identified a number of potential problems with this proposal. For example, they explained that it is common practice for test publishers to ship cartons of tests to the institutions where the tests will be administered, whether the tests are being administered at a test assessment center or by an independent test administrator. In addition, we were informed that many, if not most tests approved for ATB are

used for placement and other purposes and not used solely for the determination of individuals' eligibility for title IV, HEA programs. Some non-Federal negotiators noted that, in fact, it is also possible that tests may be far more secure if they are located at an institution where the facilities are monitored. Independent test administrators may not have access to secure locations apart from the institutions at which they give tests. For this reason, some non-Federal negotiators urged the Department not to require that tests be maintained in a secure location other than the institution at which they would be administered.

The language in proposed § 668.151(b)(2) is consistent with the Department's position that all ATB tests must be kept at a secure location. However, we also understand that if some of the tests are used for multiple purposes, it is difficult to prohibit the delivery of these tests to an institution. Therefore, the Department is specifically soliciting comments regarding proposed § 668.151(b)(2) and on other ways the Department can ensure that tests can be kept secure. Specifically, what does it mean to keep tests at a secure location? Does it mean a locked facility to which only the test administrator has a key? Should the focus be on maintaining a chain of custody, with adequate safeguards, rather than on the location itself? Is there a way to maintain inventory that would address the test security issue? As test publishers have a vested interest in keeping their tests secure, the Department is particularly interested in recommendations regarding how best to address the security issue in regulations.

With regard to the changes reflected in proposed § 668.151(g), we would be adding to the information that an institution must record. The added information that the institution would be required to maintain for each individual who took an ATB test would include: (1) the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State; and (2) if the individual who took the test has a disability and is unable to be evaluated by the use of an approved ATB test or the individual requested or required a testing accommodation, documentation of the individual's disability and of the testing arrangements that is provided in accordance with § 668.153(b). This proposed provision is intended to encompass documentation of accommodations provided through the use of accessible technologies, as described in § 668.144(c)(18) and(d)(9), as well as other accommodations requested or required by the individual with a disability in accordance with § 668.153(b). Requiring the name, address and any assigned identifier for each test administered would enable the test publisher or State to identify all tests administered by a test administrator and facilitate the notification of test takers should the test publisher or the State determine that the test was improperly administered. Requiring documentation of disabilities that necessitate testing accommodation, and of the testing arrangements provided, would provide important information for two reasons. First, collection of the information would help emphasize that testing accommodations may be provided only to individuals with documentation of a disability who require testing accommodations. We would encourage test administrators to work with an institution's disability support services center, or other institutional or State staff who have knowledge and experience in providing appropriate testing accommodations to individuals with disabilities to ensure that appropriate testing accommodations are provided and are appropriately documented. Second, providing such information to the test publisher or State would let those entities know that testing accommodations were provided, so that entity can make a determination regarding whether to include the score with scores of other test takers, for whom no testing accommodations were provided, for evaluative or norming purposes in the future.

Administration of Tests by Assessment Centers (§ 668.152)

Current regulations: Under current § 668.152(a), assessment centers are required to follow the requirements for administering tests specified in § 668.151(d). If the assessment center scores tests, it must send copies of completed tests, or a report listing all test-takers' scores, to the test publisher on an annual basis (*see* current § 668.152(b)).

Proposed regulations: Proposed § 668.152(a) would clarify that assessment centers are also required to comply with the provisions of § 688.153 (Administration of tests for individuals whose native language is not English or for individuals with disabilities), if applicable.

Under proposed § 668.152(b)(2), assessment centers that score tests would be required to provide copies of completed tests or lists of test-takers' scores to the test publisher or the State, as applicable, on a weekly basis. Under proposed § 668.152(b)(2)(i) and (b)(2)(ii), copies of completed tests or reports listing test-takers' scores would be required to include the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State.

Reasons: In proposed § 668.152(a), we would clarify that assessment centers are also required to comply with the provisions of § 668.153. With respect to individuals whose native language is not English, the test assessment center would be required to use the appropriate test, depending on the type of program in which an individual plans to enroll, and whether the classes are conducted in English or in the individual's native language. With respect to individuals with disabilities, the assessment center would be required to maintain documentation of an individual's disability, and would be required to ensure that there is documentation that an individual with a disability requires accommodations, such as extra time or a quiet room, for taking an approved test. Under current regulations, the presumption is that assessment centers comply with the provisions of § 668.153, but the proposed regulations would make the requirement explicit so there is no misunderstanding.

In proposed § 668.152(b)(2), we would require assessment centers that score tests to provide on a weekly basis (rather than an annual basis) the test publisher, or the State, as applicable, with all copies of the completed tests and a report listing, among other things, all test-takers' scores and institutions to which the scores were sent. We would also revise this section to require assessment centers to record the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher and to maintain this information in the copies of the completed tests or a report listing all test-takers' scores and institutions to which the scores were sent. These changes would enable the test publisher or State to identify all tests administered by a test administrator and to facilitate the notification of test takers should the test publisher or the State determine that the test was improperly administered.

We also propose minor technical and conforming changes throughout this section.

Administration of Tests for Individuals Whose Native Language Is Not English or for Individuals With Disabilities (§ 668.153)

Current regulations: Current § 668.153 describes the requirements governing the administration of tests for students whose native language is not English or for persons with disabilities.

Current § 668.153(a) specifies the requirements that apply to the tests that must be used for students whose native language is not English and those requirements differ depending on whether the student is enrolled in (1) a program conducted entirely in his or her native language, (2) a program that is taught in English with an English as a Second Language (ESL) component; or (3) a program that is taught in English without an ESL component, or the student does not enroll in the ESL component if the institution offers such a component.

Current § 668.153(b) specifies the requirements that apply to the tests that must be used for students with a documented impairment. Under this provision, an institution must use a test described in § 668.148(a)(3) or § 668.149(a) for students with a documented impairment. The institution must document that a student is disabled and unable to be evaluated by the use of a conventional test.

Proposed regulations: In addition to reflecting a number of technical and conforming changes, proposed § 668.153 would clarify that this section applies to individuals whose native language is not English or individuals with disabilities who are enrolled or who plan to enroll at an institution (*i.e.,* not only students).

Proposed § 668.153(a)(1) and (a)(3) would remain largely unchanged from the current regulations. Under proposed § 668.153(a)(2), an individual whose native language is not English who is enrolled or plans to enroll in a program taught in English with an ESL component would now be required to take an English language proficiency assessment approved under § 668.148(b) and, before beginning the portion of the program taught in English, a test approved under § 668.146.

Proposed § 668.153(b) would be revised by removing references to an individual's impairment and, in its place, using the term *individual with a disability,* which would be defined in proposed § 668.142. The substantive changes reflected in paragraph (b) of proposed § 668.153 relate to the documentation necessary to support the determination that an individual has a disability and requires accommodations for taking an approved test. If an individual with a disability requires accommodations—such as extra time or a quiet room—for taking an approved test, or is unable to be evaluated by the use of an approved ATB test, the test administrator would be required to ensure that there is documentation to support the alternative arrangements. Proposed § 668.153(b)(4), which lists potential sources of such documentation, would be expanded to include a record of the disability from a local or State educational agency, or other government agency, such as the Social Security Administration or a vocational rehabilitation agency that identifies the disability and may include a diagnosis as well as recommended testing accommodations.

Reasons: We propose to refer to "individuals who are enrolled, or who plan to enroll", instead of "students who are enrolled", throughout this section because it is common for individuals to take ATB tests prior to enrollment.

We propose to make the changes reflected in proposed § 668.153(a)(2) to address a problem with the current regulations, which require non-native English speakers who enroll in a program that is taught in English and that has an ESL component to take either an ESL test or an ATB test in the student's native language. Testing such an individual in his or her native language does not demonstrate that the individual has the ability to benefit from a program taught in English. Rather, for these individuals, it is necessary first to determine how proficient they are in English. Therefore, proposed § 668.153(a)(2) would require individuals who wish to enroll in such a program to first take an English language proficiency assessment to determine appropriate placement in the ESL component. Before such students could begin a program taught in English, they would be required to take a regular ATB test in English.

Finally, we would revise § 668.153(b)(3) to require that test administrators ensure that there is adequate documentation to support determinations that a test-taker is an individual with a disability and requires accommodations for taking an approved test or is unable to be evaluated by the use of an approved ATB test. The examples of documentation that would be added to § 668.153(b)(4) are provided to assist institutions in understanding what kinds of documentation are appropriate for supporting a determination that an individual has a disability and requires accommodations for taking an approved test.

Institutional Accountability (§ 668.154)

Current regulations: Current § 668.154 limits institutional liability for title IV, HEA program funds disbursed to a student whose eligibility is determined under subpart J of part 668 only if the institution used a test administrator who: (1) was not independent of the institution at the time the test was given, (2) compromised the testing process, or (3) was unable to demonstrate that the student received a passing score on an approved test.

Proposed regulations: Proposed § 668.154 would largely track current § 668.154, except that it would provide for institutional liability if institutions used a test that was not administered independently in accordance with § 668.151(b). In addition, in proposed § 668.154(b), we would clarify that an institution would be liable if it or an employee of the institution compromised the test in any way.

Reasons: We propose to amend § 668.154(a) to provide that an institution would be liable if the institution used a test that was not administered independently, in accordance with § 668.151(b). In making this change, we would clarify that ATB tests must be administered independently, whether in an assessment center or by an independent test administrator in order to preserve the integrity of the testing process.

In addition, we propose to provide that an institution would be held responsible if either the institution or an employee of the institution compromises the testing process to promote accountability.

Transitional Rule for the 1996–97 Award Year (§ 668.155)

Current regulations: Current § 668.155 contains a transitional rule for the 1996–97 award year.

Proposed regulations: The proposed regulations would remove current § 668.155 and reserve that section for future use.

Reason: We propose to remove the transitional rule for 1996–97 because it is outdated.

Approved State Process (§ 668.156)

Current regulations: Current § 668.156 provides the requirements for the Department's approval of a State process that serves as an alternative to the requirement for passage of a test approved under subpart J of part 668.

Proposed regulations: Proposed § 668.156 would remain largely unchanged from current § 668.156. The one change, in proposed § 668.156(e), would specify that an approved State

process would become effective on the date the Secretary approves the process or six months after the State submits the process for approval if the Secretary neither approves nor disapproves the process.

Reason: The change clarifies that the effective date of a State process is the date the process has been deemed to be approved. We made this change to clarify what the effective date of a process is when the Secretary affirmatively approves it.

Disbursements (§§ 668.164(i), 685.102(b), 685.301(e), 686.2(b), and 686.37(b))

Provisions for Books and Supplies

Statute: Section 401(e) of the HEA provides that an institution may credit a student's account with Federal Pell Grant funds to pay for the cost of tuition and fees, and for institutionally owned housing, room, and board. For other goods and services provided by the institution, the student may elect to have his or her account credited with Federal Pell Grant funds to pay those costs. In all other respects, section 401(e) provides that payments of Federal Pell Grant funds are made in accordance with regulations promulgated by the Secretary. The HEA does not address the issue of crediting student accounts for the other title IV, HEA programs.

Current regulations: Section 668.164(b) provides that an institution must disburse title IV, HEA program funds (except for FWS funds) on a payment period basis. Section 668.164(d) reflects the statutory requirements for crediting a student's account with Federal Pell Grant funds, but provides that those requirements also apply to ACG, National SMART Grant, TEACH Grant, FSEOG, Federal Perkins Loan, Direct Loan, and FFEL program funds. In addition, §§ 686.33(a), 690.76(a), and 691.76(a), provide that for each payment period, an institution may pay Federal Pell Grants, ACGs, National SMART Grants, and TEACH Grants to a student in a time and manner that best meets the student's needs.

Proposed regulations: Under proposed § 668.164(i), an institution would provide a way for a Federal Pell Grant eligible student to obtain or purchase required books and supplies by the seventh day of a payment period under certain conditions. An institution would have to comply with this requirement only if, 10 days before the beginning of the payment period, the institution could disburse the title IV, HEA program funds for which the student is eligible, and presuming that those funds were disbursed, the student would have a credit balance under § 668.164(e). The amount the institution would provide to the student for books and supplies would be the lesser of the presumed credit balance or the amount needed by the student, as determined by the institution. In determining the amount needed by the student, the institution may use the actual costs of books and supplies or the allowance for books and supplies used in the student's cost of attendance for the payment period.

Reasons: Although the current regulations permit institutions to disburse Federal Pell Grant and other title IV, HEA program funds in a manner that best meets the needs of students, we have identified situations where low-cost institutions delay disbursing funds for an extended time, or make partial disbursements to cover costs for only tuition and fees. As a result of these practices, students either have to pay for books and supplies that would otherwise be paid by title IV, HEA program funds by obtaining loans, or do without the books and supplies needed at the beginning of the term or enrollment period until the institution makes the funds available. The proposed regulations would reduce these disbursement delays at some institutions and enable students to obtain their books and supplies in a timely manner.

During the negotiated rulemaking sessions, some of the non-Federal negotiators stated that many institutions advance funds (institutional funds or title IV, HEA program funds) or issue vouchers, or other credit vehicles, that students use to obtain books and supplies. The negotiators noted that if a student to whom the institution provided the advance or voucher does not begin classes, the institution risks losing the amount advanced. For example, if the institution advanced Federal Pell Grant funds to a student, *e.g.,* made a disbursement directly to the student, and the institution could not show that the student began attendance in the payment period, under § 668.21(a)(1) the institution would be liable and would have to return those funds. For this reason, some of the non-Federal negotiators argued that in exchange for requiring an institution to advance funds or issue vouchers early in the payment period, and before the institution could establish that the student began attendance, the student should be liable under § 668.21 for returning the funds.

In response to these concerns and suggestions, the Department put forward draft proposed regulations shifting the liability to students, but that draft was rejected by other non-Federal negotiators for two reasons. First, these negotiators believed that a student should not be responsible for repaying a debt under the title IV, HEA programs because a student could be precluded from enrolling again at a postsecondary institution if the student did not repay the debt or make satisfactory arrangements to repay it. Second, some of the non-Federal negotiators were aware of predatory practices at some institutions where students were promised an advance of funds simply for enrolling in programs at those institutions, and these negotiators believed that shifting the liability to students would exacerbate these practices.

Some of the non-Federal negotiators noted that some public institutions must request funds from a State office (unlike other institutions that have direct control of funds) and cautioned against adopting any regulations that would make it administratively difficult, if not impossible, for these institutions to comply with disbursement timelines. These non-Federal negotiators suggested that an advance or voucher for books and supplies could be issued early in the payment period only if the institution determined that the student was eligible and otherwise qualified for title IV, HEA program funds before the beginning of the payment period, and this suggestion is reflected in the proposed regulation.

The committee agreed to adopt proposed § 668.164(i), believing it provided an appropriate balance between the need for students to be able to purchase or obtain books and supplies early in the payment period and the administrative needs of institutions.

Reporting Disbursements, Adjustments, and Cancellations

Statute: None.

Current regulations: Sections 685.301(e) and 686.37(a) require an institution to submit a record to the Department for the initial disbursement of a Direct Loan or TEACH Grant no later than 30 days following the date of that disbursement. In addition, an institution must submit subsequent records for disbursements, adjustments, and cancellations of these program funds no later than 30 days following the date of those actions. However, § 690.83(a)(2) of the Federal Pell Grant regulations provides that an institution submits Payment Data in accordance with procedures established by the

Secretary through publication in the **Federal Register.**

Proposed regulations: The proposed regulations in §§ 685.301(e) and 686.37(b) would adopt the current Federal Pell Grant reporting requirements. Also, the definition of the term "Payment Data" would be added to the Direct Loan and TEACH Grant program regulations in §§ 685.102(b) and 686.2(b), respectively.

Reasons: The proposed regulations would harmonize the reporting requirements for the Federal Pell Grant, TEACH Grant, and Direct Loan programs and provide flexibility to the Secretary to modify the requirements to take advantage of changing technology and improved business processes.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, we have determined this proposed regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action and have determined that the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations are needed to implement provisions of the HEA, as amended by the HEOA, particularly related to programs that prepare students for gainful employment, incentive compensation, satisfactory academic progress policies, and verification of information on student aid applications which require the development of new or revised policies and disclosures for institutions participating in Federal student assistance programs. These regulations also would implement changes made by the HEOA to provisions related to ability to benefit options.

Many regulatory provisions were included in this NPRM because of the length of time since they had been updated or the provisions' relationship to significant developments, such as the Department's FAFSA simplification initiative. In the following areas, the Secretary has exercised limited discretion in including topics in these proposed regulations:

Definition of High School Diploma (§ 668.16(p)): The proposed regulations would require institutions to demonstrate the capability to adequately administer the program by developing and following procedures to evaluate the validity of a student's high school completion. A high school diploma is an essential factor in determining an institution's participation in or a student's eligibility for assistance under the title IV, HEA programs, but the term is not defined anywhere in the HEA or its implementing regulations. Under proposed § 668.16(p), institutions would have to verify a student's high school completion if the institution or the Secretary has reason to believe a student's diploma is not valid or is not from an entity that provides secondary school education. This proposed provision is not intended to create a requirement to collect high school diplomas from all students. Rather, it allows operational flexibility so institutions can choose the best approach to make inquiries when warranted. To assist in this process, the Department is working to implement changes in the FAFSA. Specifically, beginning in 2011–2012, students will be required to list the name of their secondary school and the State that issued their diploma when completing their FAFSA. In addition, the Department plans to issue guidance to institutions on developing and following procedures for evaluating the validity of high school diplomas through the Federal Student Aid Handbook or other means.

Ability to Benefit (§§ 668.32 and 668.141 through 668.156): Students without a high school diploma or its equivalent may become eligible for title IV, HEA program funds if they can prove their ability to benefit from the planned education by taking Department-approved ability to benefit tests or completing college coursework. The current regulations specify the criteria and procedures for approval of ATB tests, the requirements for independent administration of approved tests, the requirements for maintaining the Secretary's approval of ATB tests, and the procedures for the Secretary's approval of alternate State processes.

As discussed in the ability to benefit section of this NPRM, the proposed regulations would update the procedures and requirements related to the administration and suitability of ability to benefit tests to ensure the security of the test, perform an analysis of test irregularities, take corrective action when test irregularities occur, report the names of decertified test administrators to the Secretary, and to handle testing of non-native speakers of English and individuals with disabilities. Several defined terms would be modified or added to clarify the regulations, including the terms *assessment center, independent test administrator, test, test administrator,* and *test publisher.*

The proposed regulations related to application for test approval would consolidate requirements for test publishers and States submitting tests for approval because the processes have common elements. Under the proposed regulations, test publishers and States would be required to show that their tests are normed using a contemporary sample that is representative of people with a high school diploma instead of people beyond the age of compulsory school attendance. They would be required to submit a description of their test administrator certification process that indicates how they will determine that a test administrator has the necessary training, knowledge, skills, and integrity to test students in accordance with requirements. Finally, they would be required to describe how they will determine that the test administrator has the ability and facilities to keep their tests secure against disclosure or release.

In addition, the proposed regulations would implement a new ability to benefit option added by the HEOA that allows students to satisfactorily complete six credit hours or 225 clock hours of college work applicable to a degree or certificate offered by the institution to prove ability to benefit. As described in the *Reasons* section related to this provision, the Department took into consideration extensive discussions at the negotiated rulemaking sessions in

developing this proposed regulatory provision. One issue discussed was whether the hours needed to be earned need to be within the program in which the student planned to enroll and for which the student applied to receive title IV, HEA program funds. Some negotiators believed that, if the coursework were not earned in the program the student planned to enroll, it might not be rigorous enough, and the provision would not be effective as a means of demonstrating the student's ability to benefit from the program in which they intend to enroll. The Department agreed with other non-Federal negotiators, who contended that the statutory language did not impose this kind of limitation and that students often change their mind as to the specific program of enrollment so the simplest approach to the provision would be best. The Department also noted that the proposed provision would be a financial aid requirement, not an admissions criterion, and that an institution could have a policy that it does not admit any students who do not have a high school diploma or the equivalent.

Finally, the negotiators questioned whether a student who established student eligibility under one of the ATB provisions could be paid for the payment period in which eligibility was established. The Department's position is that a student who establishes eligibility by passing an ATB test during a payment period may be paid for the entire payment period, but that a student who establishes eligibility through coursework may not be paid for the payment period during which the student took the requisite coursework because eligibility would not be established until the payment period was over.

Misrepresentation of Information to Students and Prospective Students (§§ 668.71 through 668.75): The Secretary recognizes that choosing a college or job training program is an increasingly important and high-stakes decision for students, and the availability of accurate information about institutions is crucial. Section 487 of the HEA and current regulations prohibit any substantial misrepresentation made by an institution regarding the nature of its educational program, its financial charges, or the employability of its graduates.

The Department proposes to strengthen regulatory enforcement authority against eligible institutions that engage in substantial misrepresentations. The proposed regulations would restructure § 668.71 so that paragraph (a) describes the actions the Secretary may take if the Secretary determines that an eligible institution has engaged in substantial misrepresentation. These actions would include revocation of the participation agreement, limitations on title IV, HEA participation, denial of participation applications, or initiation of proceedings against the institution.

The proposed regulations would provide additional guidance to institutions to ensure that marketing materials and statements are an accurate representation of the institution. The proposed definition of *misrepresentation* would restate the current definition of the term (*i.e.,* that misrepresentation is any false, erroneous, or misleading statement made not only by the eligible institution), but it would also clarify that the term includes any false, erroneous, or misleading statement made by one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement. Moreover, we would clarify in the definition of *misrepresentation* that it may be made directly or indirectly to a student or a member of the public in written, oral, visual, or other form.

The proposed amendments in subpart F of part 668 would add further detail to the categories of misrepresentation described in the current regulations prohibiting misrepresentation. In proposed § 668.72, which describe the types of false, erroneous, or misleading statements about an institution's educational program that would be prohibited as misrepresentations, we would expand the list of prohibited misrepresentations to include false, erroneous, or misleading statements relating to the following: Institutional, programmatic, or specialized accreditation; conditions for acceptance of transfer credits; whether completion of a course of instruction qualifies students to take licensing examinations or meet other additional conditions required for employment in the field for which the program is represented to prepare students; requirements to complete the course of study and conditions that would lead to termination of enrollment; the availability of unsolicited testimonials or endorsements; the subject matter, content of the course of study, and facts about the degree, certificate, or other completion document; and whether the degree to be given has been authorized by the appropriate State educational agency.

Current § 668.73 describes prohibited false, erroneous, or misleading statements related to the cost of the program and financial aid that is available to students. Proposed § 668.73 would expand the categories to include the cost of the program and the institution's refund policy if a student does not complete the program; the availability of any financial assistance offered to students, including a student's loan repayment responsibility regardless of program completion or subsequent employment; and the student's right to apply for or reject any particular type of financial aid or other assistance. The Department agreed with non-Federal negotiators that students who enroll in a program should have specific knowledge of the cost of the program, its refund policy, and financial aid options.

Current § 668.73 describes what constitutes misrepresentation related to the employability of an institution's graduates and these prohibitions would be retained. Proposed § 668.73 would prohibit false statements regarding an institution's knowledge of current or likely future conditions, compensation, or employment opportunities for its graduates. Misrepresentations relating to whether employment is being offered by the institution or that a talent hunt or contest is being conducted would also be prohibited. In addition, institutions would be prohibited from making false statements about other requirements that are generally needed in order to be employed in certain fields. Negotiators acknowledged that students need to be informed about employment prospects when considering postsecondary program options, but were concerned about the ability to provide accurate information given the economic environment and timeframes involved.

Current § 668.75 describes the Department's procedures for reviewing allegations or complaints regarding misrepresentation claims. The Department proposes removing § 668.75 as these procedures have not been used to take enforcement actions against institutions for making substantial misrepresentations. The Department has used its other administrative remedies to take the appropriate actions against institutions found to have engaged in misrepresentation. The proposed regulations would create a new § 668.75 that would prohibit an institution from suggesting that its participation in title IV, HEA programs represents a Departmental endorsement of the quality of its educational programs.

Incentive Compensation (§ 668.14(b)): Section 487(a)(20) of the HEA requires that the title IV, HEA program participation agreement prohibit an institution from making any

commission, bonus, or other incentive payments based directly or indirectly on success in securing enrollments or financial aid to any persons or entities involved in student recruiting or admissions activities, or in making decisions about the award of student financial assistance. This statutory prohibition does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal financial assistance. Current regulations to implement HEA Section 487(a)(20) specify twelve types of activities and arrangements that do not violate the prohibition on incentive payments to an institution's employees based on success in securing enrollments. The first safe harbor explains the conditions under which an institution may adjust compensation without that compensation being considered an incentive payment. The twelve safe harbors describe the conditions under which payments that could potentially be construed as based upon securing enrollments or financial aid are nonetheless not covered by the statutory prohibition. As described in greater detail in the *Reasons* section related to this provision, the safe harbors under the existing regulations dealt with adjustments to employee compensation, enrollments in programs not eligible for title IV, HEA program funds, contracts to provide training, profit-sharing bonus plans, compensation based upon program completion, pre-enrollment activities, managerial and supervisory employees, token gifts, profit distributions, Internet-based activities, and payments to third parties.

The proposed regulations would eliminate these safe harbors in response to student and advisor complaints about aggressive sales tactics from some institutions, institutions' concerns that a lack of clear guidance made it difficult to be confident of compliance, and the Department's experience that unscrupulous actors routinely rely on the safe harbors to circumvent the intent of section 487(a)(20) of the HEA. The regulations proposed by the Department would eliminate the safe harbors and prohibit incentive compensation linked to enrollments for employees engaged in recruitment, admissions, or financial aid activities. Institutions would be able to make merit-based adjustments that are not based on securing enrollments or the award of financial aid. The clarifying remarks about the current safe harbors in the preamble to this NPRM describe the potential for non-compliant conduct to be protected by the safe harbors. The proposed regulations would require institutions to focus on two questions when evaluating employee bonus or incentive payments: (1) Whether the payment is based on success in securing enrollments; and (2) whether the payment is an award of a sum of money. If the answer to each question is yes, the incentive or bonus payment would not be permitted. Non-Federal negotiators who agreed with the Department supported the elimination of the safe harbors as a way to reduce non-compliance and to make the regulations more consistent with the statute. Other non-Federal negotiators objected that the safe harbors were needed to explain an unclear law and to provide boundaries so institutions do not unintentionally run afoul of the regulations. As discussed in the *Regulatory Alternatives Considered* section below, negotiations about incentive compensation and safe harbors did not lead to agreement.

State Authorization as a Component of Institutional Eligibility (§§ 600.4(a)(3), 600.5(a)(4), 600.6(a)(3), and 600.9): To participate in the title IV, HEA student aid programs, an institution must be legally authorized to provide a postsecondary educational program within the State in which it is located. Current regulations do not define or describe the statutory requirement that an institution must be legally authorized in a State. State legal authorization can be granted through a charter, license, or other written document issued by an appropriate agency or State official and may be provided by a licensing board or educational agency. Some States have deferred approval of educational institutions to accrediting agencies or have exempted from State authorization requirements a subset of institutions. Since accrediting agencies generally require that an institution be legally operating in the State, the Department was concerned that the checks and balances provided by the separate processes of accreditation and State legal authorization were being undermined. The different requirements for authorization as an educational institution allow some institutions to move from State to State for less oversight. There was also concern over the Department's existing policy that an institution was authorized by a State by virtue of the State's decision not to have any oversight over the institution. As discussed in the *Reasons* section related to this provision, the recent lapse in the existence of California's Bureau for Private Postsecondary and Vocational Education exemplified the weakness of this policy in ensuring appropriate oversight of Federal programs.

The proposed regulations would clarify what constitutes State authorization for participation in title IV, HEA programs. According to the Department's proposal, legal authorization is represented by a charter, license, or other document from a State agency or State entity that specifically grants the authority to operate postsecondary educational programs, including those leading to a degree or certificate. The State authorization must be subject to adverse action by the State and the State must have a process to review and act on complaints about an institution. An institution would also be considered legally authorized in a State if the institution were authorized to offer programs beyond secondary education by the Federal Government or an Indian Tribe as that term is described in 25 U.S.C. 1802(2) or if it were exempt from State authorization as a religious institution under the State constitution. The proposed regulations also would require a State to notify students of the contact information for filing complaints with an institution's accreditor and State licensing agency.

Gainful Employment (§§ 600.2, 600.4, 600.5, 600.6, 668.6, and 668.8): The Department intends to begin collecting information on completers of programs that, by law, must lead to gainful employment in a recognized occupation. The proposed new requirement would enable the Department to further evaluate and monitor the outcomes of these programs.

Under proposed § 668.6(a), an institution would annually submit information about students who complete a program that leads to gainful employment in a recognized occupation. That information would include, at a minimum, identifying information about each student who completed a program, the CIP code for that program, the date the student completed the program, and the amounts the student received from private educational loans and institutional financing plans. In addition, under proposed § 668.6(b), an institution would be required to disclose on its Web site information about (1) the occupations that its programs prepare students to enter, along with links to occupational profiles on O*NET, (2) the on-time graduation rate of students entering a program, (3) the cost of each program, including costs for tuition and fees, room and board, and other institutional costs typically incurred by students enrolling in the program, such as books and supplies, (4) beginning no later than

June 30, 2013, the placement rate for students completing each of those programs, as determined under § 668.8(g) or a State-sponsored workforce data system; and (5) the median loan debt incurred by students who completed each program in the preceding three years, identified separately as title IV, HEA loan debt and debt from private educational loans and institutional financing plans.

Definition of a Credit Hour (§§ 600.2, 602.24, 603.24, and 668.8): Credit hours are used to measure degree completion and award title IV, HEA aid, but under current regulations there is no commonly accepted definition of a credit hour. The increased availability of weekend, evening, and distance education programs complicates the measurement of credit hours by seat time in the definitions and conversion formulas existing under current regulations. In current § 668.8(k) and (l), the regulations provide the formula that certain undergraduate programs must use to convert the number of clock hours offered to the appropriate number of credit hours, with each semester or trimester hour requiring at least 30 clock hours of instruction, and each quarter hour requiring at least 20 hours of instruction. An institution must use the formula to determine if a program is eligible for title IV, HEA purposes unless (1) the institution offers an undergraduate program in credit hours that is at least two academic years in length and leads to an associate degree, a bachelor's degree, or a professional degree or (2) each course within the program is acceptable for full credit toward an associate degree, bachelor's degree, or professional degree offered by the institution, and the degree offered by the institution requires at least two academic years of study.

The proposed regulations would add a definition of a credit hour, amend accrediting agency procedures for reviewing the assignment of credit hours, and revise the clock-to-credit hour conversion formulas. Under the proposed regulations, a credit hour is defined as a unit measuring the amount of work consisting of one hour of classroom or direct faculty instruction and at least two hours of student work outside the classroom over a set period of time. The required time period is fifteen weeks for a semester or trimester credit hour, ten to twelve weeks for a quarter hour of credit, and the equivalent amount of work for a different amount of time. For other activities that grant credit such as internships, studio work, and laboratory work, the institution must require at least a comparable amount of work to award credit hours. For programs for which the provisions above are not appropriate, the institution must establish reasonable equivalencies as represented by learning outcomes for the amount of work required in the definition of a credit hour.

The credit hour was developed as part of a process to establish a standard measure of faculty workloads, costs of instruction, and rates of educational efficiencies as well as a measure of student work for transfer students. A standard measure will provide increased assurance that a credit hour has the necessary educational content to support the amounts of Federal funds that are awarded to participants in Federal funding programs and that students at different institutions are treated equitably in the awarding of those funds. During the negotiated rulemaking sessions, a few of the non-Federal negotiators were opposed to any proposal to define a credit hour because they believed that a definition would impinge upon an institution's ability to create innovative courses and teaching methods. Other non-Federal negotiators agreed with the Department that the proposed definition of a credit hour would provide sufficient flexibilities for institutions and supported keeping it in the proposed regulations. In response to these concerns, the proposed regulations were changed to allow institutions to establish reasonable equivalent measures of a credit hour in accordance with its accrediting agency's requirements and adopt alternative measures of student work. The proposed definition of a credit hour does not change the policy providing funding based only on credit hours that are the direct result of postsecondary student work and not Advanced Placement (AP) or International Baccalaureate (IB) programs, tests or testing out, life experience, or similar competency measures. No agreement was reached on this issue due to the belief of some non-Federal negotiators that a definition would limit an institution's ability to use alternative measures of student work.

In addition, the proposed regulations require accrediting agencies to review an institution's assignment of credit hours and determine that they comply with accepted practice in higher education. Accrediting agencies may use sampling or other methods in reviews of programs at institutions. The accrediting agency must take actions to address deficiencies identified in such a review and must inform the Secretary if it finds systemic noncompliance or significant noncompliance in one or more programs at an institution.

Finally, the proposed regulations would revise the clock-to-credit hour conversion process. Proposed § 668.8(l)(1) would modify existing clock hour to credit hour conversion formulas so a semester or trimester credit hour must include at least 37.5 clock hours of instruction and a quarter hour must include at least 25 clock hours of instruction. If an institution's process for determining credit hours has not been found deficient by the accrediting or State licensing agency, then the minimum clock hours of instruction can be reduced to 30 for semester and trimester programs and 20 for quarter programs as long as the combined instruction and work outside the class meets the longer requirements described above. With respect to the definition of an eligible program in § 668.8, the proposed regulations require that institutions demonstrate that students enroll in and graduate from the degree program. The proposed regulations also require a program to use clock hours when accrediting agencies determine that an institution's policies and procedures about credit hours are deficient or when completing clock hours is required for graduates to apply for a license or authorization to practice their intended occupation.

Written Agreements between Institutions of Higher Education (§§ 668.5 and 668.43): Under current regulations, two or more institutions may enter into agreements for students to continue receiving title IV, HEA funds when studying away from their "home" institution. These agreements fit into three categories: (1) consortium agreements between eligible institutions; (2) contractual agreements between an eligible institution and an ineligible institution; and (3) study abroad arrangements, which may involve a consortium or contractual agreement between two or more institutions. There is no requirement in either § 668.5 or 668.43 of the current regulations that institutions provide information on written arrangements to enrolled or prospective students.

The proposed regulations would address issues related to written agreements between institutions with common ownership, restrict agreements with ineligible institutions, and expand student notification requirements related to written agreements. The proposed regulations would redefine the home institution from the one that enrolls the student to the one that grants the degree or certificate. Proposed § 668.5(a)(2) would specify that if the institutions involved in a written agreement are controlled by the same individual, partnership, or corporation,

the institution that grants the degree must provide more than 50 percent of the educational program. This would address concerns that such agreements could be used to circumvent regulations governing cohort default rates and "90–10" provisions. For contractual agreements between an eligible institution and an ineligible institution, the proposed regulations would add a restriction that the ineligible institution has not had its certification to participate in title IV, HEA programs revoked or had its application for re-certification denied. The proposed regulations also would limit the portion of the education program that the ineligible institution could provide to less than 50 percent. The proposed regulations would also require institutions to provide information about written agreements to students. This information would need to include the portion of the program the home institution is not providing, estimated additional costs that would be incurred, the method of delivery for the portion of education outside the home institution, and the name and locations of the other institutions. During negotiations, the Department explained that the proposed disclosure requirements would apply to blanket, existing arrangements between or among institutions and not to individual, student-initiated written arrangements, or internships and externships.

Verification of Information Included on Student Aid Applications (§§ 668.52 through 668.61): Under current regulations, institutions are required to verify the application information of up to 30 percent of Federal financial aid applicants selected by the Secretary in a given award year. Institutions have expressed concern that this verification process is overly complicated and invasive for applicants' families.

Current subpart E of part 668 governs the verification and updating of the FAFSA information used to calculate an applicant's expected family contribution (EFC) as part of the determination of an applicant's need for student financial assistance. These proposed regulations would implement statutory changes to Part F of the HEA made by the HEOA and further align these regulations with enhancements that have been made to the application processing system. Based on the Department's review of current policies and procedures, the changes reflected in these proposed regulations would remove obsolete definitions, procedures, and references to programs and would include: (1) Describing institutional and applicant responsibilities for updating FAFSA information; (2) removing and refining definitions related to the FAFSA application; (3) codifying current policy that an institution must complete verification before exercising any authority under professional judgment; (4) removing the 30 percent cap on the number of applicants selected by the Secretary that an institution must verify in order to move towards a more targeted verification system; (5) restructuring the exclusions from verification section; (6) requiring any changes to a student's dependency status be updated throughout the award year, including changes in marital status; (7) replacing the five items that an institution currently verifies with a targeted verification process that is specific to each applicant selected as described in a **Federal Register** notice published annually by the Secretary; (8) codifying the Department's IRS Data Retrieval Process, which allows an applicant to import income and other data from the IRS into an online FAFSA; (9) updating the IRS deadline granted for extension filers; (10) clarifying when an institution is required to reverify the AGI and taxes paid by an applicant and his or her spouse or parents for individuals with an IRS tax filing extension; (11) expanding the information a tax preparer must provide on the copy of the filer's return that has been signed by the preparer; (12) describing in an annual **Federal Register** notice other documentation that an applicant must provide for the information that is selected for verification; (13) allowing interim disbursements when changes to an applicant's FAFSA information would not change the amount the applicant would receive under a title IV, HEA; (14) requiring all corrections to be submitted to the Secretary for reprocessing; (15) removing all allowable tolerances; (16) applying the cash management procedures for proceeds received from a Subsidized Stafford Loan or Direct Subsidized Loan on behalf of an applicant; and (17) describing the liability of an institution that disburses title IV, HEA aid to an applicant without receiving a corrected SAR or ISIR within an established deadline.

The proposed verification regulations would align the verification process with the effort to simplify the FAFSA and make it flexible enough to accommodate future changes while still ensuring that students who receive Federal aid funds are eligible. Institutions would be required to establish procedures that are consistent with these provisions. For example, an institution would be required to complete an applicant's verification before it could exercise its authority to change the applicant's cost of attendance or data items to calculate the expected family contribution. Applicants may be excluded from verification if they do not receive aid under title IV, HEA programs for reasons outside of verification questions, only receive unsubsidized aid, or transfer from another institution where verification was already performed as proven by a letter with ISIR number from that institution. The specific items to be verified under the proposed regulations would be published by the Secretary in the **Federal Register** for each award year. The regulations would also allow for information to be verified as having come from the IRS instead of requiring an applicant's tax form.

Satisfactory Academic Progress (§§ 668.16(e), 668.32(f), 668.34): To be eligible for Federal financial aid under title IV of the HEA, students must make satisfactory academic progress ("SAP") and institutions must have a published policy to monitor that progress. As detailed in the *Satisfactory Academic Progress* section of this preamble, the SAP policy must include grade-based and time-related standards, must apply consistently to students within categories, must be as strict for title IV, HEA aid recipients as for non-recipients in the same educational program, must describe the circumstances under which a student may appeal a determination that the student is not making satisfactory academic progress, and must require an institution to review a student's academic progress at the end of each year, at a minimum. The proposed regulations would restructure the satisfactory academic progress requirements so that § 668.16(e) would be revised to include only the requirement that an institution establish, publish, and apply satisfactory academic progress standards. The remainder of § 668.16(e) would be moved to proposed § 668.34 so that that provision would contain all of the required elements of a satisfactory academic progress policy as well as how an institution would implement such a policy.

All of the policy elements in the current regulations under §§ 668.16(e) and 668.34 would be combined in proposed § 668.34. The timing provisions would maintain the maximum timeframe of 150 percent of the published length of the educational program whether measured in credit hours or clock hours (reflected in current § 668.16(e)(2)(ii)(A)). SAP

policies would need to describe how the institution treats withdrawals, course repetitions, and transfers from another institution. For educational programs greater than two academic years, students must have a GPA of "C" or its equivalent at the end of the second year or have academic standing that is consistent with the institution's graduation requirements. The proposed regulations would not require institutions to permit students to appeal. An institution that permits appeals, however, would be required to describe the appeals process in its satisfactory academic progress policy. Under proposed § 668.34(a)(9)(ii), a student would be permitted to file an appeal based on the death of a relative, an injury or illness of the student, or other special circumstances. Under proposed § 668.34(a)(9)(iii), a student would be required to submit, as part of the appeal, information regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that would allow the student to demonstrate satisfactory academic progress at the next evaluation. If an institution does not permit appeals, the satisfactory academic policy must describe how a student may regain eligibility for assistance under the title IV, HEA programs. Proposed § 668.34(a)(11) would require that an institution's policy provide for notification to students of the results of an evaluation that impacts the student's eligibility for title IV, HEA program funds.

Proposed § 668.34(a)(8) would require institutions that use "financial aid warning" and "financial aid probation" statuses in connection with satisfactory academic progress evaluations to describe these statuses and how they are used in their satisfactory academic progress policies. The term *financial aid warning* would be defined as a status conferred automatically and without action by a student, while the term *financial aid probation* would be defined as a status conferred after a student has submitted an appeal that has been granted. In order to encourage institutions to provide additional support to students in a timely manner, the proposed regulations would permit institutions that review student progress at the end of each payment period to place students on financial aid warning for one payment period. Proposed § 668.34(a)(8)(ii) would make clear that an institution with a satisfactory academic progress policy that includes the use of the financial aid probation status could require that a student on financial aid probation fulfill specific terms and conditions, such as taking a reduced course load or enrolling in specific courses.

Recent questions from institutions and reviews of institutional satisfactory academic progress policies have suggested that it is possible for an institution to have a policy that meets all of the current regulatory criteria, but due to use of automatic probationary periods, permits students to receive aid for as long as 24 months even though they are not meeting the institution's satisfactory progress standards. The proposed regulations are designed to implement a more structured, comprehensive, and consistent approach to development and implementation of institutional satisfactory progress policies.

Retaking Coursework (§ 668.2): The proposed regulations would amend the definition of "full-time student" in § 668.2 to allow repeated coursework to count towards a student's enrollment status in term-based programs. Currently, students in term-based credit hour programs may get paid for retaking courses as long as the credits are in addition to and not a replacement for previously earned credits, and the student meets the institution's overall satisfactory academic progress standards. Non-Federal negotiators expressed concern that institutions were unable to track this information without a burdensome program audit of each individual student. The Department agreed and proposed to amend the definition of full-time to allow such credits to count toward enrollment status and eligibility for payment under the title IV, HEA programs. Tentative agreement was reached on this issue.

Return of Title IV, HEA Program Funds: Term-based Programs with Modules or Compressed Courses (§ 668.22(a) and (f)): Current regulations related to the return of title IV, HEA program funds when a student withdraws do not address the issue of student withdrawals from programs with courses in modules or compressed courses. Under current regulations, when a student withdraws from an institution, the institution must determine the amount of title IV, HEA aid the student has earned for the period the student attended. For term based programs with several courses offered concurrently for the length of the term, the student may remain in one course and not be considered as withdrawn. Department policy equates the completion of one course or module, within a term in which a student is expected to continue attendance in additional coursework, to the completion of one traditional course in a program with courses taken concurrently over the full term. As a result of this policy, a student who attends a week or two of a fifteen week term and completes a module will not be determined to have withdrawn, so the student or the institution can keep aid intended to cover fifteen weeks.

The proposed regulations offer an opportunity to review this policy. Under the proposed regulations, students would be considered withdrawn as follows: In programs measured in credit hours, if the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing. For credit hour programs, the calculation of the percentage of the payment period or period of enrollment completed would take into account the total number of calendar days that the student was scheduled to complete prior to withdrawing without regard to any course completed by the student that is less than the length of the term. In the case of a program that is measured in clock hours, the student would be considered to have withdrawn if he or she does not complete all of the clock hours in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing.

Return of Title IV, HEA Program Funds: Taking Attendance (§ 668.22(b)): In order to implement provisions related to the return of funds when a student withdraws, institutions must be able to determine the date a student is considered to have withdrawn. Current regulations specify distinctions between institutions required to take attendance by an outside agency and those institutions that are not required to take attendance. For institutions required to take attendance, the date of withdrawal is determined from attendance records. For other institutions, the date of withdrawal may be the date the student initiated the withdrawal process, the date the student provided official notice of intent to withdraw, the midpoint of the payment period if the student gave no notice of withdrawal, or, in lieu of the above, the last day of the student's attendance at an academically-related activity. The lack of precision for a withdrawal date for these institutions potentially allows the abuse of Federal funds.

The proposed regulations would require that if an institution has attendance records, as required by an outside entity or the institution itself, the attendance records should be used for the withdrawal date. Current nonregulatory guidance regarding an institution that is required to take

attendance, or requires that attendance be taken, for a limited period of time, such as for the first two weeks of courses or up until a "census date" would be incorporated. These proposed provisions would specify that an institution must use its attendance records to determine a withdrawal date for a student who withdraws during that limited period, and a student who subsequently stops attending during the payment period would be treated as a student for whom the institution was not required to take attendance. The proposed regulations would also incorporate current guidance that if an institution is required to take attendance, or requires that attendance be taken, on a specified date to meet a census reporting requirement, the institution is not considered to take attendance.

Non-Federal negotiators pointed out that having to determine a more exact date of withdrawal, as opposed to assuming a 50 percent point, would be more burdensome. They also noted that attendance does not necessarily accurately reflect academic activity, and also stated that they cannot ensure that faculty members will keep accurate and up-to-date attendance records. The Department recognizes these concerns, but maintains that the best date available should be used to determine the amount of time that a student was in attendance to support the fair treatment of students and avoid the potential for fraud and abuse of Federal funds.

Disbursements of Title IV, HEA Program Funds (§ 668.164(i)): As described in the preamble to this NPRM, current regulations provide that an institution must disburse title IV, HEA program funds (except for FWS funds) on a payment period basis and establish requirements for crediting a student's account with Federal Pell Grant funds. Those requirements also apply to ACG, National SMART Grant, TEACH Grant, FSEOG, Federal Perkins Loan, Direct Loan, and FFEL program funds. Current regulations permit institutions to disburse Pell Grants in a manner that best meets the needs of the student, and the proposed regulations would add provisions to specifically limit delays in disbursements.

Students who do not receive Pell Grants in a timely manner may resort to taking loans or using personal funds, go without needed items such as books, or withdraw from school for financial reasons. The proposed regulations will require institutions to provide a way for a Federal Pell Grant eligible student to obtain or purchase required books and supplies by the seventh day of a payment period under certain conditions. The proposed regulations would limit the required early payment of anticipated credit balances to Federal Pell Grant-eligible students who have met all disbursement requirements 10 days before the first day of class for the payment period, and apply only if the student will have a title IV, HEA credit balance. The proposed language gives institutions the flexibility to determine the method by which they provide funds to students, which can include a book voucher or crediting books to the student's institutional account. The proposed regulations would not change existing liability if the student never begins attendance in any classes, leaving it with the institutions and not the students.

The following section addresses the alternatives that the Secretary considered in developing these proposed regulations. These alternatives are also discussed in more detail in the *Reasons* sections of this preamble related to the specific regulatory provisions.

Regulatory Alternatives Considered

Definition of High School Diploma (§ 668.16(p)): Initially, the Secretary proposed regulatory language that that would have required institutions to maintain three listings of secondary schools (schools that are acceptable, schools that are unacceptable, and schools that require further evaluation) based on regulatory criteria for determining the acceptability of their credential for title IV, HEA program purposes. Non-Federal negotiators objected that K–12 issues should be handled at the State level and that requiring institutions to maintain such lists was too great an administrative burden. Based on these concerns, the Department agreed to assume responsibility for establishing and maintaining a list of valid secondary schools, and tentative agreement was reached on this provision.

Incentive Compensation (§ 668.14(b)): As discussed in the *Incentive Compensation* section of the preamble, non-Federal negotiators proposed and counter-proposed draft regulatory language related to incentive compensation for the Department to consider. In turn, the Department addressed some of the isues raised in the negotiations. For example, the Department made clear that any individuals who are engaged in any student recruitment or admissions activity or in making decisions about the award of student financial aid—including those in supervisory positions—would be impacted by these proposed provisions. Moreover, the Department clarified that the following activities would not necessarily be prohibited under the proposed regulations: the use of volume-driven shared services, contracts for financial aid services based on a headcount basis, third party Internet marketing activities paid based on clicks and not enrollments, and token gifts for contacts not linked to enrollments.

The Department agreed to include a definition of the term *commission, bonus, or other incentive payment* in the proposed § 668.14(b)(22)(iii)(A) that is unambiguous in prohibiting payment of any money or item of value on the basis of direct or indirect success in securing enrollments or the award of financial aid.

Several negotiators were concerned that under the proposed regulations, institutions would be prohibited from paying merit-based increases to their financial aid or admissions personnel. The Department contends that an institution could use a variety of standard evaluative factors as the basis for such an increase; however, it would not be permitted to consider the employee's success in securing student enrollments or the award of financial aid or related institutional goals based on that success among those factors. One negotiator felt strongly that it was critical to use the word "solely," or some other modifier, to limit the prohibition in proposed § 668.14(b)(22)(i). This negotiator said that the use of the word solely, or some other modifier, would be consistent with the use of that term solely in the first safe harbor reflected in current § 668.14(b)(22)(ii)(A). As discussed earlier in this preamble, given the Department's experience with how the first safe harbor in current § 668.14(b)(22) has been abused, the Department does not believe that such a construction is warranted. In addition, some negotiators advocated strongly for an institution's ability to pay bonuses on the basis of students who complete their program. The Department believes that these regulations must clearly reinforce the statutory provision and exclude the possibility of basing any portion of an adjustment on success in securing student enrollments or financial aid awards. No agreement was reached on incentive compensation.

State Authorization as a Component of Institutional Eligibility (§§ 600.4(a)(3), 600.5(a)(4), 600.6(a)(3), and 600.9): The Department clarified aspects of this provision in response to concerns expressed by non-Federal negotiators. Federal or Indian Tribe authorization was included, and the ability of State entities other than State Agencies such

as State legislatures and State Constitutions to grant authorization was made explicit. Provisions concerning monitoring the quality of educational programs and financial responsibility were removed as unnecessarily duplicative of Federal or accrediting agency actions. The *Reasons* section of the preamble details the development of this provision. Some negotiators remained concerned that these proposed regulations would allow States to continue to rely on an institution's status with an outside entity for State legal authorization and that there would no longer be a requirement that a State review an institution's fiscal viability. No agreement was reached on this provision.

Written Agreements between Institutions of Higher Education (§§ 668.5 and 668.43): During negotiated rulemaking, the Department's initial proposal was to require accrediting or State agency review of written agreements between institutions of higher education if the portion of an educational program provided under the written arrangement with another eligible institution, or with a consortium of eligible institutions, were more than 50 percent. Subsequently, several non-Federal negotiators explained that, contrary to the Department's initial understanding, it was not common practice for accrediting agencies to review a significant portion of written arrangements, even those between or among eligible institutions. After hearing concerns about increased workloads and impeded development of innovative programs, the Department agreed to reconsider its draft regulatory language and to focus the proposed changes more narrowly on the types of institutions and situations where problems had been identified. The Department subsequently proposed limiting the portion of an educational program that could be provided under a written arrangement between two eligible for-profit institutions under common ownership or control to 25 percent. After negotiations about the appropriate percentage and the institutions to which it should apply, the Department agreed to revise the proposed language to refer to eligible institutions that are owned or controlled by the same individual, partnership or corporation and to specify that the institution that grants the degree or certificate must provide 50 percent or more of the educational program. When presenting this draft regulatory language to the negotiated rulemaking committee, the Federal negotiator explained that it is not the Department's intention for either public or private, non-profit institutions to be covered by the proposed language as such institutions are not owned or controlled by other entities and generally act autonomously.

Return of Title IV, HEA Program Funds: Term-based Programs with Modules or Compressed Courses (§ 668.22(a) and (f)): During the negotiation sessions, non-Federal negotiators expressed concern that the proposed regulations would penalize students and burden institutions with a significant increase in the number of return to title IV, HEA funds calculations. The non-Federal negotiators presented three options to address their concerns. The first option was to exclude students who completed the same enrollment status for which they were originally paid title IV, HEA aid. The second option was to exclude students who completed 50 percent of the credits that were awarded and 50 percent of the projected enrollment time. The third option was to only apply the proposed regulations to compressed coursework that was shorter than a "to-be-determined" percent of the payment period; the non-Federal negotiators did not reach agreement as to what the appropriate percentage should be. The Department appreciates the concerns expressed by the non-Federal negotiators, but continues to believe that the proposed changes are necessary to ensure the equitable application of these provisions for all students, regardless of the academic calendar of the programs that students are attending.

Disbursements of Title IV, HEA Program Funds (§ 668.164(i)): Some non-Federal negotiators stated that many institutions advance funds or issue vouchers that students use to obtain books and supplies, and that under current regulations, the institution risks losing the amount advanced if the student does not begin classes. For this reason, these non-Federal negotiators argued that in exchange for requiring an institution to advance funds or issue vouchers early in the payment period before the institution could establish student attendance, the student should be liable for returning the funds. In response to this concern, the Department drafted regulatory language to shift liability for this debt to students, but the proposal was rejected. Other negotiators objected that student liability for this debt might preclude reenrollment or exacerbate predatory practices at some institutions where students were promised an advance of funds simply for enrolling in programs. As a result of these negotiations, the proposed regulations keep liability at the institutional level.

Benefits

Benefits provided in these proposed regulations include updated administrative procedures for the Federal student aid programs; a definition and process to determine the validity of a student's high school diploma; enhanced reliability and security of ATB tests; an additional option for students to prove ability to benefit by successfully completing college coursework; increased clarity about incentive compensation for employees at institutions of higher education; reporting of information on program completers for programs leading to gainful employment, including costs, debt levels, graduation rates, and placement rates; the establishment of minimum standards for credit hours; greater transparency for borrowers participating in the programs offered under written agreements between institutions; greater detail about misrepresentation in marketing and recruitment materials; a more structured and consistent approach to the development and implementation of satisfactory academic progress policies; updated and simplified procedures for verifying FAFSA applicant information; updated regulations related to the return of title IV, HEA funds when a student withdraws; harmonization of Direct Loan and Teach Grant disbursement procedures with other title IV, HEA programs; and revised disbursement requirements to ensure Federal Pell Grant recipients can access funds in a timely manner. It is difficult to quantify benefits related to the new institutional and other third-party requirements, as there is little specific data available on the effect of the provisions on borrowers, institutions, or the Federal taxpayer. The Department is interested in receiving comments or data that would support a more rigorous analysis of the impact of these provisions.

As discussed in greater detail under *Net Budget Impacts,* these proposed provisions result in net costs to the government of $0.0 million over 2011–2015.

Costs

Several of the proposed regulations would require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. Institutions would also be required to update existing policies and procedures related to satisfactory academic progress. Other proposed regulations generally would require discrete changes in specific parameters associated with existing requirements—such as changes to title

IV, HEA disbursement procedures, updated processes for verification of FAFSA application information, clearer standards for the return of title IV, HEA program funds following a student's withdrawal, and updated definitions and processes for confirming the validity of a high school diploma —rather than wholly new requirements. Accordingly, entities wishing to continue to participate in the title IV, HEA programs have already absorbed many of the administrative costs related to implementing these proposed regulations. Marginal costs over this baseline are primarily due to new procedures that, while possibly significant in some cases, are an unavoidable cost of continued program participation.

The Department would welcome comment on the analysis presented here. We also welcome analyses that others have done on this proposal which we will consider as we assess the impact of the proposed regulation as we prepare to publish it in final form later this year.

In assessing the potential impact of these proposed regulations, the Department recognizes that certain provisions are likely to increase workload for some program participants. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of this preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these proposed changes are estimated to increase burden on entities participating in the Federal Student Assistance programs by 5,756,506 hours. Of this increased burden, 3,596,111 hours are associated with institutions, 9,454 hours with ATB test publishers and ATB test administrators. An additional 2,150,941 hours are associated with borrowers, generally reflecting the time required to read new disclosures or submit required information.

As detailed in the *Paperwork Reduction Act of 1995* section of this NPRM, the additional paperwork burden is attributable to several provisions, with the greatest additional burden coming from the revised FAFSA verification process. Of the 3.6 million hours of additional burden associated with institutions, 1.8 million relate to FAFSA verification. While the average number of items to be verified is expected to decrease, the growth in the number of applicants and the requirement to submit all changes to the Department is estimated to increase overall burden. Other paperwork burden increases include 729,725 hours related to academic reviews and development of academic plans under proposed § 668.34, 425,075 hours related to calculation of unearned amounts when a student withdraws under proposed § 668.22, 289,005 hours associated with updating marital and dependency status under proposed § 668.55, 105,377 hours related to the gainful employment reporting and disclosure provisions in proposed § 668.6, 48,391 hours related to ATB test administration and reporting under proposed §§ 668.151 and 668.152, 67,870 hours associated with disclosure of information about an institution's written agreements in proposed § 668.43, 54,337 hours related to disbursement of funds to Pell Grant recipients for books and supplies under proposed § 668.164, 21,982 hours related to the development of a high school diploma validation process and the validation of questionable diplomas under proposed § 668.16, and 18,349 hours related to clock hour to credit hour conversion and the inclusion of outside work for program eligibility under proposed § 668.8. For ATB test publishers and administrators, the increased burden of 9,454 hours comes from the reporting, recordkeeping, test anomaly analysis and other requirements in proposed §§ 668.144, 668.150, and 668.151. The increased burden on students is concentrated in the FAFSA verification and status updating processes with 1,604,800 hours under proposed §§ 668.55, 668.56, and 668.59, with additional burden associated with the withdrawal process under § 668.22 and satisfactory academic progress policies under § 668.34.

Thus, for the specific information collections listed in the Paperwork Reduction Act section of this notice, the total cost estimates are as follows: For Information Collection 1845–0041, the total cost will be $65,913,938, for Information Collection 1845–NEW2, the total cost attributable to these regulatory changes will be $18,750,120, for Information Collection 1845–0022, the total cost will be $13,900,328, for Information Collection 1845–NEW1, the total cost attributable to the regulatory changes will be $2,182,885, for Information Collection 1845–0049, the total cost will be $1,097,588, and for Information Collection 1845–NEW3, the total cost attributable to these regulatory changes will be $1,012,461.

The monetized cost of this additional burden, using wage data developed using Bureau of Labor Statistics available at *http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $102,677,320, of which $67.23 million is associated with institutions, $0.18 million with ATB test publishers and administrators, and $35.28 million with borrowers. For institutions, test publishers, and test administrators, an hourly rate of $18.63 was used to monetize the burden of these provisions. This was a blended rate based on wages of $15.51 for office and administrative staff and $36.33 for managers, assuming that office staff would perform 85 percent of the work affected by these regulations. For the gainful employment provision, an hourly rate of $20.71 was used to reflect increased management time to establish new data collection procedures associated with that provision. For students, the first quarter 2010 median weekly earnings for full-time wage and salary workers were used. This was weighted to reflect the age profile of the student loan portfolio, with half at the $457 per week of the 20 to 24 age bracket and half at the $691 per week of the 25 to 34 year old bracket. This resulted in a $16.40 hourly wage rate to use in monetizing the burden on students.

Given the limited data available, the Department is particularly interested in comments and supporting information related to possible burden stemming from any additional workload expected under the proposed regulations. Estimates included in this NPRM will be reevaluated based on any information received during the public comment period.

Net Budget Impacts

The proposed regulations are estimated to have a net budget impact of $0.0 million over FY 2011–2015. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

These estimates were developed using the Office of Management and Budget's (OMB) Credit Subsidy Calculator. (This calculator will also be used for re-estimates of prior-year costs, which will be performed each year beginning in FY 2009). The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is

discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these proposed regulations. That said, however, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence on the impact of these proposed regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources.* Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: Two-year proprietary institutions, two-year public and private not-for-profit institutions, freshman and sophomores at four-year institutions, juniors and seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category.

The Department estimates no budgetary impact for most of the proposed regulations included in this NPRM as there is no data indicating that the provisions will have any impact on the volume or composition of Federal student aid programs.

Assumptions, Limitations, and Data Sources

Impact estimates provided in the preceding section reflect a baseline in which the changes implemented in these proposed regulations do not exist. Costs have been quantified for five years. In general, these estimates should be considered preliminary; they will be reevaluated in light of any comments or information received by the Department prior to the publication of the final regulations. The final regulations will incorporate this information in a revised analysis.

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP); and data from a range of surveys conducted by the National Center for Education Statistics such as the 2008 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used. Data on administrative burden at participating schools, accreditors, test administrators, and third-party servicers are extremely limited; accordingly, as noted earlier in this discussion, the Department is particularly interested in receiving comments in this area.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers.

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers	$0
From Whom To Whom?	Federal Government to Student Loan Borrowers.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 601.30.)
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, *see* the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions that participate in title IV, HEA programs, ATB test publishers, and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define for-profit institutions as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000, and defines non-profit institutions as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000.

Data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 4,379 institutions participating in the Federal student assistance programs meet the definition of "small entities." The following table provides the distribution of institutions and students by revenue category and institutional control.

Revenue category	Public		Private NFP		Proprietary		Tribal	
	No. of schools	No. of students	No. of schools	No. of students	No. of schools	No. of students	No. of schools	No. of students
$0 to $500,000	43	2,124	103	13,208	510	38,774	.....	.....
$500,000 to $1 million	44	7,182	81	9,806	438	61,906	1	137
$1 million to $3 million	98	29,332	243	65,614	745	217,715	3	555
$3 million to $5 million	75	65,442	138	60,923	303	182,362	.....	.....
$5 million to $7 million	49	73,798	99	62,776	224	185,705	5	2,525
$7 million to $10 million	78	129,079	110	84,659	228	235,888	9	4,935
$10 million and above	*1,585*	*18,480,000*	*1,067*	*4,312,010*	*383*	*1,793,951*	*14*	*18,065*
Total	1,972	18,786,957	1,841	4,608,996	2,831	2,716,301	32	26,217

Approximately two-thirds of these institutions are for-profit schools subject to the disclosure and reporting requirements related to programs leading to gainful employment described in this NPRM. Other affected small institutions include small community colleges and tribally controlled schools. For these institutions, the new disclosure and administrative requirements imposed under the proposed regulations could impose some new costs as described below. The impact of the proposed regulations on individuals is not subject to the Regulatory Flexibility Act.

As discussed in the preamble to this NPRM, the proposed program integrity regulations are being developed to update administrative procedures for the Federal student aid programs and to ensure that funds are provided to students at eligible programs and institutions. Many of the provisions addressed in this NPRM modify existing regulations and requirements. For example, the proposed regulations on FAFSA verification would change the number of items to be verified but would not require the creation of a new process. The following table summarizes the estimated total hours, costs, and requirements applicable to small entities from these provisions.

	Reg. section	OMB Control No.	Hours	Costs
	668.6	1845–NEW1	82,637	1,711,818
Annual submission of private loan, CIP, and identifying data for completers by program	668.6(a)	.....	34,999	725,001
Report CIP codes for all attendees	.....	.....	37,138	769,317
Disclose occupational information, graduation rates, program placement rates, and program costs	668.6(b)	.....	10,500	217,500
	668.8	1845–0022	12,035	224,250
Determine if program is affected, evaluate amount of outside student work that should be included, and perform credit to clock hour conversion	.....	.....	.....	.....
	668.16	1845–0022	14,418	268,650
Develop a high school diploma validity process	668.16(p)	.....	13,106	244,208
Verify questionable diplomas	668.16(p)	.....	1,312	24,443
	668.22	1845–0022	278,807	5,195,005
Establish withdrawal date and calculate percentage of payment period or period of enrollment completed	.....	.....	.....	.....
	668.34	1845–NEW2	478,627	8,918,250
Review proposed regulations and implement changes to ensure compliance	668.34(a)	.....	11,234	209,316
Perform academic reviews at the end of each payment period	668.34(c)	.....	137,282	2,557,972
Develop academic plan for students who do not achieve satisfactory academic progress when reviewed at end of payment period	668.34(c)	.....	120,123	2,238,249
Perform academic reviews at institutions that do so annually	668.34(d)	.....	111,994	2,086,777
Develop academic plan for students who do not achieve satisfactory academic progress when reviewed annually	668.34(d)	.....	97,995	1,825,936
	668.43	1845–NEW2	44,516	829,465
Disclose information about written agreements	.....	.....	43,930	818,552
Make contact information for filing complaints to accreditor and State approval or licensing agency available to enrolled and prospective students	668.43(b)	.....	586	10,914
	668.55	1845–0041	189,558	3,532,041
Update household size throughout award year	.....	.....	170,603	3,178,843
Update marital status throughout award year	.....	.....	18,956	353,198
	668.57	1845–0041	401,411	7,479,487
Review verification responses for acceptable documentation	.....	.....	.....	.....
	668.59	1845–0041	802,822	14,958,975
Removes tolerances and requires institutions to report all changes to applicants' FAFSA information resulting from verification	.....	.....	.....	.....
Recalculate applicant's EFC if information changes from verification	.....	.....	.....	.....
	668.151	1845–0049	28,313	527,548
Keep records of individuals who take ATB tests and details about the administrator	668.151(g)(4)	.....	25,279	471,024
Keep documentation of individual's disability and testing arrangements provided	668.151(g)(5)	.....	3,034	56,524

	Reg. section	OMB Control No.	Hours	Costs
Maintain the scored ATB tests and collect and submit copies of completed ATB tests or a listing to the test publisher or State weekly	668.152	1845–0049	3,427	63,857
Provide a way for Pell Grant recipients to obtain or purchase required books and supplies by the 7th day of a payment period under certain conditions	668.164	1845–NEW3	35,640	664,073

To assess overall burden imposed on institutions meeting the definition of small entities, the Department developed a methodology using IPEDS data and the percentage of institutions with revenues below $7 million and all non-profit institutions, allocating approximately 66 percent of the paperwork burden to small institutions. Using this methodology, the Department estimates that the proposed regulations would increase total burden hours for these schools by 2.37 million, or roughly 541 hours per institution. Monetized using salary data from the Bureau of Labor Statistics, this burden is $44.4 million and $10,133, respectively. If calculated using the distribution of students from 2007–08, the share of the burden allocated to small institutions would be much lower at approximately 21 percent, resulting in an estimated burden of 186 hours and $3,510 per institution. Even the more conservative estimate of $10,133 represents 1 percent or less of the midpoint revenue for all but the lowest revenue category, for which it is 4 percent of midpoint revenue.

For institutions, an hourly rate of $18.63 was used to monetize the burden of these provisions. This was a blended rate based on wages of $15.51 for office and administrative staff and $36.33 for managers, assuming that office staff would perform 85 percent of the work affected by these regulations. For the gainful employment provision, an hourly rate of $20.71 was used to reflect increased management time to establish new data collection procedures associated with that provision. These rates are the same as those used for all institutions in the costs section of this analysis, reflecting the fact that the primary cost of meeting the paperwork burden is in additional labor and wages at small institutions should not be systematically higher than those at all institutions. The Department welcomes comments from institutions regarding the costs of meeting the additional burdens described in the *Paperwork Reduction Act* section of this NPRM.

Where possible, the Department has allowed institutions flexibility to establish processes to comply that fit the institution's administrative capabilities. For example, the requirement to distribute funds to Pell Grant recipients for books and supplies within 7 days of the start of the payment period allows institutions to use book vouchers or a credit to the student's account. The Department has also tried to allow more time to establish procedures for new data collections, such as the placement rate information required in the data collection related to gainful employment. While these timing provisions are available to all institutions, they should help small institutions have time for the necessary adjustments. Granting such extensions to all institutions is simpler to administer and provides additional certainty to institutions that will not have to anticipate if their revenues will fall below the small business threshold to get more time for compliance. Approximately 60 percent of the paperwork burden associated with these regulations comes in OMB 1845–0041 from updating FAFSA application information and reporting all changes resulting from verification. These updated requirements will help ensure eligible students receive aid. As detailed in the *Paperwork Reduction Act* section of this NPRM, the increase in burden associated with the FAFSA acceptable documentation provision is largely driven by the increase in student applicants since the burden was last calculated. The number of verifications is estimated to have increased from 3.0 million in 2002–03 to 5.1 million in 2008–09. Without the regulatory change estimated to reduce the number of items to be verified, the paperwork burden on small institutions in OMB 1845–0041 would increase by an additional 267,607 hours. Based on these estimates, the Department believes the proposed new requirements do not impose significant new costs on these institutions.

No alternative provisions were considered that would target small institutions with exemptions or additional time for compliance. Additional time or flexibility was granted to all institutions based on the nature of the provision and the data requested. The Secretary invites comments from small institutions and other affected entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Sections 668.6, 668.8, 668.16, 668.22, 668.34, 668.43, 668.55, 668.56, 668.57, 668.59, 668.144, 668.150, 668.151, 668.152, and 668.164 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Section 668.6—Gainful Employment

The proposed regulations would impose new requirements on certain programs that by law must, for purposes of the title IV, HEA programs, prepare students for gainful employment in a recognized occupation. For public and private nonprofit institutions, a program that does not lead to a degree would be subject to the eligibility requirement that the program lead to gainful employment in a recognized occupation, while a program leading to a degree, including a two-academic-year program fully transferrable to a baccalaureate degree, would not be subject to this eligibility requirement. For proprietary institutions, all eligible degree and nondegree programs would be required to lead to gainful employment in a recognized occupation, except for a liberal arts baccalaureate program under section 102(b)(1)(A)(ii) of the HEA.

The institution would be required under proposed § 668.6(a) to submit annually, information that would include, at a minimum, identifying information about each student who completed a program, the CIP code for that program, the date the student completed the program, and the amounts the student received from private educational loans and institutional financing plans. We estimate that it will take the affected 2,086 proprietary institutions, on average, 10 hours to meet these reporting requirements for their

occupational training programs for a total estimated increase in burden of 20,860 hours. We estimate that it will take the affected 238 private non-profit institutions, on average, 10 hours to meet these reporting requirements for their occupational training programs for a total estimated increase in burden of 2,380 hours. We estimate that it will take the affected 2,139 public institutions, on average, 10 hours to meet these reporting requirements for their occupational training programs for a total estimated increase in burden of 21,390 hours.

Collectively, we estimate that burden for institutions to meet these proposed reporting requirements in accordance with procedures established by the Secretary would increase by 44,630 hours in OMB Control Number 1845–NEW1.

We estimate that over the first three-year reporting period that there would be 591,966 graduates from these occupational training programs. We estimate that the proposed reporting for an estimated 278,224 graduates from proprietary institutions would average 5 minutes (.08 hours) per graduate, increasing burden by 22,258 hours. We estimate that the proposed reporting for the estimated 29,598 graduates from private non-profit institutions would average 5 minutes (.08 hours) per graduate, increasing burden by 2,368 hours. We estimate that the proposed reporting for 284,144 graduates from public institutions would average 5 minutes (.08 hours) per graduate, increasing burden by 22,732 hours.

Collectively, burden associated with the proposed disclosures (including the reporting of Department provided median loan debt information) for each graduate would increase for institutions by 47,358 hours in OMB Control Number 1845–NEW1.

Finally, under proposed § 668.6(b) an institution would be required to disclose on its Web site information about (1) the occupations that its programs prepare students to enter, along with links to occupational profiles on O*NET, (2) the on-time graduation rate of students entering a program, (3) the cost of each program, including costs for tuition and fees, room and board; other institutional costs typically incurred by students enrolling in the program, such as books and supplies, (4) beginning no later than June 30, 2013, the placement rate for students completing each of these programs, as determined under § 668.8(g) or a State-sponsored workforce data system, and (5) the median loan debt incurred by students who completed each program in the preceding three years, identified separately as title IV, HEA loan debt and debt from private educational loans and institutional financing plans.

We estimate that, on average, institutions would take 3 hours per institution to obtain the required disclosure information and to provide that information on the institution's Web sites. We estimate that 2,086 proprietary institutions would take 3 hours per institution to collect and post the proposed disclosures which would increase burden by 6,258 hours. We estimate that 238 private non-profit institutions would take 3 hours per institution to collect and post the proposed disclosures which would increase burden by 714 hours. We estimate that 2,139 public institutions would take 3 hours per institution to collect and post the proposed disclosures which would increase burden by 6,417 hours.

Collectively, we estimate that these proposed disclosures would result in an increase in burden to institutions by 13,389 hours in OMB Control Number 1845–NEW1.

In total, the proposed regulatory changes reflected in § 668.6 would increase burden by a total of 105,377 hours in OMB Control Number 1845–NEW1.

Section 668.8—Eligible Program

Under proposed § 668.8(l)(1), we would revise the method of converting clock hours to credit hours to use a ratio of the minimum clock hours in an academic year to the minimum credit hours in an academic year, *i.e.,* 900 clock hours to 24 semester or trimester hours or 36 quarter hours. Thus, a semester or trimester hour would be based on at least 37.5 clock hours, and a quarter hour would be based on at least 25 clock hours. Proposed § 668.8(l)(2) would create an exception to the conversion ratio in proposed § 668.8(l)(1) if neither an institution's designated accrediting agency nor the relevant State licensing authority for participation in the title IV, HEA programs determines there are any deficiencies in the institution's policies, procedures, and practices for establishing the credit hours that the institution awards for programs and courses, as defined in proposed § 600.2. Under the exception provided by proposed § 668.8(l)(2), an institution would be permitted to combine students' work outside of class with the clock-hours of instruction in order to meet or exceed the numeric requirements established in proposed § 668.8(l)(1). However, under proposed § 668.8(l)(2), the institution would need to use at least 30 clock hours for a semester or trimester hour or 20 clock hours for a quarter hour.

In determining whether there is outside work that a student must perform, the analysis would need to take into account differences in coursework and educational activities within the program. Some portions of a program may require student work outside of class that justifies the application of proposed § 668.8(l)(2). In addition, the application of proposed § 668.8(l)(2) could vary within a program depending on variances in required student work outside of class for different portions of the program. Other portions of the program may not have outside work, and proposed § 668.8(l)(1) would need to be applied. Of course, an institution applying only proposed § 668.8(l)(1) to a program eligible for conversion from clock hours to credit hours, without an analysis of the program's coursework, would be considered compliant with the requirements of proposed § 668.8(l).

Proposed § 668.8(k)(1)(ii) would modify a provision in current regulations to provide that a program is not subject to the conversion formula in § 668.8(l) where each course within the program is acceptable for full credit toward a degree that is offered by the institution and that this degree requires at least two academic years of study. Additionally, under proposed § 668.8(k)(1)(ii), the institution would be required to demonstrate that students enroll in, and graduate from, the degree program.

Proposed § 668.8(k)(2)(i) would provide that a program is considered to be a clock-hour program if the program must be measured in clock hours to receive Federal or State approval or licensure, or if completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue. Under proposed § 668.8(k)(2)(ii) and (iii), the program would also be considered to be offered in clock hours if the credit hours awarded for the program are not in compliance with the definition of a *credit hour* in proposed § 600.2, or if the institution does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and, except as provided in current § 668.4(e), requires attendance in the clock hours that are the basis for the credit hours awarded. The proposed regulations on which tentative agreement was reached would not include the provision in proposed § 668.8(k)(2)(iii) that, except as provided in current § 668.4(e), an institution must require attendance in the clock hours

that are the basis for the credit hours awarded.

Proposed § 668.8(k)(3) would provide that proposed § 668.8(k)(2)(i) would not apply if a limited portion of the program includes a practicum, internship, or clinical experience component that must include a minimum number of clock hours due to a State or Federal approval or licensure requirement.

We estimate that on average, for each affected program it would take 30 minutes for an institution to make the determination of whether the program is an affected program, to evaluate the amount of outside student work that should be included as proposed and to perform the clock hour to credit hour conversion. We further estimate that of the 4,587 institutions of higher education with less than 2-year programs, that on average, each institution has approximately 8 non-degree programs of study for a total of 36,696 affected programs. We estimate that there are 16,513 affected programs at proprietary institutions times .5 hours which would increase burden by 8,257 hours. We estimate that there are 1,835 affected programs at private non-profit institutions times .5 hours which would increase burden by 918 hours. We estimate that there are 18,348 affected programs at public institutions times .5 hours which would increase burden by 9,174 hours.

Collectively, the proposed regulatory changes reflected in § 668.8 would increase burden by 18,349 hours in OMB Control Number 1845–0022.

Section 668.16—Standards of Administrative Capability

Under the proposed regulations, the elements of the institution's satisfactory academic progress plan would be moved from current § 668.16(e) to proposed § 668.34. We would also update these provisions. As a result, the estimated burden upon institutions associated with measuring academic progress currently in OMB Control Number 1845–0022 of 21,000 hours would be administratively removed from this collection and transferred to OMB Control Number 1845–NEW2.

Under proposed § 668.16(p), an institution would be required to develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. The burden associated with this proposed requirement would be mitigated by the fact that many institutions already have processes in place to collect high school diplomas and make determinations about their validity.

We estimate that burden would increase for each institution by 3.5 hours for the development of a high school diploma validity process. We estimate that 2,086 proprietary institutions would on average take 3.5 hours to develop the proposed procedures to evaluate the validity of high school completions which would increase burden by 7,301 hours. We estimate that 1,731 private non-profit institutions would on average take 3.5 hours to develop the proposed procedures to evaluate the validity of high school completion which would increase burden by 6,059 hours. We estimate that 1,892 public institutions would on average take 3.5 hours to develop the proposed procedures to evaluate the validity of high school completion which would increase burden by 6,622 hours.

Additionally, we estimate that the validity of approximately 4,000 high school diplomas per year would be questioned and, therefore, require additional verification that is estimated to take .5 hours per questionable diploma. We estimate that proprietary institutions would have 2,000 questionable diplomas times .5 hours per diploma equals 1,000 hours of increased burden. We estimate that private non-profit institutions would have 600 questionable diplomas times .5 hours per diploma equals 300 hours of increased burden. We estimate that public institutions would have 1,400 questionable diplomas times .5 hours per diploma equals 700 hours of increased burden.

Collectively, the proposed regulatory changes reflected in § 668.16 would increase burden by 21,982 hours in OMB Control Number 1845–0022.

Section 668.22—Treatment of Title IV, HEA Program Funds When a Student Withdraws

The proposed changes to § 668.22(a)(2) would clarify when a student is considered to have withdrawn from a payment period or period of enrollment. In the case of a program that is measured in credit hours, the student would be considered to have withdrawn if he or she does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing. In the case of a program that is measured in clock hours, the student would be considered to have withdrawn if he or she does not complete all of the clock hours in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing.

The proposed change to § 668.22(f)(2)(i) would clarify that, for credit hour programs, in calculating the percentage of the payment period or period of enrollment completed, it is necessary to take into account the total number of calendar days that the student was scheduled to complete prior to withdrawing without regard to any course completed by the student that is less than the length of the term.

These proposed regulations would affect all programs with courses that are less than the length of a term, including, for example, a semester-based program that has a summer nonstandard term with two consecutive six-week sessions within the term.

We estimate that approximately 425,075 students in term-based programs with modules or compressed courses will withdraw prior to completing more than 60 percent of their program of study. We estimate that on average, the burden per individual student who withdraws prior to the 60 percent point of their term-based program to be 45 minutes (.75 hours) per affected individual which would increase burden for the estimated 425,075 students by 318,806 hours in OMB Control Number 1845–0022. Of these 425,075 withdrawals, we estimate that 50 percent of the withdrawals (212,538) would occur at proprietary institutions and would increase burden by 1 hour per withdrawal increasing burden by 212,538 hours. We estimate that 10 percent of the withdrawals (42,508) would occur at private non-profit institutions and would increase burden by 1 hour per withdrawal increasing burden by 42,508 hours. We estimate that 40 percent of the withdrawals (170,029) would occur at public institutions and would increase burden by 1 hour per withdrawal increasing burden by 170,029 hours. Collectively, we estimate that burden will increase by 743,881 hours in OMB Control Number 1845–0022, of which 318,806 hours is for individuals and 425,075 hours is for institutions.

Section 668.34—Satisfactory Progress

The proposed regulations would restructure the satisfactory academic progress requirements. Proposed § 668.16(e) (Standards of administrative capability) would be revised to include only the requirement that an institution establish, publish, and apply satisfactory academic progress standards that meet the requirements of § 668.34. The remainder of current § 668.16(e) would be moved to proposed § 668.34 such that it, alone, would describe all of

the required elements of a satisfactory academic progress policy as well as how an institution would implement such a policy. The references in paragraph § 668.32(e) would be updated to conform the section with the changes proposed to §§ 668.16(e) and 668.32.

Proposed § 668.34(a) would specify the elements an institution's satisfactory academic policy must contain to be considered a reasonable policy. Under the proposed regulations, institutions would continue to have flexibility in establishing their own policies; institutions that choose to measure satisfactory academic progress more frequently than at the minimum required intervals would have additional flexibility (*see* proposed § 668.34(a)(3)).

All of the policy elements in the current regulations under § 668.16(e) and § 668.34 would be combined in proposed § 668.34. In addition, proposed § 668.34(a)(5) would make explicit the requirement that institutions specify the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, and provide for measurement of a student's pace at each evaluation. Under proposed § 668.34(a)(6), institutional policies would need to describe how a student's GPA and pace of completion are affected by transfers of credit from other institutions. This provision would also require institutions to count credit hours from another institution that are accepted toward a student's educational program as both attempted and completed hours.

Proposed § 668.34(a)(7) would provide that, except as permitted in § 668.34(c) and (d), the policy requires that, at the time of each evaluation, if the student is not making satisfactory academic progress, the student is no longer eligible to receive the title IV, HEA assistance.

Proposed § 668.34(a)(8) would require institutions that use "financial aid warning" and "financial aid probation" statuses (concepts that would be defined in proposed § 668.34(b)) in connection with satisfactory academic progress evaluations to describe these statuses and how they are used in their satisfactory academic progress policies. Proposed § 668.34(a)(8)(i) would specify that a student on financial aid warning may continue to receive assistance under the title IV, HEA programs for one payment period despite a determination that the student is not making satisfactory academic progress. Financial aid warning status may be assigned without an appeal or other action by the student. Proposed § 668.34(a)(8)(ii) would make clear that an institution with a satisfactory academic progress policy that includes the use of the financial aid probation status could require that a student on financial aid probation fulfill specific terms and conditions, such as taking a reduced course load or enrolling in specific courses.

Proposed § 668.34(a)(9) would require an institution that permits a student to appeal a determination that the student is not making satisfactory academic progress to describe the appeal process in its policy. The policy would need to contain specified elements. Proposed § 668.34(a)(9)(i) would require an institution to describe how a student may re-establish his or her eligibility to receive assistance under the title IV, HEA programs. Under proposed § 668.34(a)(9)(ii), a student would be permitted to file an appeal based on the death of a relative, an injury or illness of the student, or other special circumstances. Under proposed § 668.34(a)(9)(iii), a student would be required to submit, as part of the appeal, information regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that would allow the student to demonstrate satisfactory academic progress at the next evaluation.

Proposed § 668.34(a)(10) would require the satisfactory academic progress policy of an institution that does not permit students to appeal a determination that they are not making satisfactory academic progress to describe how a student may regain eligibility for assistance under the title IV, HEA programs.

Proposed § 668.34(a)(11) would require that an institution's policy provide for notification to students of the results of an evaluation that impacts the student's eligibility for title IV, HEA program funds.

We estimate that, on average, institutions would take 3 hours per institution to review the proposed regulations in § 668.34(a) and implement any proposed changes to insure compliance. We estimate that 2,086 proprietary institutions would take 3 hours per institution to review and implement the proposed regulations increasing burden by 6,258 hours. We estimate that 1,731 private non-profit institutions would take 3 hours per institution to review and implement the proposed regulations increasing burden by 5,193 hours. We estimate that 1,892 public institutions would take 3 hours per institution to review and implement the proposed regulations increasing burden by 5,676 hours. Collectively, the proposed regulatory changes reflected in § 668.34(a) would increase burden by 17,127 hours.

Proposed § 668.34(c) and (d) would specify that an institution's policy may provide for disbursement of title IV, HEA program funds to a student who has not met an institution's satisfactory academic standards in certain circumstances. Of the 17 million applicants in 2008–2009, we estimate that 90 percent (or 15,300,000 individuals) would begin attendance. We estimate that of the 15,300,000 individuals that begin attendance, that 90 percent (or 13,770,000 individuals) would persist at least through the end of the initial payment period and therefore the institution would evaluate the student's satisfactory academic progress consistent with the provision of proposed § 668.34. We estimate that 38 percent of the institutions would evaluate their students at the end of each payment period under proposed § 668.34(c), therefore 13,770,000 individuals times 38 percent equals 5,232,600 individuals that would be evaluated more than annually. We estimate that 62 percent of institutions would evaluate their students once per academic year under proposed § 668.34(d), therefore, 13,770,000 individuals times 62 percent equals 8,537,400 individuals that would be evaluated annually.

Proposed § 668.34(c) would permit an institution that measures satisfactory academic progress at the end of each payment period to have a policy that would permit a student who is not making satisfactory academic progress to be placed automatically on financial aid warning, a newly defined term. We estimate as a result, the burden associated with an academic progress measurement at the end of each payment period, and when required, developing an academic plan for the student, would increase burden. We estimate that proprietary institutions, which comprise 37 percent of the total number of institutions of higher education, times 5,232,600 individuals equals 1,936,062 individuals at proprietary institutions that would require an academic review more than once per academic year. 1,936,062 times an average of 2 reviews per academic year, equals 3,872,124 satisfactory academic progress reviews. Since these academic progress reviews are generally highly automated, we estimate that, on average, each review will take 1.2 minutes (.02 hours) and will increase burden by 77,442 hours. We estimate that private non-profit institutions, which comprise 30 percent of the total

number of institutions of higher education, times 5,232,600 individuals equals 1,569,780 individuals at private non-profit institutions that would require an academic review. 1,569,780 times an average of 2 reviews per academic year, equals 3,139,560 satisfactory academic progress reviews. Since these academic progress reviews are generally highly automated, we estimate that, on average, each review will take 1.2 minutes (.02 hours) and will increase burden by 62,791 hours. We estimate that public institutions, which comprise 33 percent of the total number of institutions of higher education, times 5,232,600 individuals equals 1,726,758 individuals at public institutions that would require an academic review. 1,726,758 times an average of 2 reviews per academic year, equals 3,453,516 satisfactory academic progress reviews. Since these academic progress reviews are generally highly automated, we estimate that, on average, each review will take 1.2 minutes (.02 hours) and will increase burden by 69,070 hours.

Collectively, we estimate that the burden for institutions would increase by 209,303 hours, in OMB Control Number 1845–NEW2.

As a result of the proposed satisfactory academic progress reviews conducted by the institutions, we estimate that 7 percent of the 5,232,600 enrolled students (at institutions that review academic progress more often than annually) or 366,282 would not successfully achieve satisfactory academic progress and therefore the institution would work with each student to develop an academic plan which would increase burden for the individual and the institutions. We estimate that under proposed § 668.34(c), that 366,282 students would, on average, take 10 minutes (.17 hours) to establish an academic plan and re-evaluate the plan a second time within the academic year (2 times per academic year), increasing burden to individuals by 124,536 hours.

We estimate that proprietary institutions, which comprise 37 percent of the total number of institutions of higher education, times 5,232,600 individuals equals 1,936,062 individuals at proprietary institutions that would require the development of an academic plan as a result of not progressing academically. 1,936,062 individuals times 7 percent (we estimate who would not academically progress), equals 135,524 individuals who would need to work with their institutions to develop an academic plan. We estimate that each academic plan would take, on average, 15 minutes (.25 hours) of staff time at two times within the academic year, increasing burden by 67,762 hours.

We estimate that private non-profit institutions, which comprise 30 percent of the total number of institutions of higher education, times 5,232,600 individuals equals 1,569,780 individuals at private non-profit institutions that would require the development of an academic plan as a result of not progressing academically. 1,569,780 individuals times 7 percent (we estimate who would not academically progress), equals 109,885 individuals who would need to work with their institutions to develop an academic plan. We estimate that each academic plan would take, on average, 15 minutes (.25 hours) of staff time at two times within the academic year, increasing burden by 54,943 hours.

We estimate that public institutions, which comprise 33 percent of the total number of institutions of higher education, times 5,232,600 individuals equals 1,726,758 individuals at public institutions that would require the development of an academic plan as a result of not progressing academically. 1,726,758 individuals times 7 percent (we estimate who would not academically progress), equals 120,873 individuals who would need to work with their institutions to develop an academic plan. We estimate that each academic plan would take, on average, 15 minutes (.25 hours) of staff time at two times within the academic year, increasing burden by 60,437 hours.

Collectively, we estimate that the burden for institutions would increase by 183,142 hours, in OMB Control Number 1845–NEW2.

Under proposed § 668.34(d), at an institution that measures satisfactory academic progress annually, or less frequently than at the end of each payment period, a student who has been determined not to be making satisfactory academic progress would be able to receive title IV, HEA program funds only after filing an appeal and meeting one of two conditions: (1) the institution has determined that the student should be able to meet satisfactory progress standards after the subsequent payment period, or (2) the institution develops an academic plan with the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

Because the proposed regulations would transfer the elements of an institution's satisfactory academic policy from § 668.16(e) to § 668.34, we are transferring the current burden estimate of 21,000 hours from the current OMB Control Number 1845–0022 to OMB Control Number 1845–NEW2.

We estimate that proprietary institutions, which comprise 37 percent of the total number of institutions of higher education, times 8,537,400 individuals equals 3,158,838 individuals at proprietary institutions that would require an academic review. Since the academic progress reviews are generally highly automated, we estimate that, on average, each review will take 1.2 minutes (.02 hours) and will increase burden by 63,177 hours. We estimate that private non-profit institutions, which comprise 30 percent of the total number of institutions of higher education, times 8,537,400 individuals equals 2,561,220 individuals at private non-profit institutions that would require an academic review. Since the academic progress reviews are generally highly automated, we estimate that, on average, each review will take 1.2 minutes (.02 hours) and will increase burden by 51,224 hours. We estimate that public institutions, which comprise 33 percent of the total number of institutions of higher education, times 8,537,400 individuals equals 2,817,342 individuals at public institutions that would require an academic review. Since the academic progress reviews are generally highly automated, we estimate that, on average, each review will take 1.2 minutes (.02 hours) and will increase burden by 56,347 hours.

Collectively, we estimate that the burden for institutions would increase by 170,748 hours, in OMB Control Number 1845–NEW2.

As a result of the proposed satisfactory academic progress reviews conducted by the institutions, we estimate that 7 percent of the 8,537,400 enrolled students (at institutions that review academic progress annually) or 597,618 would not successfully achieve satisfactory academic progress and therefore the institution would work with each student to develop an academic plan which would increase burden for the individual and the institutions. We estimate that under proposed § 668.34(d), that 597,618 students would, on average, take 10 minutes (.17 hours) to establish an academic plan, increasing burden to individuals by 101,595 hours.

We estimate that proprietary institutions, which comprise 37 percent of the total number of institutions of higher education, times 8,537,400 individuals equals 3,158,838 individuals at proprietary institutions that would require the development of an academic plan as a result of not

progressing academically. 3,158,838 individuals times 7 percent (we estimate who would not academically progress), equals 211,119 individuals who would need to work with their institutions to develop an academic plan. We estimate that each academic plan would take, on average, 15 minutes (.25 hours) of staff time, increasing burden by 55,280 hours.

We estimate that private non-profit institutions, which comprise 30 percent of the total number of institutions of higher education, times 8,537,400 individuals equals 2,561,220 individuals at private non-profit institutions that would require the development of an academic plan as a result of not progressing academically. 2,561,220 individuals times 7 percent (we estimate who would not academically progress), equals 179,285 individuals who would need to work with their institutions to develop an academic plan. We estimate that each academic plan would take, on average, 15 minutes (.25 hours) of staff time, increasing burden by 44,821 hours.

We estimate that public institutions, which comprise 33 percent of the total number of institutions of higher education, times 8,537,400 individuals equals 2,817,342 individuals at public institutions that would require the development of an academic plan as a result of not progressing academically. 2,817,342 individuals times 7 percent (we estimate who would not academically progress), equals 197,214 individuals who would need to work with their institutions to develop an academic plan. We estimate that each academic plan would take, on average, 15 minutes (.25 hours) of staff time, increasing burden by 49,304 hours.

Collectively, we estimate that the burden for institutions would increase by 149,405 hours, in OMB Control Number 1845–NEW2.

In total, the proposed regulatory changes reflected in § 668.34 would increase burden by a total of 955,855 hours in OMB Control Number 1845–NEW2; however when the 21,000 hours of burden currently in OMB 1845–0022 are administratively transferred from OMB 1845–0022 to OMB 1845–NEW2, the grand total of burden hours under this section would increase to 976,855 in OMB 1845–NEW2.

Section 668.43—Institutional Information

The Department proposes to revise current § 668.5(a) by revising and redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2). Proposed § 668.5(a)(1) would be based on the language that is in current paragraph (a), but it would be modified to make it consistent with the definition of an "educational program" in 34 CFR 600.2. Proposed new § 668.5(a)(2) would specify that if a written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the institution that grants the degree or certificate must provide more than 50 percent of the educational program. These clarifications are also intended to ensure that the institution enrolling the student has all necessary approvals to offer an educational program in the format in which it is being provided, such as through distance education when the other institution is providing instruction under a written agreement using that method of delivery. Proposed § 668.5(c)(1) would expand the list of conditions that would preclude an arrangement between an eligible institution and an ineligible institution. Proposed §§ 668.5(e) and 668.43 would require an institution that enters into a written arrangement to provide a description of the arrangement to enrolled and prospective students.

We estimate that 104 proprietary institutions would enter into an average of 1 written arrangement per institution and that, on average, the burden associated with the proposed collection of information about written agreements and its disclosure would take 30 minutes (.5 hours) per arrangement, increasing burden by 52 hours. We estimate that 1,731 private non-profit institutions would enter into an average of 50 written arrangements per institution and that, on average, the burden associated with the proposed collection of information about written agreements and its disclosure would take 30 minutes (.5 hours) per arrangement, increasing burden by 43,275 hours. We estimate that 1,892 public institutions would enter into an average of 25 written arrangements per institution and that, on average, the burden associated with the proposed collection of information about written agreements and its disclosure would take 30 minutes (.5 hours) per arrangement, increasing burden by 23,650 hours.

Collectively, we estimate that burden would increase for institutions in their reporting of the details of written agreements by 66,977 hours in OMB Control Number 1845–0022.

Currently, the Department requires that an institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The Department proposes in § 668.43(b) that the institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and State approval or licensing entity.

We estimate that of the 2,086 proprietary institutions that 1,919 (or 92 percent) would have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent are already providing this information. We estimate that on average, this disclosure would take 10 minutes (.17 hours) per disclosure and increase burden to proprietary institutions by 326 hours. We estimate that of the 1,731 private non-profit institutions that 1,593 (or 92 percent) would have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent are already providing this information. We estimate that on average, this disclosure would take 10 minutes (.17 hours) per disclosure and increase burden to private non-profit institutions by 271 hours. We estimate that of the 1,892 public institutions that 1,740 (or 92 percent) would have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent are already providing this information. We estimate that on average, this disclosure would take 10 minutes (.17 hours) per disclosure and increase burden to proprietary institutions by 296 hours.

Collectively, we estimate that burden would increase for institutions in their reporting of the contact information for filing complaints to accreditors and approval or licensing agencies by 893 hours in OMB Control Number 1845–0022.

In total, the proposed regulatory changes reflected in § 668.43 would increase burden by 67,870 hours in OMB Control Number 1845–0022.

Section 668.55—Updating Information

Proposed § 668.55 would require an applicant to update all changes in dependency status that occur throughout the award year, including changes in the applicant's household size and the number of those household members attending postsecondary educational institutions. We estimate that 1,530,000 individuals would update their household size or the number of household members attending postsecondary educational institutions and that, on average, reporting would take 5 minutes (.08

hours) per individual, increasing burden by 122,400 hours.

We estimate that proprietary institutions would receive updated household size or the updated number of household members attending postsecondary educational institutions from 566,100 applicants. We estimate that each updated record would take 10 minutes (.17 hours) to review each updated record thereby increasing burden by 96,237 hours. We estimate that private non-profit institutions would receive updated household size or the updated number of household members attending postsecondary educational institutions from 459,000 applicants. We estimate that each updated record would take 10 minutes (.17 hours) to review each updated record thereby increasing burden by 78,030 hours. We estimate that public institutions would receive updated household size or the updated number of household members attending postsecondary educational institutions from 504,900 applicants. We estimate that each updated record would take 10 minutes (.17 hours) to review each updated record thereby increasing burden by 85,833 hours.

Collectively, we estimate that burden would increase for individuals and institutions in their reporting updated household size and the updated number of household members attending postsecondary educational institutions by 382,500 hours in OMB Control Number 1845–0041, of which 122,400 hours is for individuals and 260,100 hours is for institutions.

The Department also proposes changes resulting from a change in the applicant's marital status, regardless of whether the applicant is selected for verification. We estimate that 170,000 individuals would update their marital status and that on average that reporting would take 5 minutes (.08 hours) per individual, increasing burden by 13,600 hours.

We estimate that proprietary institutions would receive updated marital status information from 62,900 applicants. We estimate that each updated record would take 10 minutes (.17 hours) to review each updated record thereby increasing burden by 10,693 hours. We estimate that private non-profit institutions would receive updated marital status information from 51,000 applicants. We estimate that each updated record would take 10 minutes (.17 hours) to review each updated record thereby increasing burden by 8,670 hours. We estimate that public institutions would receive updated marital status information from 56,100 applicants. We estimate that each updated record would take 10 minutes (.17 hours) to review each updated record thereby increasing burden by 9,537 hours.

Collectively, we estimate that burden would increase for individuals and institutions in their reporting updated marital status information by 42,500 hours in OMB Control Number 1845–0041.

Proposed § 668.55 would also include a number of other changes to remove language that implements the marital status exception in the current regulations, including removing current § 668.55(a)(3) and revising § 668.55(b).

In total, the proposed regulatory changes reflected in § 668.55 would increase burden by 425,005 hours in OMB Control Number 1845–0041.

Section 668.56—Information To Be Verified

The Department proposes to eliminate from the regulations the five items that an institution currently is required to verify for all applicants selected for verification. Instead, pursuant to proposed § 668.56(a), for each award year, the Secretary would specify in a **Federal Register** notice the FAFSA information and documentation that an institution and an applicant may be required to verify. The Department would then specify on an individual student's SAR and ISIR what information must be verified for that applicant.

Currently under OMB Control Number 1845–0041, there are 1,022,384 hours of burden associated with the verification regulations of which 1,010,072 hours of burden are a result of the data gathering and submission by each individual applicant selected for verification. This estimate was based upon the number of applicants in the 2002–2003 award year. Since then, the number of applicants has grown significantly to 17.4 million applicants for the 2008–2009 award year, of which we would project 5.1 million individual applicants to be selected for verification.

The projected number of items to be verified under the proposed regulations is expected to be reduced from the current five required data elements to an average of three items per individual. This projected reduction in items to be verified would result in a reduction of burden per individual applicant. Also, as a result of collecting information to verify applicant data on this smaller average number of data elements (three items instead of five items), the average amount of time for the individual applicant to review verification form instructions, gather the data, respond on a form and submit a form and the supporting data would decrease from the current average of 12 minutes (.20 hours) per individual to 7 minutes (.12 hours), thus further reducing burden on the individual applicant.

For example, when we consider the estimated 5.1 million 2008–2009 applicants selected for verification at an average of 12 minutes (.20 hours) to collect and submit information, including supporting documentation for the five required data elements (which is the estimated amount of time that is associated with the requirements in current § 668.56(a)), the requirements in that section would yield a total burden of 1,020,000 hours added to OMB Control Number 1845–0041. However, under proposed § 668.56(b), where the number of verification data elements would be reduced to an average of three, the estimated 5.1 million individuals selected for verification multiplied by the reduced average of 7 minutes (.12 hours) would yield an increase of 612,000 hours in burden. Therefore, with the proposed changes to this section, we would expect the burden to be 408,000 hours less than under the current regulations.

As a result, for OMB reporting purposes, we estimate that the individuals, as a group, would have an increase in burden by 612,000 hours in OMB Control Number 1845–0041 (rather than 1,020,000 hours).

Section 668.57—Acceptable Documentation

We propose to make a number of technical and conforming changes throughout § 668.57. We also propose to make the following substantive changes described in this section.

Proposed § 668.57(a)(2) would allow an institution to accept, in lieu of an income tax return or an IRS form that lists tax account information, the electronic importation of data obtained from the IRS into an applicant's online FAFSA.

We also propose to amend § 668.57(a)(4)(ii)(A) to accurately reflect that, upon application, the IRS grants a six-month extension beyond the April 15 deadline rather than the four-month extension currently stated in the regulations.

Under proposed § 668.57(a)(5), an institution may require an applicant who has been granted an extension to file his or her income tax return to provide a copy of that tax return once it has been filed. If the institution requires the applicant to submit the tax return, under this proposed provision, it would need to re-verify the AGI and taxes paid of the applicant and his or

her spouse or parents when the institution receives the return.

Proposed § 668.57(a)(7) would clarify that an applicant's income tax return that is signed by the preparer or stamped with the preparer's name and address must also include the preparer's Social Security number, Employer Identification Number or the Preparer Tax Identification Number.

Proposed § 668.57(b) and (c) would remain substantively unchanged.

We would delete current § 668.57(d) regarding acceptable documentation for untaxed income and benefits and replace it with new proposed § 668.57(d). This new section would provide that, if an applicant is selected to verify other information specified in an annual **Federal Register** notice, the applicant must provide the documentation specified for that information in the **Federal Register** notice.

Currently under OMB Control Number 1845–0041, there are 1,022,384 hours of burden associated with the verification regulations, of which 12,312 hours are attributable to institutions of higher education to establish their verification policies and procedures. Under proposed § 668.57, we estimate that, on average, institutions will take 7 minutes (.12 hours) per applicant selected for verification to review and take appropriate action based upon the information provided by the applicant, which in some cases may mean correcting applicant data or having the applicant correct his or her data. Under current § 668.57, when we consider the significant increase to 17.4 million applicants in the 2008–2009 award year, of which 5.1 million would be selected for verification at an average of 12 minutes (.20 hours) per verification response received from applicants by the institutions for review, the total increase in burden would have been 1,020,000 additional hours. However, under proposed § 668.57, both the average number of items to be verified would be reduced from five items to three items, as well as the average amount of time to review would decrease from 12 minutes (.20 hours) to 7 minutes (.12 hours). Therefore, under the proposed regulations, the burden to institutions would be 612,000 burden hours (that is, 5.1 million multiplied by 7 minutes (.12 hours))—rather than 1,020,000 burden hours (*i.e.,* 5.1 million applicants multiplied by 12 minutes (.20 hours)). Thus, as compared to the burden under the current regulations, using the number of applicants from 2008–2009—17.4 million—there would be 408,000 fewer burden hours for institutions.

We estimate that for 2,086 proprietary institutions times 7 minutes (.12 hours) equals 226,440 hours of increased burden. We estimate that for 1,731 private non-profit institutions times 7 minutes (.12 hours) equals 183,600 hours of increased burden. We estimate that for 1,892 public institutions times 7 minutes (.12 hours) equals 201,960 hours of increased burden.

As a result, for OMB reporting purposes, collectively there would be a projected increase of 612,000 hours of burden for institutions in OMB Control Number 1845–0041.

Section 668.59—Consequences of a Change in FAFSA Information

We propose to amend § 668.59 by removing all allowable tolerances and requiring instead that an institution submit to the Department all changes to an applicant's FAFSA information resulting from verification for those applicants receiving assistance under any of the subsidized student financial assistance programs (*see* proposed § 668.59(a)).

Under proposed § 668.59(b), for the Federal Pell Grant program, once the applicant provides the institution with the corrected SAR or ISIR, the institution would be required to recalculate the applicant's Federal Pell Grant and disburse any additional funds, if additional funds are payable. If the applicant's Federal Pell Grant would be reduced as a result of verification, the institution would be required to eliminate any overpayment by adjusting subsequent disbursements or reimbursing the program account by requiring the applicant to return the overpayment or making restitution from its own funds (*see* proposed § 668.59(b)(2)(ii)).

Proposed § 668.59(c) would provide that, for the subsidized student financial assistance programs, excluding the Federal Pell Grant Program, if an applicant's FAFSA information changes as a result of verification, the institution must recalculate the applicant's EFC and adjust the applicant's financial aid package on the basis of the EFC on the corrected SAR or ISIR.

With the exception of minor technical edits, proposed § 668.59(d), which describes the consequences of a change in an applicant's FAFSA information, would be substantively the same as current § 668.59(d).

Finally, we would remove current § 668.59(e), the provision that requires an institution to refer to the Department unresolved disputes over the accuracy of information provided by the applicant if the applicant received funds on the basis of that information.

As proposed, both individuals (students) and institutions would be making corrections to FAFSA information as a result of the verification process. We estimate that 30 percent of the 17,000,000 applicants or 5,100,000 individuals (students) would be selected for verification. Of those 5,100,000 individuals, students would submit, on average, 1.4 changes in FAFSA information as a result of verification for 7,140,000 changes which would take an average of 7 minutes (.12 hours) per change, increasing burden to individuals by 856,800 hours.

We estimate that of the 5,100,000 individuals selected for verification, that institutions would submit, on average 2.0 changes per individual in FAFSA information as a result of verification for 10,200,000 changes. We estimate that 3,774,000 changes to FAFSA information as a result of verification would occur at proprietary institutions which would take an average of 7 minutes (.12 hours) per change, increasing burden by 452,880 hours. We estimate that 3,060,000 changes to FAFSA information as a result of verification would occur at private non-profit institutions which would take an average of 7 minutes (.12 hours) per change, increasing burden by 367,200 hours. We estimate that 3,366,000 changes to FAFSA information as a result of verification would occur at public institutions which would take an average of 7 minutes (.12 hours) per change, increasing burden by 403,920 hours.

Collectively, the proposed regulatory changes reflected in § 668.59 would increase for individuals and institutions by 2,080,800 hours in OMB Control Number 1845–0041.

Section 668.144—Application for Test Approval

We propose to clarify and expand the requirements in current §§ 668.143 and 668.144 and to include all of the requirements for test approval in one section, proposed § 668.144. Paragraphs (a) and (b) of proposed § 668.144 would describe the general requirement for test publishers and States to submit to the Secretary any test they wish to have approved under subpart J of part 668. Paragraph (c) of proposed § 668.144 would describe the information that a test publisher must include with its application for approval of a test. Paragraph (d) of proposed § 668.144 would describe the information a State must include with its application when it submits a test to the Secretary for approval.

Proposed § 668.144(c)(16) would require test publishers to include in

their applications a description of their test administrator certification process. In proposed § 668.144(c)(17), we would require test publishers to include in their applications, a description of the test anomaly analysis the test publisher will conduct and submit to the Secretary. Finally, proposed § 668.144(c)(18) would require test publishers to include in their applications a description of the types of accommodations available for individuals with disabilities, including a description of the process used to identify and report when accommodations for individuals with disabilities were provided.

Proposed § 668.144(d) would be added to describe what States must include in their test submissions to the Secretary. While this provision would replace the content in current § 668.143, its language would be revised to be parallel, where appropriate, to the test publisher submission requirements in current § 668.144. In addition to paralleling most of the current requirements for test publisher test submissions, proposed § 668.144(d) would also include the new requirements proposed to be added to the test publisher submissions. A description of those new provisions follows:

Both test publishers and States would be required to submit a description of their test administrator certification process that indicates how the test publisher or State, as applicable, will determine that a test administrator has the necessary training, knowledge, skills, and integrity to test students in accordance with requirements and how the test publisher or the State will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release (*see* proposed § 668.144(c)(16) (test publishers) and § 668.144(d)(7) (States)).

We estimate that test publishers and States would, on average, take 2.5 hours to develop its process to establish that a test administrator has the necessary training, knowledge, skills and integrity to administer ability-to-benefit (ATB) tests and report that process to the Secretary. We estimate that the burden associated with 8 ATB tests would increase for the proprietary test publishers by 20 hours.

The proposed regulations would require both test publishers and States to submit a description of the test anomaly analysis they will conduct that includes how they will identify potential test irregularities and make a determination that test irregularities have occurred; an explanation of corrective action to be taken in the event of test irregularities; and information on when and how the Secretary, test administrator, and institutions will be notified if a test administrator is decertified (*see* proposed § 668.144(c)(17) (test publishers) and § 668.144(d)(8) (States)). We estimate that test publishers and States would, on average, take 75 hours to develop its test anomaly process, to establish its test anomaly analysis (where it explains its test irregularity detection process including its decertification of test administrator process) and to establish its reporting process to the Secretary. We estimate that the burden associated with 8 ATB tests would increase for the proprietary test publishers by 600 hours.

Under proposed § 668.144(c)(18) and (d)(9) respectively, both test publishers and States would be required to describe the types of accommodations available for individuals with disabilities, and the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided. We estimate that test publishers and States would, on average, take 1 hour to develop and describe to the Secretary the types of accommodations available to individuals with disabilities, to describe the process the test administrator would use to support the identification of the disability and to develop the process to report when accommodations would be used. We estimate that the burden associated with 8 ATB tests would increase for the proprietary test publishers by 8 hours.

Collectively, the proposed regulatory changes in § 668.144 would increase burden for test publishers by 628 hours in OMB 1845–0049.

Section 668.150—Agreement Between the Secretary and a Test-Publisher or a State

Proposed § 668.150 would provide that States, as well as test publishers, must enter into agreements with the Secretary in order to have their tests approved.

We would also revise this section to require both test publishers and States to comply with a number of new requirements that would be added to the agreement with the Secretary. These requirements would include:

- Requiring the test administrators that they certify to provide them with certain information about whether they have been decertified (*see* proposed § 668.150(b)(2)). We estimate that 3,774 individuals (test administrators) would take, on average, 10 minutes (.17 hours) to access, read, complete and submit the written certification to a test publisher or State, which would increase burden by 642 hours.
- We estimate that it would take each test publisher or State 1 hour per test submission to develop its process to obtain a certification statement from each prospective test administrator, which would increase burden by 8 hours. We estimate that the review of the submitted written certifications by the test publishers or States for the 3,774 test administrators would take, on average, 5 minutes (.08 hours) per certification form, which would increase burden by 302 hours. Immediately notifying the test administrator, the Secretary, and institutions when the test administrator is decertified (*see* proposed § 668.150(b)(6)). We estimate that 1 percent of the 3,774 test administrators would be decertified. We estimate that it would take test publishers and States, on average, 1 hour per decertification to provide all of the proposed notifications, which would increase burden for proprietary test publishers by 38 hours. Reviewing test results of tests administered by a decertified test administrator and immediately notifying affected institutions and students (*see* proposed § 668.150(b)(7)). We estimate that 481,763 ATB tests would be taken for title IV, HEA purposes annually. Of the annual total of ATB tests provided, we estimate that 1 percent will be improperly administered and that 4,818 individuals would be contacted, which would take, on average, 15 minutes (.25 hours) per individual. We estimate that burden would increase by 1,205 hours. We estimate that it would take test publishers and States, on average, 5 hours per ATB test submitted, to develop the process to determine when ATB tests have been improperly administered, which for 8 approved ATB tests would increase burden by 40 hours. We estimate that test publishers and States would, on average, take 20 minutes (.33 hours) for each of the 4,818 estimated improperly administered ATB tests to make the proposed notifications to institutions, students and prospective students, which would increase burden by 1,590 hours. Reporting to the Secretary if a test publisher or the State certifies a previously decertified test administrator after the three-year decertification period (*see* proposed § 668.150(b)(8)). We estimate that of the 3,774 test administrators that 1 percent or 38 test administrators would be decertified. Of the 38 decertified test administrators, we estimate that 2 percent or 1 previously de-certified test administrator would be re-certified after

a three-year period and therefore reported to the Secretary. We estimate the burden for test publishers for this reporting would be 1 hour. We project that it will be very rare that a decertified test administrator will seek re-certification after the three-year decertification period.

• Providing copies of test anomaly analysis every 18 months instead of every 3 years (*see* proposed § 668.150(b)(13)). We estimate that it would take test publishers or States, on average, 75 hours to conduct its test anomaly analysis and report the results to the Secretary every 18 months as proposed. We estimate the burden on test publishers for the submission of the 8 test anomaly analysis every 18 months would be 600 hours.

• Reporting to the Secretary any credible information indicating that a test has been compromised (*see* proposed § 668.150(b)(15)). We estimate that 481,763 ATB tests for title IV, HEA purposes would be given on an annual basis. Of that total number ATB tests provided, we estimate that 482 ATB tests will be compromised. On average, we estimate that test publishers would take 1 hour per test to collect the credible information to make the determination that a test would be compromised and report it to the Secretary. We estimate that burden would increase by 482 hours. Reporting to the Office of Inspector General of the Department of Education any credible information indicating that a test administrator or institution may have engaged in fraud or other criminal misconduct (*see* proposed § 668.150(b)(16)). We estimate that 481,763 ATB tests for title IV, HEA purposes would be given on an annual basis. Of that total number ATB tests provided, we estimate that 482 ATB tests will be compromised. On average, we estimate that test publishers would take 1 hour per test to collect the credible information to make the determination that a test would be compromised and report it to the U.S. Department of Education's Office of the Inspector General. We estimate that burden would increase by 482 hours.

• Requiring a test administrator who provides a test to an individual with a disability who requires an accommodation in the test's administration to report to the test publisher or the State the nature of the disability and the accommodations that were provided (*see* proposed § 668.150(b)(17)). Census data indicate that 12 percent of the U.S. population is severely disabled. We estimate that 12 percent of the ATB test population (481,763 ATB test takers) or 57,812 of the ATB test takers would be individuals with disabilities that would need accommodations for the ATB test. We estimate that it would take 5 minutes (.08 hours) to report the nature of the disability and any accommodation that the test administrator made for the test taker, increasing burden by 4,625 hours.

We estimate that, on average, test publishers and States would take 2 hours per ATB test to develop the process for having test administrators report the nature of the test taker's disability and any accommodations provided, times 8 tests would increase burden for proprietary ATB test publishers by 16 hours.

Collectively, the proposed changes reflected in § 668.150 would increase burden by 10,031 hours in OMB Control Number 1845–0049.

Section 668.151—Administration of Tests

Proposed § 668.151(g)(4), would require institutions to keep a record of each individual who took an ATB test and the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State.

We estimate that 481,763 ATB tests for title IV, HEA purposes would be given on an annual basis. We estimate that proprietary institutions would provide 36 percent of those ATB tests or 173,445 tests and that, on average, the amount of time to record the test takers name and address as well as the test administrators identifiers would be 5 minutes (.08 hours) per test, increasing burden by 13,876 hours. We estimate that private non-profit institutions would provide 31 percent of those ATB tests or 149,347 tests and that, on average, the amount of time to record the test takers name and address as well as the test administrators identifiers would be 5 minutes (.08 hours) per test, increasing burden by 11,948 hours. We estimate that public institutions would provide 33 percent of those ATB tests or 158,962 tests and that, on average, the amount of time to record the test takers name and address as well as the test administrators identifiers would be 5 minutes (.08 hours) per test, increasing burden by 12,717 hours.

• If the individual who took the test has a disability and is unable to be evaluated by the use of an approved ATB test, or the individual requested or required a testing accommodation, the institution would be required, under proposed § 668.151(g)(5), to maintain documentation of the individual's disability and of the testing arrangements provided. Census data indicate that 12 percent of the U.S. population is severely disabled. We estimate that 12 percent of the ATB test population (481,763 ATB test takers) or 57,812 of the ATB test takers would be individuals with disabilities that would need accommodations for the ATB test. We estimate that it would take 5 minutes (.08 hours) to collect and maintain documentation of the individual's disability and of the testing accommodations provided to the test taker. We estimate that proprietary institutions will provide 36 percent or 20,812 tests times 5 minutes (.08 hours), increasing burden by 1,665 hours. We estimate that private non-profit institutions will provide 31 percent or 17,922 tests times 5 minutes (.08 hours), increasing burden by 1,434 hours. We estimate that public institutions will provide 33 percent or 19,078 tests times 5 minutes (.08 hours), increasing burden by 1,526 hours. Collectively, the proposed regulatory changes reflected in § 668.151 would increase burden by 43,166 hours in OMB Control Number 1845–0049.

Section 668.152—Administration of Tests by Assessment Centers

Proposed § 668.152(a) would clarify that assessment centers are also required to comply with the provisions of § 688.153 (Administration of tests for individuals whose native language is not English or for individuals with disabilities), if applicable.

Under proposed § 668.152(b)(2), assessment centers that score tests would be required to provide copies of completed tests or lists of test-takers' scores to the test publisher or the State, as applicable, on a weekly basis. Under proposed § 668.152(b)(2)(i) and (b)(2)(ii), copies of completed tests or reports listing test-takers' scores would be required to include the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State.

We estimate that of the 3,774 ATB test administrators approximately one-third (.3328 times 3,774) or 1,256 of the ATB test administrators are at test assessment centers. Of the 1,256 test assessment centers, we estimate that 18 percent or 226 test assessment centers are at private non-profit institutions and 82 percent or 1,030 test assessment centers are at public institutions. We estimate that 92 percent of the ATB tests provided at test assessment centers are scored by the test administrators and therefore, under the proposed regulations, the institution would be required to maintain the scored ATB

tests, to collect and submit copies of the completed ATB tests or a listing to the test publisher or State on a weekly basis, while the other 8 percent will not be impacted by these proposed regulations. We estimate that, on average, it would take 5 minutes (.08 hours) per week for the test assessment center (institution) to collect and submit the proposed information on a weekly basis. For 226 test assessment centers at private non-profit institutions times 5 minutes (.08 hours) times 52 weeks per year equals 940 hours of increased burden. For the 1,030 test assessment centers at public institutions times 5 minutes (.08 hours) times 52 weeks per year equals 4,285 hours of increased burden.

Collectively, the proposed regulatory changes reflected in § 668.152 would increase burden by 5,225 hours in OMB Control Number 1845–0049.

Section 668.164—Disbursing Funds

Under proposed § 668.164(i), an institution would provide a way for a Federal Pell Grant eligible student to obtain or purchase required books and supplies by the seventh day of a payment period under certain conditions. An institution would have to comply with this requirement only if, 10 days before the beginning of the payment period, the institution could disburse the title IV, HEA program funds for which the student is eligible, and presuming that those funds were disbursed, the student would have a title IV, HEA credit balance under § 668.164(e). The amount the institution would provide to the student for books and supplies would be the lesser of the presumed credit balance or the amount needed by the student, as determined by the institution. In determining the amount needed by the student, the institution could use the actual costs of books and supplies or the allowance for books and supplies used in the student's cost of attendance for the payment period.

We estimate that of the 6,321,678 Federal Pell Grant recipients in the 2008–2009 award year, that approximately 30 percent or 1,896,503 would have or did have a title IV, HEA credit balance. Of that number of Federal Pell Grant recipients, we estimate that 25 percent or 474,126 Federal Pell Grant recipients would have a presumed credit balance 10 days prior to the beginning of the payment period, and as proposed, that the institution would have to provide a way for those recipients to either obtain or purchase their books and supplies within 7 days of the beginning of the payment period. We estimate that the 2,063 proprietary institutions participating in the Federal Pell Grant program would take, on average 3 hours per institution to analyze and make programming change needed to identify these recipients with presumed credit balances, increasing burden by 6,189 hours. Additionally, we estimate that proprietary institutions would be required to disburse the presumed credit balance to 38 percent of the 474,126 at proprietary institutions (180,168 recipients) which on average, would take 5 minutes (.08 hours) per recipient, increasing burden by 14,414 hours. We estimate that the 1,523 private non-profit institutions participating in the Federal Pell Grant program would take, on average 3 hours per institution to analyze and make programming change needed to identify these recipients with presumed credit balances, increasing burden by 4,569 hours. Additionally, we estimate that private non-profit institutions would be required to disburse the presumed credit balance to 28 percent of the 474,126 at proprietary institutions (132,755 recipients) which on average, would take 5 minutes (.08 hours) per recipient, increasing burden by 10,620 hours. We estimate that the 1,883 public institutions participating in the Federal Pell Grant program would take, on average 3 hours per institution to analyze and make programming change needed to identify these recipients with presumed credit balances, increasing burden by 5,469 hours. Additionally, we estimate that proprietary institutions would be required to disburse the presumed credit balance to 34 percent of the 474,126 at proprietary institutions (161,203 recipients) which on average, would take 5 minutes (.08 hours) per recipient, increasing burden by 12,896 hours.

Collectively, the proposed regulatory changes reflected in § 668.164 would increase burden by 54,337 hours in OMB Control Number 1845–NEW3.

Collection of Information

Regulatory section	Information collection	Collection
668.6	This proposed regulatory section would require institutions to submit annually information that would include identifying information about each student who completed a program that prepares a student for gainful employment, the CIP code for that program, the date the student completed the program, and the amounts the student received from private educational loans and institutional financing programs. Institutions would have to disclose on their Web site information about the occupations that its programs prepare students to enter, information from DOL's O-Net data about the job tasks and expected salaries. In addition, the institution would also have to report the costs for tuition and fees, room and board, and other associated institutional costs typically incurred by students enrolling in these programs; graduation rates; placement rates; and median debt rate information about title IV, HEA loans and private loan as provided by the Department to the institution.	OMB 1845–NEW1. This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comment. The burden increases by 105,377 hours.
668.8	This proposed regulatory section provides for a new conversion ratio when converting clock hours to credit hours. As proposed, this section would include an exemption for affected institutions if the accrediting agency, or the State approval agency finds that there are no deficiencies in the institutions policies and procedures for these conversions. Under the exception, the institution would use a lower ratio and could consider student's outside work in the total hours being converted to credit hours. Burden would increase for proprietary, not-for profit and public institutions when they measure whether certain programs when converted from clock hours to credit hours have sufficient credit hours to receive title VI, HEA funds.	OMB 1845–0022. The burden increases by 18,349 hours.

Regulatory section	Information collection	Collection
668.16	This proposed regulatory section would be streamlined by moving most of the elements of satisfactory academic progress (SAP) from this section to proposed § 668.34. Under this proposal, the required elements of SAP would be expanded to provide greater institutional flexibility Burden would increase for proprietary, not-for profit and public institutions to develop a high school diploma validity process and would increase when certain diplomas are verified.	OMB 1845–0022 and OMB 1845–NEW2. The burden hours attributable to SAP in OMB 1845–0022 would be administratively transferred to OMB 1845–NEW2. Additionally, the burden increases by 21,982 hours in OMB 1845–0022.
668.22	This proposed regulatory section would consider a student to have withdrawn if the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing. Burden would increase for individuals, proprietary, not-for profit and public institutions when students in term-based programs with modules or compressed courses withdraw before completing more than 60 percent of the payment period or period of enrollment for which a calculation would be performed to determine the earned and unearned portions of title IV, HEA program assistance.	OMB 1845–0022. The burden increases by 743,881 hours.
668.34	This proposed regulatory section would restructure and expand the satisfactory academic progress requirements by allowing for more frequent measuring of SAP. Burden would increase for individuals and proprietary, not-for profit and public institutions for institutions to measure academic progress and when academic plans or alternatives would be provided to students who do not meet the institution's academic standards.	OMB 1845–NEW2. This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comment. The burden increases by 976,855 hours.
668.43	This proposed regulatory section would require that for institutions that enter into written arrangements with other institutions to provide for a portion of its programs' training by the institution that is not providing the degree or certificate, the institution providing the degree or certificate must provide a variety of disclosures to enrolled and prospective students about the written arrangements. Burden would increase for proprietary, not-for profit and public institutions for reporting the details of written arrangements with other institutions offering a portion of a student's program of study.	OMB 1845–0022. The burden increases by 67,870 hours.
668.55	This proposed regulatory provision would require that all updated applicant data information as a result of verification be reported to the Secretary via the Central Processing System. This also would cover changes made as a result of a dependent student becoming married during the award year, such change in status due to marriage had previously been prohibited.	OMB 1845–0041. The burden increases by 425,005 hours.
668.56	This proposed regulation changes from the current five mandatory items included in the verification process to a more flexible list of items that will be selected on an individualized basis. For example, there is no need to verify data that can be obtained directly from the IRS. Burden would increase for individuals; however, the average number of data elements to be verified is expected to be reduced.	OMB 1845–0041. The burden increases by 612,000 hours.
668.57	This proposed regulatory provision would modify the requirements related to acceptable documentation required as a part of the verification process. It would allow for the importation of data obtained directly from the IRS that has been unchanged and would provide other flexibilities that would reduce burden; however, due to the large increase in applicants, there would be an overall increase in burden.	OMB 1845–0041. The burden increases by 612,000 hours.
668.59	This proposed provision would eliminate all allowable tolerances and require an institution to submit to the Department all changes to an applicant's FAFSA as a result of verification. Burden would increase for proprietary, not-for profit and public institutions that would recalculate title IV, HEA awards as a result of data changes due to verification.	OMB 1845–0041. The burden increases by 2,080,800 hours.
668.144	This proposed regulatory section would amend and expand the required elements that a test publisher or a State must submit to the Secretary for approval.	OMB 1845–0049. The burden increases by 628 hours.
668.150	This proposed provision would amend and expand the provisions of the agreement between the Secretary and the ability to benefit test (ATB) publishers or a State. The expanded requirements would include requiring test administrators to certify that they have not been decertified, notification requirements when a test administrator is decertified, and providing test anomaly studies every eighteen months rather than every 36 months. Burden would increase for individuals, proprietary, not-for profit and public institutions for the collection and maintenance of certifications, for required notifications, and for submission of test anomaly studies.	OMB 1845–0049. The burden increases by 10,031 hours.
668.151	This proposed provision would require independent test administrators to submit completed tests for scoring to the test publisher or the State in no more than two business days following the test. Institutions would be required to maintain a record of each individual who takes an ATB test and information about the test administrator. When the test taker has a disability, it would be the institution's responsibility to maintain documentation of the individual's disability and any accommodation provided the individual.	OMB 1845–0049. The burden increases by 43,166 hours.
668.152	This proposed provision would require that test assessment centers provide either copies of the completed tests or lists of the test takers' scores, including the test administrator's name, address, and any other test administrator identifier to the test publisher or State, as applicable, on a weekly basis.	OMB 1845–0049. The burden increases by 5,225 hours.

Regulatory section	Information collection	Collection
668.164	This proposed provision would require that institutions provide a way for Federal Pell Grant program recipients to obtain or purchase books and supplies by the seventh day of the payment period if certain conditions are met and a credit balance or projected credit balance exists. Burden would increase for proprietary, not-for profit and public institutions to identify and notify Pell recipients with a presumed credit balance about ways to obtain or purchase books and supplies.	OMB 1845–NEW3. This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comment. The burden increases by 54,337 hours.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

• Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarify of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance: 84.007 FSEOG; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.376 ACG/SMART; 84.379 TEACH Grant Program)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 602

Colleges and universities, Reporting and recordkeeping requirements.

34 CFR Part 603

Colleges and universities, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 691

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: June 8, 2010.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600, 602, 603, 668, 682, 685, 686, 690, and 691 of title 34 of the Code of Federal Regulations as previously amended in the **Federal Register** on October 27, 2009 (74 FR 55414) and October 29, 2009 (74 FR 55902) as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

2. Section 600.2 is amended by:

A. Adding, in alphabetical order, the definition of a *Credit hour.*

B. Revising the definition of *Recognized occupation.*

The addition and revision read as follows:

§ 600.2 Definitions.

* * * * *

Credit hour: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is—

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time;

(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours; or

(3) Institutionally established reasonable equivalencies for the amount of work required in paragraph (1) of this definition for the credit hours awarded, including as represented in intended learning outcomes and verified by evidence of student achievement.

* * * * *

Recognized occupation: An occupation that is—

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget or an Occupational Information Network O* NET–SOC code established by the Department of Labor and available at *http://online.onetcenter.org* or its successor site; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

* * * * *

3. Section 600.4 is amended by:

A. In paragraph (a)(3), adding the words, "in accordance with § 600.9" immediately after the word "located".

B. In paragraph (a)(4)(i)(C), removing the word "and" that appears after the punctuation ";".

C. Adding paragraph (a)(4)(iii).

The addition reads as follows:

§ 600.4 Institution of higher education.

(a) * * *

(4) * * *

(iii) That is at least a one academic year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation; and

* * * * *

§ 600.5 [Amended]

4. Section 600.5(a)(4) is amended by adding the words, "in accordance with § 600.9" immediately after the word "located".

§ 600.6 [Amended]

5. Section 600.6(a)(3) is amended by adding the words, "in accordance with § 600.9" immediately after the word "located".

6. Section 600.9 is added to subpart A to read as follows:

§ 600.9 State authorization.

(a)(1) An institution described under §§ 600.4, 600.5, and 600.6 is legally authorized by a State through a charter, license, approval, or other document issued by an appropriate State government agency or State entity that affirms or conveys the authority to the institution to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

(2) An institution is considered to meet the provisions of paragraph (a)(1) of this section if the institution is authorized to offer educational programs beyond secondary education by the Federal Government or, as defined in 25 U.S.C. 1802(2), an Indian tribe.

(3) An institution is considered to be legally authorized to offer educational programs beyond secondary education if it is exempt from State authorization as a religious institution under the State constitution.

(b) The Secretary considers an institution to be legally authorized by a State under paragraph (a)(1) of this section if—

(1) The authorization is given to the institution specifically to offer programs beyond secondary education but not if the authorization is merely of the type required to do business in the State or to operate as an eleemosynary organization;

(2) The authorization provided to the institution is subject to adverse action by the State; and

(3) The State has a process to review and appropriately act on complaints concerning an institution and enforces applicable State laws.

(Authority: 20 U.S.C. 1001 and 1002)

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

7. The authority citation for part 602 continues to read as follows:

Authority: 20 U.S.C. 1099b, unless otherwise noted.

8. Section 602.24 is amended by adding a new paragraph (f) to read as follows:

§ 602.24 Additional procedures certain institutional accreditors must have.

* * * * *

(f) *Credit-hour policies.* The accrediting agency, as part of its review of an institution for initial accreditation or preaccreditation or renewal of accreditation, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

(1) The accrediting agency meets this requirement if—

(i) It reviews the institution's—

(A) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for courses and programs; and

(B) The application of the institution's policies and procedures to its programs and coursework; and

(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.

(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, an accrediting agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (f)(1)(i)(B) of this section.

(3) The accrediting agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (f)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.

(4) If, following the institutional review process under this paragraph (f), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.

* * * * *

PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES

9. The authority citation for part 603 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1094(c)(4); 42 U.S.C. 293a(b), 38 U.S.C. 3675, unless otherwise noted.

10. Section 603.24 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 603.24 Criteria for State agencies.

* * * * *

(c) *Credit-hour policies.* The State agency, as part of its review of an institution for initial approval or renewal of approval, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

(1) The State agency meets this requirement if—

(i) It reviews the institution's—

(A) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for courses and programs; and

(B) The application of the institution's policies and procedures to its programs and coursework; and

(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.

(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, a State agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (c)(1)(i)(B) of this section.

(3) The State agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (c)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.

(4) If, following the institutional review process under this paragraph (c), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

11. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.2 [Amended]

12. Section 668.2 is amended by:

A. In paragraph (a), adding, in alphabetical order, the term "Credit hour".

B. In paragraph (b), in the definition of *Full-time student,* adding the words, "including for a term-based program, repeating any coursework previously taken in the program" immediately before the period in the second sentence.

13. Section 668.5 is amended by:

A. Revising paragraph (a).

B. Revising paragraph (c)(1).

C. In paragraph (c)(2), adding the words "offered by the institution that grants the degree or certificate" after the word "program".

D. In paragraph (c)(3)(i), removing the words "not more than" and adding the words "or less" after the word "percent".

E. In paragraph (c)(3)(ii)(A), removing the words "not more" and adding, in their place, the word "less".

F. Adding new paragraph (e).

The addition and revisions read as follows:

§ 668.5 Written arrangements to provide educational programs.

(a) *Written arrangements between eligible institutions.* (1) Except as provided in paragraph (a)(2) of this section, if an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides part of the educational program to students enrolled in the first institution, the Secretary considers that educational program to be an eligible program if the educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of § 668.8.

(2) If the written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the Secretary considers the educational program to be an eligible program if—

(i) The educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of § 668.8; and

(ii) The institution that grants the degree or certificate provides more than 50 percent of the educational program.

* * * * *

(c) * * *

(1) The ineligible institution or organization has not—

(i) Had its eligibility to participate in the title IV, HEA programs terminated by the Secretary;

(ii) Voluntarily withdrawn from participation in the title IV, HEA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Secretary;

(iii) Had its certification to participate in the title IV, HEA programs revoked by the Secretary;

(iv) Had its application for re-certification to participate in the title IV, HEA programs denied by the Secretary; or

(v) Had its application for certification to participate in the title IV, HEA programs denied by the Secretary;

* * * * *

(e) *Information made available to students.* If an institution enters into a written arrangement described in paragraph (a), (b), or (c) of this section, the institution must provide the information described in § 668.43(a)(12) to enrolled and prospective students.

* * * * *

14. Section 668.6 is added to subpart A to read as follows:

§ 668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.

(a) *Reporting requirements.* In accordance with procedures established by the Secretary, an institution must report annually for each student who completes a program under § 668.8(c)(3) or (d), information that includes—

(1) Information needed to identify the student;

(2) The Classification of Instructional Program (CIP) code of the program the student completed;

(3) The date the student completed the program; and

(4) The amounts the student received from private educational loans and institutional financing plans.

(b) *Disclosures.* For each program offered by an institution under this section, on its Web site the institution must provide prospective students with—

(1) The occupations (by names and SOC codes) that the program prepares students to enter, along with links to occupational profiles on O*NET or its successor site;

(2) The on-time graduation rate for students entering the program;

(3) The cost of the program, including tuition and fees, room and board, and other institutional costs that a typical student would incur for enrolling in the program;

(4) Beginning no later than June 30, 2013, the placement rate for students completing the program, as determined under § 668.8(g) or a State-sponsored workforce data system; and

(5) The median loan debt incurred by students who completed the program during the preceding three years. The institution must identify separately the median loan debt from title IV, HEA program loans, and the median loan debt from private educational loans and institutional financing plans.

(Approved by the Office of Management and Budget under control number 1845–NEW1)

(Authority: 20 U.S.C 1001(b), 1002(b) and (c))

15. Section 668.8 is amended by:

A. Revising paragraph (c)(3).

B. In paragraph (d)(2)(iii), adding the words, "as provided under § 668.6" immediately after the word "occupation."

C. In paragraph (d)(3)(iii), adding the words, "as provided under § 668.6" immediately after the word "occupation."

D. Revising paragraphs (k) and (l).

The revisions read as follows:

§ 668.8 Eligible program.

* * * * *

(c) * * *

(3) Be at least a one-academic-year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation.

* * * * *

(k) *Undergraduate educational program in credit hours.* (1) Except as provided in paragraph (k)(2) of this section, if an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the title IV, HEA programs, unless—

(i) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(ii) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary provided that—

(A) The institution's degree requires at least two academic years of study; and

(B) The institution demonstrates that students enroll in, and graduate from, the degree program.

(2) A program is considered to be a clock-hour program for purposes of the title IV, HEA programs if—

(i) Except as provided in paragraph (k)(3) of this section, a program is required to measure student progress in clock hours when—

(A) Receiving Federal or State approval or licensure to offer the program; or

(B) Completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue;

(ii) The credit hours awarded for the program are not in compliance with the definition of a credit hour in 34 CFR 600.2; or

(iii) The institution does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and, except as provided in § 668.4(e), requires attendance in the clock hours that are the basis for the credit hours awarded.

(3) The requirements of paragraph (k)(2)(i) of this section do not apply to a program if there is a State or Federal approval or licensure requirement that a limited component of the program must include a practicum, internship, or clinical experience component of the program that must include a minimum number of clock hours.

(l) *Formula.* (1) Except as provided in paragraph (l)(2) of this section, for purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and of determining the number of credit hours in that educational program with regard to the title IV, HEA programs—

(i) A semester hour must include at least 37.5 clock hours of instruction;

(ii) A trimester hour must include at least 37.5 clock hours of instruction; and

(iii) A quarter hour must include at least 25 clock hours of instruction.

(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section, if neither the institution's designated accrediting agency nor the relevant State licensing authority for participation in the title IV, HEA programs has identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f), or, if applicable, 34 CFR 603.24(c), so long as—

(i) The institution's student work outside of class combined with the clock-hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and

(ii)(A) A semester hour must include at least 30 clock hours of instruction;

(B) A trimester hour must include at least 30 clock hours of instruction; and

(C) A quarter hour must include at least 20 hours of instruction.

* * * * *

16. Section 668.14 is amended by revising paragraph (b)(22) to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(22)(i)(A) It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the awarding of title IV, HEA program funds.

(B) The restrictions in paragraph (b)(22) of this section do not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(ii) Eligible institutions, organizations that are contractors to eligible institutions, and other entities may make merit-based adjustments to employee compensation provided that such adjustments are not based directly or indirectly upon success in securing enrollments or the award of financial aid.

(iii) As used in paragraph (b)(22) of this section,

(A) *Commission, bonus, or other incentive payment* means a sum of money or something of value paid to or given to a person or an entity for services rendered.

(B) *Securing enrollments or the awards of financial aid* means activities that a person or entity engages in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students.

(*1*) These activities include recruitment contact in any form with a prospective student, such as preadmission or advising activities, scheduling an appointment to visit the enrollment office, attendance at such appointment, or signing an enrollment agreement or financial aid application.

(*2*) These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on the number of students who apply or enroll.

(C) *Enrollment* means the admission or matriculation of a student into an eligible institution.

* * * * *

17. Section 668.16 is amended by:

A. Revising paragraph (e).

B. In paragraph (n) introductory text, removing the word "and" that appears after the punctuation";".

C. In paragraph (o)(2), removing the punctuation "." and adding, in its place, the punctuation and word "; and".

D. Adding paragraph (p).

E. Revising the OMB control number at the end of the section.

The revisions and addition read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(e) For purposes of determining student eligibility for assistance under a title IV, HEA program, establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory academic progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards are in accordance with the provisions specified in § 668.34.

* * * * *

(p) Develops and follows procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

(Approved by the Office of Management and Budget under control number 1845–0022)

* * * * *

18. Section 668.22 is amended by:

A. Redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(3) through (a)(6), respectively.

B. Adding new paragraph (a)(2).

C. In newly redesignated paragraph (a)(5), removing the citation "(a)(5)" and adding, in its place, the citation "(a)(6)".

D. In newly redesignated paragraph (a)(6)(ii)(A)(*2*), removing the citation "(a)(5)(iii)" and adding, in its place, the citation "(a)(6)(iii)".

E. In newly redesignated paragraph (a)(6)(ii)(B)(*2*), removing the citation "(a)(5)(iii)" and adding, in its place, the citation "(a)(6)(iii)".

F. In newly redesignated paragraph (a)(6)(ii)(B)(*3*), removing the citation "(a)(5)(iii)" and adding, in its place, the citation "(a)(6)(iii)".

G. In newly redesignated paragraph (a)(6)(iii)(A)(*1*), removing the citation "(a)(5)(ii)(A)(*2*)" and adding, in its place, the citation "(a)(6)(ii)(A)(*2*)".

H. In newly redesignated paragraph (a)(6)(iii)(A)(*5*), removing the citation "(a)(5)(iii)(C)" and adding, in its place, the citation "(a)(6)(iii)(C)".

I. In newly redesignated paragraph (a)(6)(iii)(B), removing the citation "(a)(5)(iii)(A)" and adding, in its place, the citation "(a)(6)(iii)(A)".

J. In newly redesignated paragraph (a)(6)(iv), removing the citation "(a)(5)(iii)" and adding, in its place, the citation "(a)(6)(iii)".

K. Revising paragraph (b)(3).

L. In paragraph (f)(2)(i), adding the words "that the student, prior to withdrawing, was scheduled to complete" after the words "within the period".

The addition and revision read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

* * * * *

(a) * * *

(2) A student is considered to have withdrawn from a payment period or period of enrollment if, prior to withdrawing—

(i) In the case of a program that is measured in credit hours, the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete; and

(ii) In the case of a program that is measured in clock hours, the student does not complete all of the clock hours in the payment period or period of enrollment that the student was scheduled to complete.

* * * * *

(b) * * *

(3)(i) An institution is required to take attendance if—

(A) An outside entity (such as the institution's accrediting agency or a State agency) has a requirement that the institution take attendance;

(B) The institution itself has a requirement that its instructors take attendance; or

(C) The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program.

(ii) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance or requires that attendance be taken for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

(iii)(A) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance, or requires that attendance be taken, for a limited period, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(3)(i) of this section for that limited period.

(B) A student in attendance at the end of the limited period identified in paragraph (b)(3)(iii)(A) of this section who subsequently stops attending during the payment period will be treated as a student for whom the institution was not required to take attendance.

(iv) If an institution is required to take attendance or requires that attendance be taken, on only one specified day to meet a census reporting requirement, the institution is not considered to take attendance.

* * * * *

19. Section 668.32 is amended by:

A. In paragraph (e)(3), removing the word "or" that appears after the punctuation ";".

B. In paragraph (e)(4)(ii), removing the punctuation "." and adding, in its place, the punctuation and word "; or".

C. Adding new paragraph (e)(5).

D. Revising paragraph (f).

The addition and revision read as follows:

§ 668.32 Student eligibility—general.

* * * * *

(e) * * *

(5) Has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution.

(f) Maintains satisfactory academic progress in his or her course of study according to the institution's published standards of satisfactory academic progress that meet the requirements of § 668.34.

* * * * *

20. Section 668.34 is revised to read as follows:

§ 668.34 Satisfactory academic progress.

(a) *Satisfactory academic progress policy.* An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution's policy to be reasonable if—

(1) The policy is at least as strict as the policy the institution applies to a student who is not receiving assistance under the title IV, HEA programs;

(2) The policy provides for consistent application of standards to all students within categories of students, *e.g.,* full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(3) The policy provides that a student's academic progress is evaluated—

(i) At the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or

(ii) At the end of each payment period or at least annually for all other educational programs;

(4)(i) The policy specifies the grade point average (GPA) that a student must achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a comparable assessment measured against a norm; and

(ii) If a student is enrolled in an educational program of more than two academic years, the policy specifies that at the end of the second academic year, the student must have a GPA of at least a "C" or its equivalent, or have academic standing consistent with the institution's requirements for graduation;

(5)(i) The policy specifies the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, as defined in paragraph (b) of this section, and provides for measurement of the student's progress at each evaluation; and

(ii) An institution calculates the pace at which the student is progressing by dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted. In making this calculation, the institution is not required to include remedial courses;

(6) The policy describes how a student's GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student's educational program must count as both attempted and completed hours;

(7) Except as provided in paragraphs (c) and (d) of this section, the policy provides that, at the time of each evaluation, a student who has not achieved the required GPA, or who is not successfully completing his or her educational program at the required pace, is no longer eligible to receive assistance under the title IV, HEA programs;

(8) If the institution places students on financial aid warning, or on financial aid probation, as defined in paragraph (b) of this section, the policy describes these statuses and that—

(i) A student on financial aid warning may continue to receive assistance under the title IV, HEA programs for one payment period despite a determination that the student is not making satisfactory academic progress. Financial aid warning status may be assigned without an appeal or other action by the student; and

(ii) A student on financial aid probation may receive title IV, HEA program funds for one payment period. While a student is on financial aid probation, the institution may require the student to fulfill specific terms and conditions such as taking a reduced course load or enrolling in specific courses. At the end of one payment period on financial aid probation, the student must meet the institution's satisfactory academic progress standards or meet the requirements of the academic plan developed by the institution and the student to qualify for further title IV, HEA program funds;

(9) If the institution permits a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy describes—

(i) How the student may re-establish his or her eligibility to receive assistance under the title IV, HEA programs;

(ii) The basis on which a student may file an appeal: The death of a relative, an injury or illness of the student, or other special circumstances; and

(iii) Information the student must submit regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that will allow the student to demonstrate satisfactory academic progress at the next evaluation;

(10) If the institution does not permit a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy must describe how the student may re-establish his or her eligibility to receive assistance under the title IV, HEA programs; and

(11) The policy provides for notification to students of the results of an evaluation that impacts the student's eligibility for title IV, HEA program funds.

(b) *Definitions.* The following definitions apply to the terms used in this section:

Appeal. Appeal means a process by which a student who is not meeting the institution's satisfactory academic progress standards petitions the institution for reconsideration of the student's eligibility for title IV, HEA program assistance.

Financial aid probation. Financial aid probation means a status assigned by an institution to a student who fails to make satisfactory academic progress and who has appealed and has had eligibility for aid reinstated.

Financial aid warning. Financial aid warning means a status assigned to a student who fails to make satisfactory academic progress at an institution that evaluates academic progress at the end of each payment period.

Maximum time frame. Maximum timeframe means—

(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours;

(2) For an undergraduate program measured in clock hours, a period that is no longer than 150 percent of the published length of the educational program, as measured by the cumulative number of clock hours the student is required to complete and expressed in calendar time; and

(3) For a graduate program, a period defined by the institution that is based on the length of the educational program.

(c) *Institutions that evaluate satisfactory academic progress at the end of each payment period.* (1) An institution that evaluates satisfactory academic progress at the end of each payment period and determines that a student is not making progress under its policy may nevertheless disburse title IV, HEA program funds to the student under the provisions of paragraph (c)(2), (c)(3), or (c)(4) of this section.

(2) For the payment period following the payment period in which the student did not make satisfactory academic progress, the institution may—

(i) Place the student on financial aid warning, and disburse title IV, HEA program funds to the student; or

(ii) Place a student directly on financial aid probation, following the procedures outlined in paragraph (d)(2) of this section and disburse title IV, HEA program funds to the student.

(3) For the payment period following a payment period during which a student was on financial aid warning, the institution may place the student on financial aid probation, and disburse title IV, HEA program funds to the student if—

(i) The institution evaluates the student's progress and determines that student did not make satisfactory academic progress during the payment period the student was on financial aid warning;

(ii) The student appeals the determination; and

(iii)(A) The institution determines that the student should be able to meet

the institution's satisfactory academic progress standards by the end of the subsequent payment period; or

(B) The institution develops an academic plan for the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

(4) A student on financial aid probation for a payment period may not receive title IV, HEA program funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student.

(d) *Institutions that evaluate satisfactory academic progress annually or less frequently than at the end of each payment period.* (1) An institution that evaluates satisfactory academic progress annually or less frequently than at the end of each payment period and determines that a student is not making progress under its policy may nevertheless disburse title IV, HEA program funds to the student under the provisions of paragraph (d)(2) or (d)(3) of this section.

(2) The institution may place the student on financial aid probation and may disburse title IV, HEA program funds to the student for the subsequent payment period if—

(i) The institution evaluates the student and determines that the student is not making satisfactory academic progress;

(ii) The student appeals the determination; and

(iii) (A) The institution determines that the student should be able to make satisfactory academic progress during the subsequent payment period and meet the institution's satisfactory academic progress standards at the end of that payment period; or

(B) The institution develops an academic plan for the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

(3) A student on financial aid probation for a payment period may not receive title IV, HEA program funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student.

(Authority: 20 U.S.C. 1091(d))

21. Section 668.43 is amended by:

A. In paragraph (a)(10)(ii), removing the word "and" that appears after the punctuation ";".

B. In paragraph (a)(11)(ii), removing the punctuation "." and adding, in its place, the punctuation and word "; and".

C. Adding paragraph (a)(12).

D. Revising paragraph (b).

The addition and revision read as follows:

§ 668.43 Institutional information.

(a) * * *

(12) A description of written arrangements the institution has entered into in accordance with § 668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

(b) The institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and State approval or licensing entity.

* * * * *

22. Subpart E of part 668 is revised to read as follows:

Subpart E—Verification and Updating of Student Aid Application Information

Sec.

668.51 General.
668.52 Definitions.
668.53 Policies and procedures.
668.54 Selection of an applicant's FAFSA information for verification.
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Subpart E—Verification and Updating of Student Aid Application Information

§ 668.51 General.

(a) *Scope and purpose.* The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance under the subsidized student financial assistance programs.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information.

(c) *Foreign schools.* The Secretary exempts from the provisions of this subpart participating institutions that are not located in a State.

(Authority: 20 U.S.C. 1094)

§ 668.52 Definitions.

The following definitions apply to this subpart:

Free Application for Federal Student Aid (FAFSA): The student aid application provided for under section 483, of the HEA, which is used to determine a student's eligibility for the title IV, HEA programs.

Institutional Student Information Record (ISIR): An electronic record the Secretary transmits to an institution, for purposes of the title IV, HEA programs, that includes an applicant's—

(1) Personal identification information;

(2) FAFSA information used to determine eligibility for title IV, HEA program aid; and

(3) EFC.

Specified year: (1) The calendar year preceding the first calendar year of an award year, *i.e.,* the base year; or

(2) The year preceding the year described in paragraph (1) of this definition.

Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the amount of his or her EFC.

Subsidized student financial assistance programs: Title IV, HEA programs for which eligibility is determined on the basis of a student's EFC. These programs include the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan, Subsidized Stafford Loan and Direct Subsidized Loan programs.

Unsubsidized student financial assistance programs: Title IV, HEA programs for which eligibility is not based on a student's EFC. These programs include the Teacher Education

Assistance for College and Higher Education (TEACH) Grant, Unsubsidized Stafford Loan, Direct Unsubsidized Loan, Federal PLUS Loan, and Direct Parent Loan for Undergraduate Students (Direct PLUS Loan) programs.

(Authority: 20 U.S.C. 1094)

§ 668.53 Policies and procedures.

(a) An institution must establish and use written policies and procedures for verifying an applicant's FAFSA information in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant must provide any documentation requested by the institution in accordance with § 668.57;

(2) The consequences of an applicant's failure to provide the requested documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of its verification if, as a result of verification, the applicant's EFC changes and results in a change in the amount of the applicant's assistance under the title IV, HEA programs;

(4) The procedures the institution will take itself or the procedures the institution will require an applicant to follow to correct his or her FAFSA information determined to be in error; and

(5)(a) The procedures for making referrals under § 668.16(g).

(b) An institution's procedures must provide that it will furnish, in a timely manner, to each applicant whose FAFSA information is selected for verification a clear explanation of—

(1) The documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of his or her FAFSA information, including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(c) An institution's procedures must provide that an applicant whose FAFSA information is selected for verification by the Secretary is required to complete verification before the institution exercises any authority under section 479A(a) of the HEA to make changes to the applicant's cost of attendance or to the values of the data items required to calculate the EFC.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

§ 668.54 Selection of an applicant's FAFSA information for verification.

(a) *General requirements.* (1) Except as provided in paragraph (b) of this section, an institution must require an applicant whose FAFSA information is selected for verification by the Secretary, to verify the information specified by the Secretary pursuant to § 668.56.

(2) If an institution has reason to believe that an applicant's FAFSA information is inaccurate, it must verify the accuracy of that information.

(3) An institution may require an applicant to verify any FAFSA information that it specifies.

(b) *Exclusions from verification.* (1) An institution need not verify an applicant's FAFSA information if—

(i) The applicant dies;

(ii) The applicant does not receive assistance under the title IV, HEA programs for reasons other than failure to verify his or her FAFSA information;

(iii) The applicant receives only unsubsidized student financial assistance; or

(iv) The applicant who transfers to the institution, had previously completed verification at the institution from which he or she transferred, and applies for assistance based on the same FAFSA information used at the previous institution, if the current institution obtains a letter from the previous institution—

(A) Stating that it has verified the applicant's information; and

(B) Providing the transaction number of the applicable ISIR.

(2) Unless the institution has reason to believe that the information reported by a dependent applicant is incorrect, it need not verify the applicant's parents' FAFSA information if—

(i) The parents are residing in a country other than the United States and cannot be contacted by normal means of communication;

(ii) The parents cannot be located because their contact information is unknown and cannot be obtained by the applicant; or

(iii) Both of the applicant's parents are mentally incapacitated.

(3) Unless the institution has reason to believe that the information reported by an independent applicant is incorrect, it need not verify the applicant's spouse's information if—

(i) The spouse is deceased;

(ii) The spouse is mentally incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her contact information is unknown and cannot be obtained by the applicant.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1091, 1094)

§ 668.55 Updating information.

(a)(1) Unless the provisions of paragraph (a)(2) of this section apply, an applicant is required to update—

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) The applicant's dependency status in accordance with the provisions of paragraph (c) of this section.

(2) An institution need not require an applicant to verify the information contained in his or her FAFSA for an award year if—

(i) The applicant updated and verified the FAFSA information on an earlier transaction; and

(ii) No change in the information to be updated has taken place since the last update.

(b) If the number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes, an applicant who is selected for verification must update his or her FAFSA information regarding those data items so that the information is correct as of the date the applicant verifies the information.

(c) If an applicant's dependency status changes during an award year, the applicant must update his or her FAFSA information so that the information is correct regardless of whether the applicant is selected for verification.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

§ 668.56 Information to be verified.

(a) For each award year the Secretary publishes in the **Federal Register** notice the FAFSA information that an institution and an applicant may be required to verify.

(b) For each applicant whose FAFSA information is selected for verification by the Secretary, the Secretary specifies the specific information under paragraph (a) of this section that the applicant must verify.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094, 1095)

§ 668.57 Acceptable documentation.

If an applicant is selected to verify any of the following information, an institution must obtain the specified documentation.

(a) *Adjusted Gross Income (AGI), income earned from work, or U.S. income tax paid.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution must require an applicant selected for verification of AGI, income earned from work or U.S. income tax paid to submit to it—

(i) A copy of the income tax return or an Internal Revenue Service (IRS) form which that lists tax account information of the applicant, his or her spouse, or his or her parents, as applicable. The copy of the return must include the signature (which need not be an original) of the filer of the return or of one of the filers of a joint return;

(ii) For a dependent student, a copy of each IRS Form W–2 received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W–2 he or she received if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) An institution may accept, in lieu of an income tax return or an IRS form that lists tax account information, the information reported for an item on the applicant's FAFSA if the Secretary has identified that item as having been obtained from the IRS.

(3) An institution must accept, in lieu of an income tax return or an IRS form that lists tax account information, the documentation set forth in paragraph (a)(4) of this section if the individual for the specified year—

(i) Has not filed and, under IRS rules, or other applicable government agency rules, is not required to file an income tax return;

(ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

(iii) Has requested a copy of the tax return or an IRS form that lists tax account information, and the IRS or a government of a U.S. territory or commonwealth or a foreign central government cannot locate the return or provide an IRS form that lists tax account information.

(4) An institution must accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that individual certifying that he or she has not filed and is not required to file an income tax return for the specified year and certifying for that year that individual's—

(A) Sources of income earned from work as stated on the FAFSA; and

(B) Amounts of income from each source. In lieu of a certification of these amounts of income, the student may provide a copy of his or her IRS Form W–2 for each source listed under paragraph (a)(4)(i)(A) of this section;

(ii) For an individual described in paragraph (a)(3)(ii) of this section—

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for the specified year, or a copy of the IRS's approval of an extension beyond the automatic six-month extension if the individual requested an additional extension of the filing time; and

(B) A copy of each IRS Form W–2 that the individual received for the specified year, or for a self-employed individual, a statement signed by the individual certifying the amount of the AGI for the specified year; and

(iii) For an individual described in paragraph (a)(3)(iii) of this section—

(A) A copy of each IRS Form W–2 that the individual received for the specified year; or

(B) For an individual who is self-employed or has filed an income tax return with a government of a U.S. territory or commonwealth, or a foreign central government, a statement signed by the individual certifying the amount of AGI for the specified year.

(5) An institution may require an individual described in paragraph (a)(3)(ii) of this section to provide to it a copy of his or her completed and signed income tax return when filed. If an institution receives the copy of the return, it must reverify the AGI and taxes paid by the applicant and his or her spouse or parents.

(6) If an individual who is required to submit an IRS Form W–2, under paragraph (a) of this section, is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work, the source of that income, and the reason that the IRS Form W–2 is not available in a timely manner.

(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that includes the preparer's Social Security Number, Employer Identification Number or the Preparer Tax Identification Number and has been signed by the preparer of the return or stamped with the name and address of the preparer of the return.

(b) *Number of family members in household.* An institution must require an applicant selected for verification of the number of family members in the household to submit to it a statement signed by both the applicant and one of the applicant's parents if the applicant is a dependent student, or only the applicant if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of that household member to the applicant.

(c) *Number of family household members enrolled in eligible postsecondary institutions.* (1) An institution must require an applicant selected for verification of the number of household members in the applicant's family enrolled on at least a half-time basis in eligible postsecondary institutions to submit a statement signed by both the applicant and one of the applicant's parents, if the applicant is a dependent student, or by only the applicant if the applicant is an independent student, listing—

(i) The name of each family member who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of the institution that each student is or will be attending.

(2) If the institution has reason to believe that an applicant's FAFSA information or the statement provided under paragraph (c)(1) of this section regarding the number of family household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain a statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless—

(i) The institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend; or

(ii) The institution has information indicating that the student will be attending the same institution as the applicant.

(d) *Other information.* If an applicant is selected to verify other information specified in the annual **Federal Register** notice, the applicant must provide the

documentation specified for that information in the **Federal Register** notice.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

§ 668.58 Interim disbursements.

(a)(1) If an institution has reason to believe that an applicant's FAFSA information is inaccurate, until the information is verified and any corrections are made, the institution may not—

(i) Disburse any Federal Pell Grant, FSEOG, or Federal Perkins Loan Program funds to the applicant;

(ii) Employ or allow an employer to employ the applicant in its FWS Program; or

(iii) Certify a Subsidized Stafford Loan or originate a Direct Subsidized Loan, or disburse any such loan proceeds for any previously certified Subsidized Stafford Loan or originated Direct Subsidized Loan to the applicant.

(2) If an institution does not have reason to believe that an applicant's FAFSA information is inaccurate prior to verification, the institution may—

(i)(A) Withhold payment of Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant; or

(B) Make one disbursement from each of the Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant's first payment period of the award year;

(ii) Employ or allow an employer to employ that applicant, once he or she is an eligible student, under the FWS Program for the first 60 consecutive days after the student's enrollment in that award year; or

(iii)(A) Withhold certification of the applicant's Subsidized Stafford Loan application or origination of the applicant's Direct Subsidized Loan; or

(B) Certify the Subsidized Stafford Loan application or originate the Direct Subsidized Loan provided that the institution does not disburse Subsidized Stafford Loan or Direct Subsidized Loan proceeds.

(3) If, after verification, an institution determines that changes to an applicant's information will not change the amount the applicant would receive under a title IV, HEA program, the institution—

(i) Must ensure corrections are made; and

(ii) May—

(A) Make one disbursement from each of the Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant's first payment period of the award year;

(B) Employ or allow an employer to employ the applicant, once he or she is an eligible student, under the FWS Program for the first 60 consecutive days after the student's enrollment in that award year; or

(C) Certify the Subsidized Stafford Loan application or originate the Direct Subsidized Loan and disburse the Subsidized Stafford Loan or Direct Subsidized Loan proceeds for the applicant.

(b) If an institution chooses to make a disbursement under paragraph (a)(2)(i)(B) or (a)(2)(iii)(B) of this section, it is liable for any overpayment discovered resulting from verification to the extent that the overpayment is not recovered through reducing subsequent disbursements in the award year.

(Authority: 20 U.S.C. 1094)

§ 668.59 Consequences of a change in an applicant's FAFSA information.

(a) For the subsidized student financial assistance programs, if an applicant's FAFSA information changes as a result of verification, the applicant or the institution must submit the changes to the Secretary.

(b) For the Federal Pell Grant Program an institution must—

(1) Recalculate the applicant's Federal Pell Grant on the basis of the EFC on the corrected SAR or ISIR; and

(2)(i) Disburse any additional funds under that award only if the institution receives a corrected SAR or ISIR for the student and only to the extent that additional funds are payable based on the recalculation; or

(ii) Comply with the procedures specified in § 668.61(a) if, as a result of verification, the Federal Pell Grant award is reduced.

(c) For the subsidized student financial assistance programs, excluding the Federal Pell Grant Program, if an applicant's FAFSA information changes as a result of verification, the institution must—

(1) Recalculate the applicant's EFC; and

(2) Adjust the applicant's financial aid package on the basis of the EFC on the corrected SAR or ISIR.

(d)(1) If an applicant is selected for verification for an award year for which the applicant previously received a Direct Subsidized Loan, and as a result of verification the loan amount is reduced, the institution must comply with the procedures specified in §§ 668.61(b)(2) and 34 CFR 685.303(e).

(2) If an applicant is selected for verification for an award year for which the applicant previously received a Subsidized Stafford Loan, and as a result of verification the loan amount is reduced, the institution must comply with the procedures for notifying the borrower and lender specified in §§ 668.61(b)(1) and 34 CFR 682.604(h).

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution must require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documentation set forth in § 668.57 that is requested by the institution.

(b) For purposes of the subsidized student financial assistance programs, excluding the Federal Pell Grant Program—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution—

(i) The institution may not—

(A) Disburse any additional Federal Perkins Loan or FSEOG Program funds to the applicant;

(B) Employ, continue to employ or allow an employer to employ the applicant under FWS; or

(C) Certify the applicant's Subsidized Stafford Loan application or originate the applicant's Direct Subsidized Loan or disburse any additional Subsidized Stafford Loan or Direct Subsidized Loan proceeds for the applicant; and

(ii) The applicant must repay to the institution any Federal Perkins Loan or FSEOG received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, disburse aid to the applicant notwithstanding paragraph (b)(1) of this section; and

(3) If an institution has received proceeds for a Subsidized Stafford Loan or Direct Subsidized Loan on behalf of an applicant, the institution must follow the cash management procedures provided in §§ 668.166(a), (b), or 668.167(c), respectively, and return the proceeds to the lender, or to the Secretary, in the case of a Direct Subsidized Loan, if the applicant does not complete verification within the time period specified.

(c) For purposes of the Federal Pell Grant Program—

(1) An applicant may submit a valid SAR to the institution or the institution may receive a valid ISIR after the applicable deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication of a notice in the **Federal Register**; and

(2) If the applicant does not provide to the institution the requested documentation and, if necessary, a valid SAR or the institution does not receive a valid ISIR, within the additional time period referenced in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Federal Pell Grant for the award year; and

(ii) Must return any Federal Pell Grant payments previously received for that award year.

(d) The Secretary may determine not to process FAFSA information of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies before the deadline for completing verification without completing that process, the institution may not—

(1) Make any further disbursements on behalf of that applicant;

(2) Certify that applicant's Subsidized Stafford Loan application, originate that applicant's Direct Subsidized Loan, or disburse that applicant's Subsidized Stafford Loan or Direct Subsidized Loan proceeds; or

(3) Consider any funds it disbursed to that applicant under § 668.58(a)(2) as an overpayment.

(Authority: 20 U.S.C. 1094)

§ 668.61 Recovery of funds.

(a) If an institution discovers, as a result of verification, that an applicant received more financial aid than the applicant was eligible to receive, including an interim disbursement under § 668.58(a)(2)(ii)(A) and (a)(2)(ii)(B), the institution must eliminate the overpayment by—

(1) Adjusting subsequent disbursements in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) Making restitution from its own funds, by the earlier of the following dates, if the applicant does not return the overpayment:

(A) Sixty days after the applicant's last day of attendance.

(B) The last day of the award year in which the institution disbursed Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds to the applicant.

(b)(1) If the institution determines as a result of verification that an applicant received Subsidized Stafford Loan proceeds for an award year in excess of the student's financial need for the loan, the institution must withhold and promptly return to the lender any disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid received by the student. However, instead of returning the entire undelivered disbursement, the school may choose to return promptly to the lender only the portion of the disbursement for which the student is ineligible. In either case, the institution must provide the lender with a written statement describing the reason for the returned loan funds.

(2) If the institution determines as a result of verification that a student received Direct Subsidized Loan proceeds for an award year in excess of the student's need for the loan, the institution must reduce or cancel one or more subsequent disbursements to eliminate the amount in excess of the student's need.

(c) If an institution disbursed subsidized student financial assistance to an applicant under § 668.58(a)(3), and did not receive the SAR or ISIR reflecting corrections within the deadlines established under § 668.60, the institution must reimburse the program account by making restitution from its own funds.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094)

23. Subpart F of part 668 is revised to read as follows:

Subpart F—Misrepresentation

Sec.

668.71 Scope and special definitions.
668.72 Nature of educational program.
668.73 Nature of financial charges.
668.74 Employability of graduates.
668.75 Relationship with the Department of Education.

Subpart F—Misrepresentation

§ 668.71 Scope and special definitions.

(a) If the Secretary determines that an eligible institution has engaged in substantial misrepresentation, the Secretary may—

(1) Revoke the eligible institution's program participation agreement;

(2) Impose limitations on the institution's participation in the title IV, HEA programs;

(3) Deny participation applications made on behalf of the institution; or

(4) Initiate a proceeding against the eligible institution under subpart G of this part.

(b) This subpart establishes the types of activities that constitute substantial misrepresentation by an eligible institution. An eligible institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement, makes a substantial misrepresentation regarding the eligible institution, including about the nature of its educational program, its financial charges, or the employability of its graduates. Substantial misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

(c) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the capacity, likelihood or tendency to deceive or confuse. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(Authority: 20 U.S.C. 1094)

§ 668.72 Nature of educational program.

Misrepresentation concerning the nature of an eligible institution's educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;

(b)(1) Whether a student may transfer course credits earned at the institution to any other institution;

(2) Conditions under which the institution will accept transfer credits earned at another institution;

(c) Whether successful completion of a course of instruction qualifies a student—

(1) For acceptance to a labor union or similar organization; or

(2) To receive, to apply to take or to take the examination required to receive, a local, State, or Federal license, or a non-governmental certification required as a precondition for employment, or to perform certain functions in the State in which the program or institution is located, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

(d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;

(e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by—

(1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or

(2) Governmental officials for governmental employment;

(f) Its size, location, facilities, or equipment;

(g) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(h) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(i) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;

(j) The availability of part-time employment or other forms of financial assistance;

(k) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;

(l) The nature or extent of any prerequisites established for enrollment in any course;

(m) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;

(n) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate State educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate State educational agency, any failure by an eligible institution to disclose this fact in any advertising or promotional materials that reference such degree; or

(o) Any matters required to be disclosed to prospective students under §§ 668.42 and 668.43 of this part.

(Authority: 20 U.S.C. 1094)

§ 668.73 Nature of financial charges.

Misrepresentation concerning the nature of an eligible institution's financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge;

(b) Whether a particular charge is the customary charge at the institution for a course;

(c) The cost of the program and the institution's refund policy if the student does not complete the program;

(d) The availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; or

(e) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

(Authority: 20 U.S.C. 1094)

§ 668.74 Employability of graduates.

Misrepresentation regarding the employability of an eligible institution's graduates includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;

(b) The institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;

(c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;

(d) Whether employment is being offered by the institution or that a talent hunt or contest is being conducted, including, but not limited to, through the use of phrases such as "Men/women wanted to train for * * *," "Help Wanted," "Employment," "Business Opportunities";

(e) Government job market statistics in relation to the potential placement of its graduates; or

(f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or pre-existing medical conditions.

(Authority: 20 U.S.C. 1094)

§ 668.75 Relationship with the Department of Education.

An eligible institution, its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement may not describe the eligible institution's participation in the title IV, HEA programs in a manner that suggests approval or endorsement by the U.S. Department of Education of the quality of its educational programs.

(Authority: 20 U.S.C. 1094)

24. Subpart J of part 668 is revised to read as follows:

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

Sec.

668.141 Scope.
668.142 Special definitions.
668.143 [Reserved]
668.144 Application for test approval.
668.145 Test approval procedures.
668.146 Criteria for approving tests.
668.147 Passing scores.
668.148 Additional criteria for the approval of certain tests.
668.149 Special provisions for the approval of assessment procedures for individuals with disabilities.
668.150 Agreement between the Secretary and a test publisher or a State.
668.151 Administration of tests.
668.152 Administration of tests by assessment centers.

668.153 Administration of tests for individuals whose native language is not English or for individuals with disabilities.
668.154 Institutional accountability.
668.155 [Reserved]
668.156 Approved State process.

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

§ 668.141 Scope.

(a) This subpart sets forth the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive title IV, HEA program funds by—

(1) Achieving a passing score, specified by the Secretary, on an independently administered test approved by the Secretary under this subpart; or

(2) Being enrolled in an eligible institution that participates in a State process approved by the Secretary under this subpart.

(b) Under this subpart, the Secretary sets forth—

(1) The procedures and criteria the Secretary uses to approve tests;

(2) The basis on which the Secretary specifies a passing score on each approved test;

(3) The procedures and conditions under which the Secretary determines that an approved test is independently administered;

(4) The information that a test publisher or a State must submit, as part of its test submission, to explain the methodology it will use for the test anomaly studies as described in § 668.144(c)(17) and (d)(8), as appropriate;

(5) The requirements that a test publisher or a State, as appropriate—

(i) Have a process to identify and follow up on test score irregularities;

(ii) Take corrective action—up to and including decertification of test administrators—if the test publisher or the State determines that test score irregularities have occurred; and

(iii) Report to the Secretary the names of any test administrators it decertifies and any other action taken as a result of test score analyses; and

(6) The procedures and conditions under which the Secretary determines that a State process demonstrates that students in the process have the ability to benefit from the education and training being offered to them.

(Authority: 20 U.S.C. 1091(d))

§ 668.142 Special definitions.

The following definitions apply to this subpart:

Assessment center: A facility that—

(1) Is located at an eligible institution that provides two-year or four-year degrees or is a postsecondary vocational institution;

(2) Is responsible for gathering and evaluating information about individual students for multiple purposes, including appropriate course placement;

(3) Is independent of the admissions and financial aid processes at the institution at which it is located;

(4) Is staffed by professionally trained personnel;

(5) Uses test administrators to administer tests approved by the Secretary under this subpart; and

(6) Does not have as its primary purpose the administration of ability to benefit tests.

Computer-based test: A test taken by a student on a computer and scored by a computer.

General learned abilities: Cognitive operations, such as deductive reasoning, reading comprehension, or translation from graphic to numerical representation, that may be learned in both school and non-school environments.

Independent test administrator: A test administrator who administers tests at a location other than an assessment center and who—

(1) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other institution;

(2) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(3) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution, its affiliates, or its parent corporation or of any other institution, or a member of the family of any of these individuals; and

(4) Is not a current or former student of the institution.

Individual with a disability: A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Non-native speaker of English: A person whose first language is not English and who is not fluent in English.

Secondary school level: As applied to "content," "curricula," or "basic verbal and quantitative skills," the basic knowledge or skills generally learned in the 9th through 12th grades in United States secondary schools.

Test: A standardized test, assessment or instrument that has formal protocols on how it is to be administered in order to be valid. These protocols include, for example, the use of parallel, equated forms; testing conditions; time allowed for the test; and standardized scoring. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive instruments that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across retests.

Test administrator: An individual who is certified by the test publisher (or the State, in the case of an approved State test or assessment) to administer tests approved under this subpart in accordance with the instructions provided by the test publisher or the State, as applicable, which includes protecting the test and the test results from improper disclosure or release, and who is not compensated on the basis of test outcomes.

Test item: A question on a test.

Test publisher: An individual, organization, or agency that owns a registered copyright of a test, or has been authorized by the copyright holder to represent the copyright holder's interests regarding the test.

(Authority: 20 U.S.C. 1091(d))

§ 668.143 [Reserved]

§ 668.144 Application for test approval.

(a) The Secretary only reviews tests under this subpart that are submitted by the publisher of that test or by a State.

(b) A test publisher or a State that wishes to have its test approved by the Secretary under this subpart must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain all the information necessary for the Secretary to approve the test under this subpart, including but not limited to, the information contained in paragraph (c) or (d) of this section, as applicable.

(c) A test publisher must include with its application—

(1) A summary of the precise editions, forms, levels, and (if applicable) subtests for which approval is being sought;

(2) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries;

(3) Each edition, form, level, and subtest of the test for which the test publisher requests approval;

(4) The distribution of test scores for each edition, form, level, or subtest for which approval is sought, that allows the Secretary to prescribe the passing score for each test in accordance with § 668.147;

(5) Documentation of test development, including a history of the test's use;

(6) Norming data and other evidence used in determining the distribution of test scores;

(7) Material that defines the content domains addressed by the test;

(8) Documentation of periodic reviews of the content and specifications of the test to ensure that the test reflects secondary school level verbal and quantitative skills;

(9) If a test being submitted is a revision of the most recent edition approved by the Secretary, an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and data from validity studies of the test undertaken subsequent to the revisions;

(10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in § 668.146(b)(2), and an analysis of the effects of time on performance;

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with disabilities;

(12) The manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the test publisher;

(13) An analysis of the item-content of each edition, form, level, and (if applicable) subtest to demonstrate compliance with the required secondary school level criterion specified in § 668.146(b);

(14) A description of retesting procedures and the analysis upon which the criteria for retesting are based;

(15) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;

(16) A description of its test administrator certification process that provides—

(i) How the test publisher will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with the test publisher's requirements; and

(ii) How the test publisher will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;

(17) A description of the test anomaly analysis the test publisher will conduct and submit to the Secretary that includes—

(i) An explanation of how the test publisher will identify potential test irregularities and make a determination that test irregularities have occurred;

(ii) An explanation of the process and procedures for corrective action (up to and including decertification of a certified test administrator) when the test publisher determines that test irregularities have occurred; and

(iii) Information on when and how the test publisher will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that test publisher, that the test administrator has been decertified; and

(18)(i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities, and

(ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes.

(d) A State must include with its application—

(1) The information necessary for the Secretary to determine that the test the State uses measures a student's skills and abilities for the purpose of determining whether the student has the skills and abilities the State expects of a high school graduate in that State;

(2) The passing scores on that test;

(3) Any guidance on the interpretation of scores resulting from any modifications of the test for individuals with disabilities;

(4) A statement regarding how the test will be kept secure;

(5) A description of retesting procedures and the analysis upon which the criteria for retesting are based;

(6) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;

(7) A description of its test administrator certification process that provides—

(i) How the State will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with the State's requirements; and

(ii) How the State will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;

(8) A description of the test anomaly analysis that the State will conduct and submit to the Secretary that includes—

(i) An explanation of how the State will identify potential test irregularities and make a determination that test irregularities have occurred;

(ii) An explanation of the process and procedures for corrective action (up to and including decertification of a test administrator) when the State determines that test irregularities have occurred; and

(iii) Information on when and how the State will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that State, that the test administrator has been decertified;

(9)(i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities; and

(ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes; and

(10) The name, address, telephone number, and e-mail address of a contact

person to whom the Secretary may address inquiries.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.145 Test approval procedures.

(a)(1) When the Secretary receives a complete application from a test publisher or a State, the Secretary selects one or more experts in the field of educational testing and assessment, who possess appropriate advanced degrees and experience in test development or psychometric research, to determine whether the test meets the requirements for test approval contained in §§ 668.146, 668.147, 668.148, or 668.149, as appropriate, and to advise the Secretary of their determinations.

(2) If the test involves a language other than English, the Secretary selects at least one individual who is fluent in the language in which the test is written to collaborate with the testing expert or experts described in paragraph (a)(1) of this section and to advise the Secretary on whether the test meets the additional criteria, provisions, and conditions for test approval contained in §§ 668.148 and 668.149.

(3) For test batteries that contain multiple subtests measuring content domains other than verbal and quantitative domains, the Secretary reviews only those subtests covering the verbal and quantitative domains.

(b)(1) If the Secretary determines that a test satisfies the criteria and requirements for test approval, the Secretary notifies the test publisher or the State, as applicable, of the Secretary's decision, and publishes the name of the test and the passing scores in the **Federal Register.**

(2) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the Secretary notifies the test publisher or the State, as applicable, of the Secretary's decision, and the reasons why the test did not meet those criteria and requirements.

(3) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the test publisher or the State that submitted the test for approval may request that the Secretary reevaluate the Secretary's decision. Such a request must be accompanied by—

(i) Documentation and information that address the reasons for the non-approval of the test; and

(ii) An analysis of why the information and documentation submitted meet the criteria and requirements for test approval notwithstanding the Secretary's earlier decision to the contrary.

(c)(1) The Secretary approves a test for a period not to exceed five years from the date the notice of approval of the test is published in the **Federal Register.**

(2) The Secretary extends the approval period of a test to include the period of review if the test publisher or the State, as applicable, re-submits the test for review and approval under § 668.144 at least six months before the date on which the test approval is scheduled to expire.

(d)(1) The Secretary's approval of a test may be revoked if the Secretary determines that the test publisher or the State violated any terms of the agreement described in § 668.150, that the information the test publisher or the State submitted as a basis for approval of the test was inaccurate, or that the test publisher or the State substantially changed the test and did not resubmit the test, as revised, for approval.

(2) If the Secretary revokes approval of a previously approved test, the Secretary publishes a notice of that revocation in the **Federal Register.** The revocation becomes effective—

(i) One hundred and twenty days from the date the notice of revocation is published in the **Federal Register;** or

(ii) An earlier date specified by the Secretary in a notice published in the **Federal Register.**

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.146 Criteria for approving tests.

(a) Except as provided in § 668.148, the Secretary approves a test under this subpart if—

(1) The test meets the criteria set forth in paragraph (b) of this section;

(2) The test publisher or the State satisfies the requirements set forth in paragraph (c) of this section; and

(3) The Secretary makes a determination that the information the test publisher or State submitted in accordance with § 668.144(c)(17) or (d)(8), as applicable, provides adequate assurance that the test publisher or State will conduct rigorous test anomaly analyses and take appropriate action if test administrators do not comply with testing procedures.

(b) To be approved under this subpart, a test must—

(1) Assess secondary school level basic verbal and quantitative skills and general learned abilities;

(2) Sample the major content domains of secondary school level verbal and quantitative skills with sufficient numbers of questions to—

(i) Adequately represent each domain; and

(ii) Permit meaningful analyses of item-level performance by students who are representative of the contemporary population beyond the age of compulsory school attendance and have earned a high school diploma;

(3) Require appropriate test-taking time to permit adequate sampling of the major content domains described in paragraph (b)(2) of this section;

(4) Have all forms (including short forms) comparable in reliability;

(5) Have, in the case of a test that is revised, new scales, scale values, and scores that are demonstrably comparable to the old scales, scale values, and scores;

(6) Meet all primary and applicable conditional and secondary standards for test construction provided in the 1999 edition of the *Standards for Educational and Psychological Testing,* prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Federal Student Aid, room 113E2, 830 First Street, NE., Washington, DC 20002 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–866–272–6272, or go to: *http://www.archives.gov/Federal_register/code_of_Federal_regulations/ibr_locations.html.* The document also may be obtained from the American Educational Research Association at: *http://www.aera.net;* and

(7) Have the test publisher's or the State's guidelines for retesting, including time between test-taking, be based on empirical analyses that are part of the studies of test reliability.

(c) In order for a test to be approved under this subpart, a test publisher or a State must—

(1) Include in the test booklet or package—

(i) Clear, specific, and complete instructions for test administration, including information for test takers on the purpose, timing, and scoring of the test; and

(ii) Sample questions representative of the content and average difficulty of the test;

(2) Have two or more secure, equated, alternate forms of the test;

(3) Except as provided in §§ 668.148 and 668.149, provide tables of distributions of test scores which clearly indicate the mean score and standard deviation for high school graduates who have taken the test within three years prior to the date that the test is submitted to the Secretary for approval under § 668.144;

(4) Norm the test with—

(i) Groups that are of sufficient size to produce defensible standard errors of the mean and are not disproportionately composed of any race or gender; and

(ii) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States; and

(5) If test batteries include sub-tests assessing different verbal and/or quantitative skills, a distribution of test scores as described in paragraph (c)(3) of this section that allows the Secretary to prescribe either—

(i) A passing score for each sub-test; or

(ii) One composite passing score for verbal skills and one composite passing score for quantitative skills.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.147 Passing scores.

Except as provided in §§ 668.144(d), 668.148, and 668.149, to demonstrate that a test taker has the ability to benefit from the education and training offered by the institution, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean score of a sample of individuals who have taken the test within the three years before the test is submitted to the Secretary for approval. The sample must be representative of the population of high school graduates in the United States.

(Authority: 20 U.S.C. 1091(d))

§ 668.148 Additional criteria for the approval of certain tests.

(a) In addition to satisfying the criteria in § 668.146, to be approved by the Secretary, a test must meet the following criteria, if applicable:

(1) In the case of a test developed for a non-native speaker of English who is enrolled in a program that is taught in his or her native language, the test must be—

(i) Linguistically accurate and culturally sensitive to the population for which the test is designed, regardless of the language in which the test is written;

(ii) Supported by documentation detailing the development of normative data;

(iii) If translated from an English version, supported by documentation of procedures to determine its reliability and validity with reference to the population for which the translated test was designed;

(iv) Developed in accordance with guidelines provided in the 1999 edition of the "Testing Individuals of Diverse Linguistic Backgrounds" section of the *Standards for Educational and Psychological Testing* prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Federal Student Aid, room 113E2, 830 First Street, NE., Washington, DC 20002 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–866–272–6272, or go to: *http://www.archives.gov/Federal_register/code_of_Federal_regulations/ibr_locations.html.* The document also may be obtained from the American Educational Research Association at: *http://www.aera.net;* and

(v)(A) If the test is in Spanish, accompanied by a distribution of test scores that clearly indicates the mean score and standard deviation for Spanish-speaking students with high school diplomas who have taken the test within five years before the date on which the test is submitted to the Secretary for approval.

(B) If the test is in a language other than Spanish, accompanied by a recommendation for a provisional passing score based upon performance of a sample of test takers representative of non-English speaking individuals who speak a language other than Spanish and who have a high school diploma. The sample upon which the recommended provisional passing score is based must be large enough to produce stable norms.

(2) In the case of a test that is modified for use for individuals with disabilities, the test publisher or State must—

(i) Follow guidelines provided in the "Testing Individuals With Disabilities" section of the *Standards for Educational and Psychological Testing;* and

(ii) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance.

(3) In the case of a computer-based test, the test publisher or State, as applicable, must—

(i) Provide documentation to the Secretary that the test complies with the basic principles of test construction and standards of reliability and validity as promulgated in the *Standards for Educational and Psychological Testing;*

(ii) Provide test administrators with instructions for familiarizing test takers with computer hardware prior to test-taking; and

(iii) Provide two or more parallel, equated forms of the test, or, if parallel forms are generated from an item pool, provide documentation of the methods of item selection for alternate forms.

(b) If a test is designed solely to measure the English language competence of non-native speakers of English—

(1) The test must meet the criteria set forth in § 668.146(b)(6), (c)(1), (c)(2), and (c)(4); and

(2) The test publisher must recommend a passing score based on the mean score of test takers beyond the age of compulsory school attendance who completed U.S. high school equivalency programs, formal training programs, or bilingual vocational programs.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.149 Special provisions for the approval of assessment procedures for individuals with disabilities.

If no test is reasonably available for individuals with disabilities so that no test can be approved under §§ 668.146 or 668.148 for these individuals, the following procedures apply:

(a) The Secretary considers a modified test or testing procedure, or instrument that has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of individuals with disabilities to be an approved test for purposes of this subpart provided that the testing procedure or instrument measures both basic verbal and quantitative skills at the secondary school level.

(b) The Secretary considers the passing scores for these testing procedures or instruments to be those recommended by the test publisher or State, as applicable.

(c) The test publisher or State, as applicable, must—

(1) Maintain appropriate documentation, including a description of the procedures or instruments, their content domains, technical properties, and scoring procedures; and

(2) Require the test administrator to—

(i) Use the procedures or instruments in accordance with instructions provided by the test publisher or State, as applicable; and

(ii) Use the passing scores recommended by the test publisher or State, as applicable.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.150 Agreement between the Secretary and a test publisher or a State.

(a) If the Secretary approves a test under this subpart, the test publisher or the State that submitted the test must enter into an agreement with the Secretary that contains the provisions set forth in paragraph (b) of this section before an institution may use the test to determine a student's eligibility for title IV, HEA program funds.

(b) The agreement between a test publisher or a State, as applicable, and the Secretary provides that the test publisher or the State, as applicable, must—

(1) Allow only test administrators that it certifies to give its test;

(2) Require each test administrator it certifies to—

(i) Provide the test publisher or the State, as applicable, with a certification statement that indicates he or she is not currently decertified; and

(ii) Notify the test publisher or the State, as applicable, immediately if any other test publisher or State decertifies the test administrator;

(3) Only certify test administrators who—

(i) Have the necessary training, knowledge, and skill to test students in accordance with the test publisher's or the State's testing requirements;

(ii) Have the ability and facilities to keep its test secure against disclosure or release; and

(iii) Have not been decertified within the last three years by any test publisher or State;

(4) Decertify a test administrator for a period of three years if the test publisher or the State finds that the test administrator—

(i) Has failed to give its test in accordance with the test publisher's or the State's instructions;

(ii) Has not kept the test secure;

(iii) Has compromised the integrity of the testing process; or

(iv) Has given the test in violation of the provisions contained in § 668.151;

(5) Reevaluate the qualifications of a test administrator who has been decertified by another test publisher or State and determine whether to continue the test administrator's certification or to decertify the test administrator;

(6) Immediately notify the test administrator, the Secretary, and the institutions where the test administrator previously administered approved tests when the test publisher or the State decertifies a test administrator;

(7)(i) Review the test results of the tests administered by a decertified test administrator and determine which tests may have been improperly administered;

(ii) Immediately notify the affected institutions and students or prospective students; and

(iii) Provide a report to the Secretary on the results of the review and the notifications provided to institutions and students or prospective students;

(8) Report to the Secretary if the test publisher or the State certifies a previously decertified test administrator after the three-year period specified in paragraph (b)(4) of this section;

(9) Score a test answer sheet that it receives from a test administrator;

(10) If a computer-based test is used, provide the test administrator with software that will—

(i) Immediately generate a score report for each test taker;

(ii) Allow the test administrator to send to the test publisher or the State, as applicable, a record of the test taker's performance on each test item and the test taker's test scores using a data transfer method that is encrypted and secure; and

(iii) Prohibit any changes in test taker responses or test scores;

(11) Promptly send to the student and the institution the student indicated he or she is attending or scheduled to attend a notice stating the student's score for the test and whether or not the student passed the test;

(12) Keep each test answer sheet or electronic record forwarded for scoring and all other documents forwarded by the test administrator with regard to the test for a period of three years from the date the analysis of the tests results, described in paragraph (b)(13) of this section, was sent to the Secretary;

(13) Analyze the test scores of students who take the test to determine whether the test scores and data produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis within 18 months after the test was approved and every 18 months thereafter during the period of test approval;

(14) Upon request, give the Secretary, a State agency, an accrediting agency, and law enforcement agencies access to test records or other documents related to an audit, investigation, or program review of an institution, the test publisher, or a test administrator;

(15) Immediately report to the Secretary if the test publisher or the State finds any credible information indicating that a test has been compromised;

(16) Immediately report to the Office of Inspector General of the Department of Education for investigation if the test publisher or the State finds any credible information indicating that a test administrator or institution may have engaged in fraud or other criminal misconduct; and

(17) Require a test administrator who provides a test to an individual with a disability who requires an accommodation in the test's administration to report to the test publisher or the State within the time period specified in § 668.151(b)(2) or § 668.152(b)(2), as applicable, the nature of the disability and the accommodations that were provided.

(c)(1) The Secretary may terminate an agreement with a test publisher or a State, as applicable, if the test publisher or the State fails to carry out the terms of the agreement described in paragraph (b) of this section.

(2) Before terminating the agreement, the Secretary gives the test publisher or the State, as applicable, the opportunity to show that it has not failed to carry out the terms of its agreement.

(3) If the Secretary terminates an agreement with a test publisher or a State under this section, the Secretary publishes a notice in the **Federal Register** specifying when institutions may no longer use the test publisher's or the State's test(s) for purposes of determining a student's eligibility for title IV, HEA program funds.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.151 Administration of tests.

(a)(1) To establish a student's eligibility for title IV, HEA program funds under this subpart, an institution must select a test administrator to give an approved test.

(2) An institution may use the results of an approved test it received from an approved test publisher or assessment center to determine a student's eligibility to receive title IV, HEA program funds if the test was

independently administered and properly administered in accordance with this subpart.

(b) The Secretary considers that a test is independently administered if the test is—

(1) Given at an assessment center by a test administrator who is an employee of the center; or

(2) Given by an independent test administrator who maintains the test at a secure location and submits the test for scoring by the test publisher or the State or, for a computer-based test, a record of the test scores, within two business days of administering the test.

(c) The Secretary considers that a test is not independently administered if an institution—

(1) Compromises test security or testing procedures;

(2) Pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test; or

(3) Otherwise interferes with the test administrator's independence or test administration.

(d) The Secretary considers that a test is properly administered if the test administrator—

(1) Is certified by the test publisher or the State, as applicable, to give the test publisher's or the State's test;

(2) Administers the test in accordance with instructions provided by the test publisher or the State, as applicable, and in a manner that ensures the integrity and security of the test;

(3) Makes the test available only to a test-taker, and then only during a regularly scheduled test;

(4) Secures the test against disclosure or release; and

(5) Submits the completed test or, for a computer-based test, a record of test scores, to the test publisher or the State, as applicable, within the time period specified in § 668.152(b) or paragraph (b)(2) of this section, as appropriate, and in accordance with the test publisher's or the State's instructions.

(e) An independent test administrator may not score a test.

(f) An individual who fails to pass a test approved under this subpart may not retake the same form of the test for the period prescribed by the test publisher or the State responsible for the test.

(g) An institution must maintain a record for each individual who took a test under this subpart. The record must include—

(1) The test taken by the individual;

(2) The date of the test;

(3) The individual's scores as reported by the test publisher, an assessment center, or the State;

(4) The name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State; and

(5) If the individual who took the test is an individual with a disability and was unable to be evaluated by the use of an approved ATB test or the individual requested or required testing accommodations, documentation of the individual's disability and of the testing arrangements provided in accordance with § 668.153(b).

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.152 Administration of tests by assessment centers.

(a) If a test is given by an assessment center, the assessment center must properly administer the test as described in § 668.151(d), and § 668.153, if applicable.

(b)(1) Unless an agreement between a test publisher or a State, as applicable, and an assessment center indicates otherwise, an assessment center scores the tests it gives and promptly notifies the institution and the student of the student's score on the test and whether the student passed the test.

(2) If the assessment center scores the test, it must provide weekly to the test publisher or the State, as applicable—

(i) All copies of the completed test, including the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable; or

(ii) A report listing all test-takers' scores and institutions to which the scores were sent and the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.153 Administration of tests for individuals whose native language is not English or for individuals with disabilities.

(a) *Individuals whose native language is not English.* For an individual whose native language is not English and who is not fluent in English, the institution must use the following tests, as applicable:

(1) If the individual is enrolled or plans to enroll in a program conducted entirely in his or her native language, the individual must take a test approved under §§ 668.146 and 668.148(a)(1).

(2) If the individual is enrolled or plans to enroll in a program that is taught in English with an ESL component, the individual must take an English language proficiency assessment approved under § 668.148(b) and, before beginning the portion of the program taught in English, a test approved under § 668.146.

(3) If the individual is enrolled or plans to enroll in a program that is taught in English without an ESL component, or the individual does not enroll in any ESL component offered, the individual must take a test in English approved under § 668.146.

(4) If the individual enrolls in an ESL program, the individual must take an ESL test approved under § 668.148(b).

(b) *Individuals with disabilities.* (1) For an individual with a disability who has neither a high school diploma nor its equivalent and who is applying for title IV, HEA program funds and seeks to show his or her ability to benefit through the testing procedures in this subpart, an institution must use a test described in § 668.148(a)(3) or § 668.149(a).

(2) The test must reflect the individual's skills and general learned abilities.

(3) The test administrator must ensure that there is documentation to support the determination that the individual is an individual with a disability and requires accommodations—such as extra time or a quiet room—for taking an approved test, or is unable to be evaluated by the use of an approved ATB test.

(4) Documentation of an individual's disability may be satisfied by—

(i) A written determination, including a diagnosis and recommended testing accommodations, by a licensed psychologist or medical physician; or

(ii) A record of the disability from a local or State educational agency, or other government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the individual's disability. This record may, but is not required to, include a diagnosis and recommended testing accommodations.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

§ 668.154 Institutional accountability.

An institution is liable for the title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if—

(a) The institution used a test that was not administered independently, in accordance with § 668.151(b);

(b) The institution or an employee of the institution compromised the testing process in any way; or

(c) The institution is unable to document that the student received a passing score on an approved test.

(Authority: 20 U.S.C. 1091(d))

§ 668.155 [Reserved]

§ 668.156 Approved State process.

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test for the purpose of determining a student's eligibility for title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) To be an approved State process, the State process does not have to include all the institutions located in that State, but must indicate which institutions are included.

(b) The Secretary approves a State's process if—

(1) The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its equivalent, who enroll in participating institutions have a success rate as determined under paragraph (h) of this section that is within 95 percent of the success rate of students with high school diplomas; and

(2) The State's process satisfies the requirements contained in paragraphs (c) and (d) of this section.

(c) A State process must require institutions participating in the process to provide each student they admit without a high school diploma or its recognized equivalent with the following services:

(1) Orientation regarding the institution's academic standards and requirements, and student rights.

(2) Assessment of each student's existing capabilities through means other than a single standardized test.

(3) Tutoring in basic verbal and quantitative skills, if appropriate.

(4) Assistance in developing educational goals.

(5) Counseling, including counseling regarding the appropriate class level for that student given the student's individual's capabilities.

(6) Follow-up by teachers and counselors regarding the student's classroom performance and satisfactory progress toward program completion.

(d) A State process must—

(1) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process;

(2) Require corrective action if an institution is found to be in noncompliance with the State process requirements; and

(3) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements.

(e)(1) The Secretary responds to a State's request for approval of its State's process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process is deemed to be approved.

(2) An approved State process becomes effective for purposes of determining student eligibility for title IV, HEA program funds under this subpart—

(i) On the date the Secretary approves the process; or

(ii) Six months after the date on which the State submits the process to the Secretary for approval, if the Secretary neither approves nor disapproves the process during that six month period.

(f) The Secretary approves a State process for a period not to exceed five years.

(g)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(h) The State must calculate the success rates as referenced in paragraph (b) of this section by—

(1) Determining the number of students with high school diplomas who, during the applicable award year described in paragraph (i) of this section, enrolled in participating institutions and—

(i) Successfully completed education or training programs;

(ii) Remained enrolled in education or training programs at the end of that award year; or

(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;

(2) Determining the number of students with high school diplomas who enrolled in education or training programs in participating institutions during that award year;

(3) Determining the number of students calculated in paragraph (h)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from participating institutions and received a 100 percent refund of their tuition under the institutions' refund policies;

(4) Dividing the number of students determined in paragraph (h)(1) of this section by the number of students determined in paragraph (h)(3) of this section;

(5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this section for students without a high school diploma or its recognized equivalent who enrolled in participating institutions.

(i) For purposes of paragraph (h) of this section, the applicable award year is the latest complete award year for which information is available that immediately precedes the date on which the State requests the Secretary to approve its State process, except that the award year selected must be one of the latest two completed award years preceding that application date.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.C. 1091(d))

25. Section 668.164 is amended by adding paragraph (i) to read as follows:

§ 668.164 Disbursing funds.

* * * * *

(i) *Provisions for books and supplies.* (1) An institution must provide a way for a Federal Pell Grant eligible student to obtain or purchase, by the seventh day of a payment period, the books and supplies required for the payment period if, 10 days before the beginning of the payment period—

(i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (e) of this section.

(2) The amount the institution provides to the student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

26. The authority citation for part 682 is revised to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.200 [Amended]

27. Section 682.200(a)(2) is amended by adding, in alphabetical order, the term "Credit hour".

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

28. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

29. Section 685.102 is amended by:

A. In paragraph (a)(2), adding, in alphabetical order, the term "Credit hour".

B. In paragraph (b), adding, in alphabetical order, the definition of *Payment data* to read as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Payment data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

* * * * *

30. Section 685.301 is amended by revising paragraph (e)(1) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(e) * * *

(1) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the **Federal Register,** and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

* * * * *

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

31. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.,* unless otherwise noted.

32. Section 686.2 is amended by:

A. In paragraph (a), adding, in alphabetical order, the term "Credit hour".

B. In paragraph (d), revising the definition of *Payment Data* to read as follows:

§ 686.2 Definitions.

* * * * *

(d) * * *

Payment Data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

* * * * *

33. Section 686.37 is amended by revising paragraph (b) to read as follows:

§ 686.37 Institutional reporting requirements.

* * * * *

(b) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the **Federal Register,** and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

34. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

§ 690.2 [Amended]

35. Section 690.2(a) is amended by adding, in alphabetical order, the term "Credit hour".

PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS

36. The authority citation for part 691 continues to read as follows:

Authority: 20 U.S.C. 1070a–1, unless otherwise noted.

§ 691.2 [Amended]

37. Section 691.2(a) is amended by adding, in alphabetical order, the term "Credit hour".

[FR Doc. 2010–14107 Filed 6–17–10; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,

June 18, 2010

Part III

Department of Education

Carol M. White Physical Education Program; Notices

DEPARTMENT OF EDUCATION

Carol M. White Physical Education Program; Catalog of Federal Domestic Assistance (CFDA) Number: 84.215F

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of final priorities, requirements, and definitions.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools announces priorities, requirements, and definitions for the Carol M. White Physical Education Program (PEP). The Assistant Deputy Secretary may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2010 and later years. We take this action to align PEP projects more closely with best practices and research related to improving children's health and fitness, to improve students' physical activity, and to improve students' ability to meet their State physical education standards.

DATES: *Effective Date:* These priorities, requirements, and definitions are effective July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Carlette Huntley, U.S. Department of Education, 550 12th Street, SW., Room 10071, PCP, Washington, DC, 20202–6450. Telephone: (202) 245–7871 or by e-mail: *Carlette.Huntley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of PEP is to initiate, expand, and improve physical education for students in grades K–12.

Program Authority: 20 U.S.C. 7261–7261f.

Applicable Program Regulations: 34 CFR part 299.

We published a notice of proposed priorities, requirements, and definitions (NPP) in the **Federal Register** on March 16, 2010 (75 FR 12522). That notice contained background information and our reasons for proposing the particular priorities, requirements, and definitions.

There are several differences between the NPP and this notice of final priorities, requirements, and definitions (NFP) as discussed in the *Analysis of Comments and Changes* section elsewhere in this notice.

Public Comment: In response to our invitation in the NPP, 59 parties submitted comments on the proposed priorities, requirements, and definitions.

We discuss substantive issues under the title of the item to which they pertain. Generally, we do not address technical and other minor changes, or suggested changes we are not authorized to make under the applicable statutory authority. In addition we do not address general comments that raised concerns not directly related to the proposed priorities or requirements.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, and definitions since publication of the NPP follows.

Absolute Priority—Programs Designed To Create Quality Physical Education Programs

Comment: One commenter suggested rewriting the absolute priority to include improving physical education as an educational outcome.

Discussion: We consider an improvement in physical education to be an educational outcome and do not see the need to include additional outcomes. The absolute priority clearly requires applicants to propose projects that address physical education. More specifically, the absolute priority requires every applicant to develop, expand, or improve its physical education program and address its State's physical education standards. Additionally, an applicant must provide instruction in healthy eating habits and implement at least one of the other program elements as described in the program statute (see sections 5501–5507 of the Elementary and Secondary Education Act of 1965, as amended; 20 U.S.C. 7261–7261f). These 2010 program requirements will help applicants develop a strategic approach to improving physical education and nutrition instruction by requiring an assessment of local efforts to address identified deficiencies.

Changes: None.

Comment: Some commenters suggested that encouraging students to engage in moderate to vigorous exercise should be the primary focus of PEP. Some commenters also suggested that increasing the proportion of time in which students in physical education classes are active should be a priority.

Discussion: We agree that moderate to vigorous physical activity by students and increasing the proportion of time that students are active in physical education classes are important outcomes for physical education programs, but disagree with the commenters that these should be the exclusive or primary focus of PEP. Instead, we believe that a comprehensive approach, incorporating both high-quality physical education and nutrition instruction strategies, offers the best opportunity for students to acquire the knowledge and skills necessary to help them understand the complementary relationship between physical education and nutrition, and the role that both of these areas can play in improving their health.

Further, we believe that the program requirements we are establishing will promote the types of programs that will improve the percentage of students who engage in moderate to vigorous physical activity during physical education classes and throughout the day. Through these requirements, we highlight the importance of initiatives that move students from being sedentary, often because of a lack of high-quality programming, to being more active, and towards a lifestyle that includes moderate to vigorous physical activity in various settings, including in physical education classes. The requirements reflect an approach that looks not just at student-level improvements, but at broad, systemic changes that will be sustained over time to continually improve opportunities for students to engage in moderate to vigorous physical activity. If grantees would like to assess the time that students engage in moderate to vigorous physical activity, we would encourage them to do so and have designed at least one of our required performance measures to support this type of assessment. For all of these reasons, we believe that improvements to physical education programs under PEP will result in more active time for students during physical education classes, resulting in improved student outcomes, and that there is no need to focus explicitly on moderate to vigorous physical activity and increased activity time in physical education classes as part of the absolute priority.

Changes: None.

Comment: One commenter suggested that all six of the PEP elements included in the program's authorizing statute be part of all quality physical education programs.

Discussion: We agree that all six elements are important facets of a comprehensive program, and applicants may propose to include all six elements as part of their proposed project if desired. At this time, however, we are not requiring applicants to include in their projects all six of the PEP program elements, because we want to provide flexibility for applicants to select approaches and activities that are linked to the priority needs identified for their schools and communities. We believe the absolute priority appropriately balances the positive aspects of moving to a more comprehensive approach with

flexibility for applicants to design a project that effectively addresses their particular needs.

Changes: None.

Comment: One commenter expressed concern that the competitive preference priorities do not address the absolute priority.

Discussion: The competitive preference priorities are designed to encourage applicants to develop proposals that will result in stronger PEP projects within the context of the absolute priority.

We note that, in our judgment, the adoption of either, or both, of the approaches identified as competitive preference priorities is likely to produce superior results. Both competitive preference priorities are likely to enhance long-term sustainability by encouraging efforts to leverage community resources and to build community investment in the program (partnership), and also efforts to provide data to policymakers so that they can make informed decisions about budget and programming in the future. An effective PEP project could be implemented without a grantee engaging in either competitive preference priority, which is why we opted not to require either or both.

Changes: None.

Comment: One commenter expressed a desire to increase accountability in PEP, and suggested that adding the term "assessment" to each of the program elements in the absolute priority would emphasize the need for assessment to be part of activities implemented as part of a PEP grant.

Discussion: We agree that PEP would be strengthened by increasing the emphasis on assessment, evaluation, and accountability, and have already incorporated requirements in the final priorities, requirements, and definitions to address this concern. For example, we are ensuring accountability in the program by requiring the use of assessment tools such as the Physical Education Curriculum Assessment, the Health Education Curriculum Assessment, and the School Health Index, all of which enhance program assessment. As a result, we do not believe that it is necessary to make the change suggested by the commenter.

Changes: None.

Comment: Several commenters expressed a concern that requiring PEP grantees to address the program element related to nutrition instruction would weaken the focus on physical education and dilute limited funding available to support activities designed to improve physical education.

Discussion: We believe that a PEP project that incorporates both high-quality physical education and nutrition instruction strategies offers the best opportunity for students to acquire the information and skills necessary to help them understand the complementary relationship between physical education and nutrition, and understand the role that physical activity and nutrition can play in improving and maintaining their health.

Furthermore, the legislation authorizing PEP has always included nutrition instruction as a program element and a significant number of past PEP grantees have elected to incorporate nutrition instruction in their projects. Generally, costs associated with including nutrition instruction have represented a fairly modest proportion of project funds, especially when compared to the costs of purchasing fitness equipment.

Changes: None.

Comment: Several commenters asked us to emphasize in the absolute priority the use of evidence-based approaches or established best practices in the field. For example, some commenters suggested that the Department focus the priority on research-based curriculum design, which is common in other subjects such as math, reading, and science, and encourage use of similar strategies for physical education, including alignment of curriculum, instruction, and assessment; other commenters stated that the Department should emphasize a variety of evidence-based approaches for which information is readily available via the Internet. Another commenter suggested that we fund only programs that use evidence-based approaches.

Discussion: We agree that use of research-based programs and established best practices strategies by PEP grantees would likely improve program outcomes. However, there is a limited research base of effective programs and strategies that would be applicable to the scope of PEP and relevant to all communities and applicants, and additionally, we want to encourage innovation in this area. We believe that the program requirements that require implementation of the School Health Index (SHI) assessment, as well as of the Physical Activity Curriculum Analysis Tool (PECAT) and the Health Education Curriculum Analysis Tool (HECAT) curriculum assessments will help applicants compare their current activities to established best practices in the field.

We provide examples of a range of resources for evidence-based practices in the application package, including some of those suggested by one commenter. We encourage applicants to refer to those resources, as well as other resources, to design an evidence-based program that addresses the applicant's greatest needs.

Changes: None.

Comment: One commenter requested that we more clearly define what we mean by the absolute priority elements concerning motor skills, physical activity, and the development of positive social and cooperative skills.

Discussion: We believe that the statutory language is sufficiently clear; these are terms that are commonly understood in the field or may be specifically defined in State standards. Accordingly, we do not believe it is necessary to define them here.

Changes: None.

Competitive Preference Priority 1—Collection of Body Mass Index Measurement

Comment: One commenter suggested that PEP grantees secure BMI information from physicians' offices and that this approach would help address some of the issues related to collection of BMI data, including privacy concerns and the need to purchase equipment and provide training on collecting BMI data.

Discussion: We believe that the approach suggested by the commenter would introduce different data collection and reporting challenges. For example, it is unlikely that all students have regular physicians that maintain wellness and other records. Also, physicians might not have collected BMI information and could not be compelled to furnish this information if it is available. Grantees and physicians would also need to be sure that requirements are satisfied concerning the non-consensual sharing of any protected health-related information or personally identifiable information from education records, such as the requirements contained in Federal, State, and local laws, regulations, and policies regarding student level data collection and privacy.

Changes: None.

Comment: One commenter urged the Department to exercise caution in using measures such as BMI to measure progress for the program, and indicated that the measures required under the Government Performance and Results Act of 1993 (GPRA) included in requirement 9 are more appropriate measures for short-term grant projects.

Discussion: We agree with the commenter. The competitive preference priority concerning BMI is designed to provide important aggregate information

about the health status of students generally, and should serve as a surveillance tool for grantees that elect to implement the priority, not as a measure of program performance. We believe that the performance measures included as part of requirement 9 will complement the collection of BMI data by providing a range of measures that will permit grantees to assess improvements in several key areas, and provide data that the Department can use to help assess the overall effectiveness of PEP.

Changes: None.

Comment: Some commenters expressed concerns about the need to have appropriate supports in place for students and families when BMI data are reported. For example, one commenter expressed concern that the collection and reporting of BMI data to students and parents without appropriate information could be associated with an increase in eating disorders and urged the Department to provide technical assistance to PEP grantees to help address this concern. Another commenter suggested that grantees collecting BMI data have a system in place to refer students with weight concerns to qualified health professionals for additional assessment and intervention if that is needed.

Discussion: We agree that careful consideration should be given to the complex policy and practice questions related to BMI data collection, particularly if BMI information is to be shared with both students and parents. The competitive preference priority requires that grantees who choose to address the priority ensure that their plan includes resources for safe and effective follow-up with trained medical care providers when BMI data suggest that such follow-up services are needed.

We plan to include in the application package a reference to available resources to help applicants implement these kinds of activities in the safest and most effective way possible, including the Centers for Disease Control and Prevention's (CDC) Children's BMI Tool for Schools; that information is available online at *http://www.cdc.gov/healthyyouth/obesity/bmi/.* We will also offer technical assistance to applicants and grantees to ensure that students' privacy is protected and that procedures are carried out in a manner that is confidential and sensitive to all students' privacy.

We note that recent research shows no increase in eating disorders or disordered eating behaviors following an increased focus on obesity prevention. Data from Arkansas, where schools have been collecting BMI from students for several years, show no increase in eating disorders.[1]

Changes: None.

Comment: Several commenters suggested that we use an additional or alternative measure to BMI to assess population health status and the impact of PEP, including measures collected by a commercial fitness assessment tool, bioelectric impedance, skin fold tests, or measures such as attendance and academic performance that may correlate with fitness and health.

Discussion: BMI is relatively easy to measure, can be done quickly and non-invasively, and provides a standard tool for measuring and assessing student weight status across a site or between sites. We have opted to use the CDC's BMI-for-age growth charts as our standard for measurement and assessment because this approach represents the recommended method of reporting size and growth patterns among children in the United States. The CDC BMI-for-age growth charts provide a full array of percentile levels, which allows for greater interpretation of weight status in the population and among individuals. The CDC 2000 growth charts provide the best reference data available for the growth of U.S. children. Additionally, using the same method for interpreting BMI data collection will allow for data comparisons across PEP sites.

Applicants that opt to undertake BMI measurement and assessment as part of their project should describe their plan to obtain student-level data, consistent with the Family Education Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Act Amendment (PPRA), which may be done using commercial fitness testing products that applicants may already have in use. The raw height and weight data collected using this tool can be easily converted to correspond with the CDC BMI-for-age growth charts, which must be used to be responsive to the competitive preference priority.

Changes: None.

Comment: One commenter expressed concern about BMI measurement and the lack of evidence that use of BMI measurements will lead to more physical activity or improved physical education programs.

Discussion: The use of BMI assessment data under this competitive priority is intended to create a mechanism to understand trends at the population level, including in the context of the other required measures of this program, in fitness, physical activity, and nutrition, and how the combination of these measures can be used to improve physical education programming and policy, and potentially help students meet their State standards for physical education.

The use of BMI assessment data would inform program planners about overall trends in the population's weight status, which may be used to inform decisions about programming and policy at the program site and in the broader community. BMI data are not intended to be used to measure a project's success; projects might not even reasonably expect to see major changes in BMI scores during the project period. Rather, applicants that choose to address the competitive preference priority for collecting and reporting BMI data should consider how BMI information would be used in the context of the required measures for PEP. We also encourage applicants who choose to address this priority to use this opportunity to create or enhance sustainable systems that can be used to make data-based decisions for continuous program improvement.

Changes: None.

Comment: Some commenters expressed concern that some States permit the collection and use of BMI data, while other States might prohibit or have restrictions on the collection and use of such data. One commenter cited States that already require the use of BMI data, potentially providing an advantage to applicants from those States. Similarly, another commenter suggested that some States may prohibit BMI assessment and that including BMI assessment as a competitive preference priority would place applicants from those States at a disadvantage. These commenters suggested that if BMI assessment is included in the program, that applicants not receive any additional points for electing to implement a plan to use such data.

Discussion: While applicants that are already collecting BMI data may be able to implement the competitive preference priority more quickly if their project is funded, they will not have any advantage over other applicants because the priority requires only that applicants demonstrate their commitment to addressing the elements of the priority by including an assurance with their application. Grantees will be able to use program funds to obtain equipment, training, and other resources necessary to assist them in effectively implementing this competitive preference priority, helping to level the playing field for all applicants.

We do not believe that there are any States that prohibit BMI data collection,

[1] Schwarz M. and Henderson K. Does obesity prevention cause eating disorders? *J Am Acad Child Adolesc Psychiatry,* 2009, 48(8):784–786.

but we encourage applicants to understand and follow Federal, State, and local laws, regulations, and policies regarding student-level data collection and privacy.

Change: None.

Comment: One commenter suggested that the complexity involved with BMI data collection could discourage smaller educational entities and communities from applying for a grant.

Discussion: We understand that collecting and reporting BMI data might pose challenges for applicants. If small school districts or communities need additional assistance to implement the competitive preference priority, they should include costs associated with collecting and reporting BMI data in their proposed budget. Allowable costs might include, for example, additional staff time to facilitate collection and reporting, purchase of needed equipment, purchase of technical assistance services, professional development costs, or resources to develop and disseminate information to parents and the community about BMI data.

Changes: None.

Comment: We received several comments expressing concern that BMI data interpreted in isolation at the individual level might not provide an accurate assessment of health status, particularly for athletes, or at the program level to assess project goals.

Discussion: The intent of the BMI data collection is to provide a population-level analysis of the weight status of the student population, at the school, site, or district level. Although applicants should consider whether and how individual assessments may be shared with students and their families, the intent of this priority is focused on population surveillance. BMI assessment is also not necessarily intended to serve as an assessment of the program's short- or long-term goals. Program planners should consider how they will use the data to assess the impact of the program on the population's weight patterns but we expect that the changes as a result of PEP implementation may take longer than the project period. We have measures to assess the project's goals, such as physical activity, that are, in theory, directly affected by the activities that grantees will implement.

Changes: None.

Comment: Two commenters suggested that the Department provide specific instructions on how to collect BMI data. The commenters stated that this information should be included on CDC's Web site.

Discussion: We agree that careful planning and training should be undertaken for projects that elect to address the proposed competitive preference priority concerning BMI assessment. As a result, we plan to include in the application package a reference to examples of available resources, including CDC's Children's BMI Tool for Schools, to help implement these kinds of activities in the safest and most effective way possible. This information is available on the CDC's Web site at: *http://www.cdc.gov/healthyyouth/obesity/bmi/.*

Changes: None.

Comment: One commenter questioned why parental permission would be necessary to collect BMI data since overall fitness testing or other assessments do not require parental permission.

Discussion: The competitive preference priority requires that parents be given the opportunity to have their child opt out of the BMI assessment after they have been informed of this choice. Applicants who wish to address the competitive preference priority related to BMI assessment are required to sign a Program-Specific Assurance that they will include parents in the development and implementation of their protocols to collect and report BMI data.

The final priorities, requirements, and definitions also reference the Federal Policy for the Protection of Human Subjects. Grantees that engage in BMI data collection could be subject to the U.S. Department of Education's Protection of Human Subjects regulations found in 34 CFR part 97 if the data are used in research funded by the Federal Government or for any future research conducted by an institution that has adopted the Federal policy for all research of that institution.

Grantees will need to review carefully the scope and design of their project to determine if parental permission for collecting and reporting BMI data is required by State or local laws, regulations, or policies, if applicable. We will provide technical assistance to grantees to help them make this determination.

Changes: None.

Comment: One commenter believed that by requiring the collection of BMI data, grantees would be compelled to purchase a commercial fitness assessment product.

Discussion: The use of a commercial product is not necessary to collect BMI data. Grantees can effectively collect BMI data without a specific fitness assessment product. In fact, many districts are conducting population-based BMI assessments with fairly simple equipment and spending more time and resources developing protocols and engaging in professional development to ensure that the assessment is done accurately and with sensitivity to students.

Grantees should design a program that is commensurate with their identified needs and propose a budget that is commensurate with that project design. Because BMI assessment is a competitive preference priority, applicants can opt not to undertake that collection. If, however, an applicant commits to undertaking BMI assessment, the applicant should determine the most appropriate methods and tools for undertaking this activity. While the grant does allow for costs associated with needed equipment, technical assistance, and resource products, the Department does not require, recommend, or endorse the purchase or use of any particular commercial product for meeting this priority.

Changes: None.

Comment: Some commenters requested that we change the competitive preference priority to an invitational priority.

Discussion: We believe the collection of BMI data has value in helping programs identify the percentage of students who might be obese, overweight, normal weight, and underweight, thus allowing them to better understand the needs of the population they serve. As such, we have opted to give competitive preference to applicants that choose to undertake this activity.

Changes: None.

Competitive Preference Priority 2—Partnerships Between Applicants and Supporting Community Entities

Comment: Several commenters expressed a concern about the requirement to include the "head of local government," as a required partner in order to satisfy the proposed competitive preference priority concerning partnerships. Specifically, commenters doubted that the head of local government would have time to play a meaningful role in a PEP project and were also concerned about the difficulty of securing support from the head of local government, particularly in large urban areas. One commenter expressed concern that requiring involvement of the head of local government would inject a political element into the grant.

Discussion: Although we believe that the head of local government can

provide a significant leadership role in community-wide efforts to improve physical education, increase levels of physical activity, and enhance knowledge about nutrition and healthy eating, we understand that in some communities it may be difficult or even impossible to secure support of the head of local government. We address this concern by providing a broader definition of the term "head of local government" in the final definitions.

Changes: We have revised the definition of "head of local government" as follows: "the head of, or an appropriate designee of, the party responsible for the civic functioning of the county, city, town, or municipality would be considered the head of local government."

Comment: Some commenters expressed concern that the competitive preference priority for partnerships is far-reaching and detracts from PEP's basic purpose of helping students meet State standards for physical education. Commenters also expressed concern about the burden associated with creating and maintaining the kinds of partnerships envisioned in the competitive preference priority, and stated that work on partnerships would dilute efforts to improve the quality of physical education programs. In some instances, commenters stated that it might also be difficult for community based organizations (CBOs) to establish such partnerships and that the inability to do so might place them at a competitive disadvantage.

Discussion: We believe that collaborative efforts between school and community entities will greatly enhance the ability of grantees to provide effective and comprehensive PEP programs that help students live and learn lifelong healthy habits. We believe that both schools and CBOs can contribute to partnerships that are designed specifically to meet the needs of their student population. Best practices in the field suggest that this type of community collaboration enhances the project's effectiveness and possibility for being sustained past the period of Federal assistance. Although all applicants who choose to address this competitive preference priority would be required to engage in additional work to create and maintain partnerships, we believe that the important outcomes that could be gained by doing the work outweigh the concerns about the potential burden imposed.

We have designed a competitive preference priority to allow CBOs to identify community partners that would enhance their efforts and connect their programs to other community initiatives. Although the makeup of the partner groups will differ between LEAs and CBOs, we do not believe that there is a significant difference between the priority requirements for LEAs or CBOs or that the priority places CBOs at a competitive disadvantage because both LEAs and CBOs are equally able to create and maintain the partnerships required.

Changes: None.

Comment: One commenter stated that partners provide significant help in implementing and sustaining programs and policies and suggested that we incorporate competitive preference priority 2 into the absolute priority for the program.

Discussion: We agree that a coordinated, community-wide approach is likely to be the most powerful model for establishing and sustaining comprehensive efforts to provide physical education, nutrition education, and other activities and programs.

However, we are concerned that some potential applicants for PEP might not be able to secure each of the required partners. We believe that inclusion of the competitive preference priority strikes an appropriate balance between encouraging the use of this approach and not creating a disadvantage for applicants that cannot secure each of the required partners.

Changes: None.

Comment: One commenter suggested that applicants be permitted to use the State public health entity rather than the local public health entity to satisfy the competitive preference priority concerning partnerships because responsibility for some issues related to PEP might rest with State officials.

Discussion: The proposed definition of the term "local public health entity" included in the NPP provided an exception for applicants from Rhode Island and Hawaii because neither State has sub-State public health units. While we believe that a local public health entity is likely to be more involved in implementing a PEP project, we have learned that some States that have local public health units may not assign responsibility for issues related to nutrition, physical education, or physical activity to those local units. Based on this new information, we have revised the definition of the term "local public health entity" to address this situation.

Changes: We have revised the definition of the term "local public health entity" to permit applicants whose local public health entity does not have responsibility for issues related to physical education, nutrition, or physical activity to partner with the State public health entity instead.

Comment: One commenter suggested that we revise the language concerning partner contributions in item (2) of the competitive preference priority by removing the word "if". Because partners are signing the partnership agreement, the commenter stated that it is reasonable to assume that they will be contributing to the partnership in some way and that those contributions should be specified in the agreement.

Discussion: We agree with the commenter's suggestion and have revised the priority.

Changes: We have revised item (2) in the competitive preference priority accordingly.

Comment: One commenter expressed concern that the time typically allowed to complete the application would not be sufficient to create a partnership as described in the competitive priority concerning partnerships.

Discussion: The Department must obligate all FY 2010 PEP funds by September 30, 2010 or those funds will revert to the U.S. Treasury. We are providing as much time as possible for applicants to develop and submit their applications under the FY 2010 PEP grant competition. All applicants will be subject to the same deadline.

Changes: None.

Comment: One commenter suggested that public health entities be allowed to function as the required partner representing an organization supporting nutrition or healthy eating under competitive preference priority 2.

Discussion: If the only entity in the community that can provide a perspective on nutrition to the advisory committee is the public health entity, we believe it would be an acceptable partner to satisfy the competitive priority and, therefore, have revised the priority.

Changes: We have revised the language in the priority and added public health entities to the definition of "organizations supporting nutrition and healthy eating."

Requirement 1—Align Project Goals With Identified Needs Using the School Health Index

Comment: One commenter suggested that the Department promote implementation of Coordinated School Health Programs in conjunction with the use of the School Health Index (SHI) as included in this requirement.

Discussion: We agree that a Coordinated School Health Program model provides a strong framework and context in which physical education, nutrition, and other important health

topics can be addressed by schools. Proposed requirement 4, which concerns linkages with Federal, State, and local initiatives, is designed to encourage applicants to consider how their proposed PEP project could be implemented in ways that maximize coordination with other health-related activities being implemented in schools and communities, including with Coordinated School Health Program initiatives. However, because eligible applicants for PEP include entities that are not schools or school districts, it would not be appropriate to require that all PEP projects implement a Coordinated School Health Program.

We believe that requirement 1, with its focus on SHI only, is an appropriate assessment tool because it can be used without requiring the use of the Coordinated School Health Program framework for programming and policy development.

Changes: None.

Comment: One commenter suggested that the Department use the CDC's SHI as part of a competitive preference priority rather than as part of a program requirement so that applicants would be encouraged to conduct an assessment for each application cycle.

Discussion: We agree that applicants should use the SHI assessment tool to plan their proposed PEP project. For that reason, we drafted this requirement to ensure that each applicant conducts the SHI assessment at the time of application and that funded grantees undertake the SHI at the end of their project period to assess their progress. With this structure, use of the SHI assessment is required, which we view as better than simply encouraging it.

Changes: None.

Comment: Some commenters suggested allowing applicants more flexibility in choosing a needs assessment tool rather than requiring that applicants use CDC's SHI. One commenter stated that any needs assessment should include a review of the legal and policy context in which the project would be implemented, and examine the incentives and enforcement mechanisms that are in place to ensure that students are receiving quality physical education.

Discussion: In part, we included this requirement in the NPP to respond to language in the conference report accompanying the FY 2010 appropriations statute that includes funding for PEP. In addition to Congressional interest in having PEP applicants complete the SHI, we believe that completing the questions concerning physical activity and nutrition required in Modules 1–4 of the SHI assessment tool will assist applicants in designing a project that is closely aligned with their needs and is consistent with best practices in the field.

The SHI is a relatively easy and straightforward tool, designed specifically for a school to assess its current policies and practices based on evidence and best practices. Findings from the SHI are also tied to action plans, which should inform the project design. We do not believe there is another tool that is easy to use, free, publicly accessible, aligned with technical assistance opportunities, and broadly applies scientifically-based principles to program and policy in a national context. Moreover, by requiring LEA applicants to use a single assessment tool, we will be better able to understand how schools change over the course of their project.

As set forth in the text of the requirement, CBO applicants that have not identified a school or LEA partner in their applications are not required to use the SHI. However, they must use an alternative needs assessment tool to assess the nutrition and physical activity environment in the community for the children to be served by the grant. There are no comparable tools for CBOs that embody all of the desirable attributes of the SHI for the community-based setting. We will include, in the application package, guidance to CBO applicants on what CBO applicants might consider if they select an alternative assessment tool to the SHI.

Finally, while not required, we encourage all applicants to assess their policy and legal contexts if they determine it is appropriate and they are able to do so. We believe that the SHI will assess the policy context but because grantees cannot necessarily change the legal context in which they would implement their projects, we do not believe that we should require this type of assessment.

Changes: None.

Comment: A number of commenters offered suggestions about how CDC's SHI assessment should be used in the PEP program. One commenter recommended that the Department revise requirement 1 to make it clear that applicants must complete Modules 1–4 of the SHI, while another commenter recommended that we delete the requirement that applicants complete Module 1 because not all of the questions in that module relate to topics that are likely to be included in a PEP project. Other commenters recommended expanding the requirement to include Module 8 of the SHI (Family and Community Involvement) given the Department's increased focus on creating school-community partnerships, as evidenced by the proposed priorities, requirements, and definitions in the NPP.

Discussion: Applicants are only required to complete the physical activities and nutrition questions in Modules 1–4 of the SHI assessment tool. Applicants are not required to complete any other questions in those or other SHI modules. Applicants may choose to complete other questions (in addition to those physical activity and nutrition questions required) if they believe that doing so would be helpful in designing their proposed PEP projects.

Changes: None.

Requirement 2—Nutrition- and Physical Activity-Related Policies

Comment: Two commenters expressed concern about the ability of an LEA or CBO to change or affect physical activity and nutrition policies in their respective settings. One commenter stated that it will be difficult for CBOs to change or affect policies because the scope of the policies subject to review and revision under this requirement is much broader than the scope of the policies that a CBO can adopt and implement. Another commenter discussed the challenges in writing and implementing specific policies in school districts, and stated that the focus of the requirement should be on reviewing and updating policies rather than developing new policies.

Discussion: Requirement 2, which addresses the nutrition- and physical activity-related policies to be developed, updated, or enhanced by grantees during the PEP grant, does not specify particular policies that must be developed, reviewed, and potentially revised. Rather, applicants must describe their current policy framework and the process they plan to use to review, develop, implement, and monitor policies. The purpose of this requirement is to ensure that PEP grantees carefully consider the role of policy development and implementation in creating comprehensive PEP projects, and that they commit to making policy changes that support improvements in the areas of physical activity and nutrition during the project period of the PEP grant. Policy changes are also likely key to institutionalizing and sustaining progress made during a PEP project.

We believe that examining the policy framework in which projects are implemented will help grantees identify needed policy changes that can remove impediments to, or provide incentives

for, enhanced physical education or improved nutrition outcomes. We do not expect grantees to address policies that are outside their authorized mission or scope.

Changes: None.

Comment: Several comments expressed concern about the relationship between proposed requirements 2 (nutrition-and physical activity-related policies), 3 (linkage with local wellness policies), and 4 (linkages with Federal, State, and local initiatives). One commenter proposed that the Department offer applicants the option of meeting either requirement 2 or 3 stating that both requirements entail the same sort of analysis and action. Another commenter suggested that we combine the three requirements into a single requirement because the foci of the three requirements are related.

Discussion: We acknowledge that requirements 2, 3, and 4 are related, but we elected not to combine them because the three requirements may apply differently depending on the applicant's organization and the context in which it operates. We believe that stating the three requirements separately enables us to address how each requirement applies in different contexts. We believe that this approach will help ensure that applicants understand the requirements and will be able to respond to them appropriately in their applications.

For example, requirement 3 concerns linkages with local wellness policies. LEAs are typically the entities responsible for developing and implementing local wellness polices. For this reason, the requirement, as applied to LEAs, is straightforward. Given that we also expect non-LEA applicants to apply for PEP grants, we have included information in this requirement to address those applicants as well. Under this requirement, CBOs whose PEP applications include a partnership with LEAs must describe in their applications how the project will enhance or support the intent of the local wellness policies of participating LEAs, while CBOs not in partnerships with LEAs do not have to satisfy this requirement.

Although we believe that the best approach to describing these three program requirements is to present them separately, applicants are encouraged to provide in their applications a comprehensive discussion of their policy framework and of linkages with other existing initiatives. Applicants need not repeat information that responds to more than one of the requirements.

Changes: None.

Requirement 3—Linkage With Local Wellness Policies

Comment: Some commenters raised concerns that proposed requirement 3, which concerns the linkage with local wellness policies, will be challenging for CBOs to meet and that time spent by staff in managing activities related to the requirement would reduce an organization's ability to provide direct services to students.

Discussion: As stated in this requirement, if an applicant or one its partners does not participate in the school programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition and WIC Reauthorization Act of 2004, it might not have a local wellness policy and, therefore, might not be required to meet this requirement or to adopt a local wellness policy. However, we encourage all applicants to consider developing a local wellness policy consistent with the policies required by the Richard B. Russell National School Lunch Act and the Child Nutrition and WIC Reauthorization Act of 2004 in conjunction with their PEP projects. If a CBO applicant has an LEA partner, it would be required to address that LEA's local wellness policy.

Changes: None.

Comment: One commenter suggested that the Department revise this requirement concerning linkages to local wellness policies to accommodate any changes that might result from reauthorization of the Child Nutrition Act.

Discussion: In future years before using the priorities, requirements, and definitions established in this NFP, we will carefully review program requirements to determine if legislative action or other changes require the Department to modify the priorities, requirements, or definitions in this NFP under this requirement.

Changes: None.

Requirement 4—Linkages With Federal, State, and Local Initiatives

Comment: Two commenters suggested that we include a reference to the Recovery Act Community Putting Prevention to Work Community Initiative (CPPW) grantees in the application package.

Discussion: We agree that adding such a reference could be helpful to applicants. The link to the CPPW Web page (*http://www.cdc.gov/chronicdisease/recovery/community.htm*), which includes a list of grant recipients and additional information on the initiative, will be provided in the application package. We believe that this program, which includes in its goals a focus on improving physical activity and nutrition habits of residents, has the potential to complement efforts undertaken as part of the PEP program.

Changes: None.

Comment: One commenter expressed concern that having programs align with Coordinated School Health programs or CPPW grants, as required under Requirement 4, would place a significant burden on applicants.

Discussion: We believe that applicants and PEP-funded projects must complement, rather than duplicate, existing, ongoing, or new efforts that promote physical activity and healthy eating, and help students meet their State standards for physical education. CDC's Coordinated School Health Program, USDA's Team Nutrition initiative, and HHS's CPPW grantees are working on projects directly related to one or more elements of PEP. Coordinating with these programs and initiatives will allow PEP grantees to maximize their resources, reduce duplication, provide more effective programming for their students, and increase chances for a PEP project's sustainability.

Changes: None.

Comment: Two commenters requested that we add State associations for health, physical education, recreation, and dance to the list of linkages to Federal, State, and local initiatives that could be made by PEP grantees.

Discussion: This requirement specifically requires applicants that are implementing CDC's Coordinated School Health Program, USDA's Team Nutrition Initiative, or CPPW, to align its proposed PEP project activities with these initiatives. Applicants that are implementing other Federal, State, or local initiatives are required to sign a Program-Specific Assurance that commits them to align their project with such initiatives.

Changes: None.

Comment: One commenter suggested that we add language to proposed requirement 4 that would mandate that USDA's Team Nutrition coordinators be involved in planning and implementing the PEP project and that their involvement be verified by a signed assurance or other documentation.

Discussion: We believe that it is important for PEP projects to complement rather than duplicate existing or new efforts to promote physical activity and healthy eating behaviors. For this reason, requirement 4 requires applicants that receive funding under the USDA's Team Nutrition initiative to describe how

their proposed PEP project supports the efforts of the USDA's Team Nutrition initiative.

Although we agree that it is important for PEP-funded activities to be coordinated with other related activities such as those supported by Team Nutrition, we believe that the proposed requirement is sufficient to address this issue without imposing an additional requirement for a signed assurance from the Team Nutrition coordinator.

Changes: None.

Requirement 5—Updates to Physical Education and Nutrition Instruction Curricula

Comment: One commenter expressed concern that the proposed requirement related to updating physical education and nutrition instruction curricula is not aligned with the absolute priority. The commenter stated that completion of the PECAT and analysis of PECAT results should guide applicants in choosing which of the absolute priority elements related to physical education they should include in their proposed PEP project.

Discussion: We believe that each of the proposed requirements in the NPP (and adopted in this NFP) is closely linked to the components of the absolute priority in this notice and that each requirement supports the adoption of high-quality, evidence-based programming and curricula. As part of a general planning framework for a PEP grant, results from the PECAT and HECAT should be used as part of the needs assessment process that each applicant will undertake to be optimally responsive to the absolute priority or as part of a grantee's analysis of available curricula during the project period. Undertaking the SHI or another needs assessment leads an applicant to select elements of the absolute priority to be included in their proposed project. If one of the needs identified is a curricular need, the PECAT and HECAT are intended to guide applicants or grantees to identify a curriculum that fills that identified need. These tools, therefore, should help applicants or grantees to be responsive to the absolute priority and function as tools to help meet the absolute priority. The PECAT and HECAT can be done as part of the application process or after the grant is awarded, as appropriate.

Changes: None.

Comment: Several commenters expressed concern about requiring the use of the HECAT and PECAT tools. Two commenters stated that use of these tools limits local flexibility and does not allow for alignment with State standards. Others contended that these tools have limited ability to assess cognitive components of physical education or that the tools are limited to secondary level curricula. Finally, one commenter expressed concerns that these tools do not assess implementation of curricula.

Discussion: We believe that the PECAT and HECAT tools provide a low-cost and rapid way to assess existing curricula and identify needed enhancements in those curricula. These tools are designed to provide a complete, consistent, and objective assessment of a site's needs and resources and to provide feedback on curricula to best meet the identified needs. According to CDC, the PECAT and HECAT are appropriate for all grade levels and relate to national physical education and health education standards. Our goal in requiring the use of these tools is to help grantees make the best choices for curricula and, in turn, equipment, before funds are spent unnecessarily on items that do not meet the needs of the site. However, this requirement does not prohibit applicants or grantees from also using additional analysis or needs assessment tools if they so choose.

We agree that the PECAT and HECAT are not designed to assess implementation of the curriculum or cognitive components of PE. For this reason, applicants must undertake the SHI or another comparable needs assessment tool to assess needs, which may include implementation issues. In addition, grantees must undertake the SHI at the end of their project period to assess their progress. The PECAT and HECAT complement the SHI in that the PECAT and HECAT address written curricula and the SHI addresses the implementation of those curricula. The SHI is a self-assessment and planning tool that schools use to assess their student health policies and programs and their school health environments. We also note that, in addition to requiring the use of these assessment and planning tools, we also are establishing performance measures for this program that are designed to help assess the effectiveness of the chosen program, including curricula, on changing student outcomes.

Changes: None.

Comment: One commenter expressed concern about tying PEP-related equipment purchases to the curricular components of the applicant's physical education and nutrition program. The commenter stated that there would not be sufficient opportunity during the grant to create an action plan related to a newly developed or adopted curriculum to help students meet their State standards for physical education.

Discussion: The intent of this requirement is to ensure that grantees align equipment purchases using PEP-related funds to the PEP elements and curricula applicable to their PEP projects, as identified by the PECAT and HECAT. Grantees must tie equipment purchases to any curricula that will be implemented as part of a PEP project. Without this alignment, equipment purchased with PEP funds would not support the effective implementation of physical education or health curricula. For this reason, applicants must undertake the PECAT—either as part of the application process or during the grant's project period—to assess their needs and plan related equipment purchases accordingly. We do not intend to prohibit a grantee from changing its plans for equipment purchases during the project period so long as the grantee aligns the equipment purchases with the PEP elements applicable to their projects (identified in priority 1) and any applicable curricula, within the scope of the funded project.

Changes: None.

Requirement 6—Equipment Purchases

Comment: One commenter suggested that it would be appropriate for applicants to consider both the schools' and the community's physical activity needs when selecting equipment for purchase so that equipment purchased for schools could be used by community members under a shared-use agreement.

Discussion: Grantees under this program may only purchase equipment with PEP-related funds (either Federal funds or funds used to satisfy the program's matching requirement) if the purchase is aligned with the curricular components of the physical education and nutrition program. We expect that applicants will describe in their application what equipment they expect to purchase with PEP funds, and how the equipment would address their curricular needs, including gaps and weaknesses in their current programming for the students served by the grant, and the specific curricular needs of the students to be served by the grant. However, it is important to note that during the project period, the equipment may be used only by students served by the grant in grades K–12. Therefore, community members may not use the equipment during the project period.

Changes: None.

Comment: None.

Discussion: Upon further review, we determined that it was appropriate to clarify the first sentence in requirement

6. Specifically, we did not think the phrase "purchases of equipment with PEP funds and related to grant activities" was sufficiently clear for applicants.

Changes: We revised the first sentence of requirement 6 to state that purchases of equipment with PEP funds or with funds used to meet the program's matching requirement must be aligned with the curricular components of the proposed physical education and nutrition program.

Requirement 7—Increasing Transparency and Accountability

Comment: One commenter suggested that we require reports generated by a particular commercial fitness product to be sent home to parents so that this additional information can be used by parents and pediatricians to monitor growth and development.

Discussion: The Department does not endorse specific commercial products. There are many mechanisms and reports that can provide information to parents and, if they so choose, parents may share this information with their child's pediatricians. We encourage applicants to consider plans to share student-level information with parents.

Changes: None.

Comment: One commenter requested clarification on whether reporting mechanisms required for grantees to increase transparency and accountability include making available to the public reports of students' progress towards meeting State physical education standards.

Discussion: The new PEP design seeks to increase accountability and transparency by requiring grantees to report aggregate student data to the public on program indicators required under GPRA, as published in the performance measurement section of the notice inviting applications (NIA), published elsewhere in this issue of the **Federal Register,** and any unique project-level measures proposed in their applications. Grantees may elect to establish measures specific to their project, which may include student's progress towards meeting State standards for physical education. Because of the diversity not only in grantee sites, but also the quality of State physical education standards, it is not practical for us to require grantees to report on this issue as a performance measure for PEP. We have chosen performance measures that best balance the potential data collection burden, which we believe is low, with the value of providing grantees with practical and actionable student-level data and obtaining comparable data that can be aggregated across program sites, which we believe is high.

Changes: None.

Comment: None.

Discussion: Upon further review of this requirement, we determined that the language in the final paragraph regarding the Program-Specific Assurance might be confusing. Specifically, we determined that the phrase "including parents of students under 18 years old" was not necessary, might cause readers to be confused as to what was required, and did not meaningfully add to the intent of the requirement.

Changes: We revised the first sentence in the last paragraph of requirement 7 to clarify that applicants must commit to reporting information to the public by signing a Program-Specific Assurance, and deleting the phrase "including parents of students under 18 years old."

Requirement 8—Participation in a National Evaluation

Comment: One commenter expressed concern about how much time would be needed to collect data related to the national evaluation and PEP's performance measures.

Discussion: Although we understand that the required performance measures and data collection methodology may be challenging for some grantees, they are similar to the measures and data collection methodology that many grantees currently collect and implement. Grantees are, and have always been, allowed to hire staff to assist in the collection and analysis of their site-specific data related to performance measurement. For the national evaluation, the Department will work directly with a contractor, who will use existing data, to the extent possible and minimize the data collection burden on grantees.

Changes: None.

Comment: One commenter requested information about the national evaluation of the PEP program.

Discussion: The scope of the national evaluation is still being considered. If a grantee is selected to participate in the national evaluation, more specific information about the study will be shared prior to the initiation of the evaluation. We expect that the evaluation will broadly examine the performance measures, which focus on increases in the percentage of students meeting the recommended levels of physical activity (at least 60 minutes every day), and improvements in student fitness levels and nutritional intake. These measures will likely be examined at the PEP program level to illustrate the range of projects implemented and outcomes achieved by grantees funded under this program.

Changes: None.

Requirement 9—Required Performance Measures and Data Collection Methodology

Additional or Alternative Measures

Comment: One commenter suggested requiring applicants to gather data on the four CDC physical activity recommendations in addition to the GPRA measures already listed in requirement 9. These CDC measures include assessments of the type and intensity of physical activity in which students engage, such as whether or not a student has engaged in moderate to vigorous physical activity, bone strengthening and muscle strengthening for at least three days; as well as the student's consumption of sugar-sweetened beverages; hours of sleep; and "screen time."

Discussion: Although we agree that these CDC measures can be useful for understanding a student's nutrition and physical activity habits, we have found that grantees are best able to focus fully on a smaller set of measures that most closely align with the desired goals and objectives of their program. We expect that the three performance measures that we have selected will serve as a proxy for the full range of these CDC measures, as well as for longer-term outcomes, and will provide the Department with the most useful assessment of whether a program is making substantial progress from year to year. With that said, we encourage grantees to adopt these CDC measures or other site-specific measures to assess their performance during their project period.

Changes: None.

Comment: Several commenters suggested expanding the required performance measures to include components, such as a standard metric that would assess the number of physical activity minutes offered to students during a school year, by school and by program, as well as the actual number of minutes that a student is engaged in physical activity, which would be assessed by using direct observation or pedometry. Another commenter suggested assessing the program's effectiveness in improving children's ability to pursue different physical activities, and the extent to which students embrace a healthy lifestyle. Still another commenter recommended that we require grantees to collect and report data on performance measures that are aligned with the six PEP program elements

outlined in the absolute priority and State standards for physical education.

Discussion: Under requirement 7 (Increasing Transparency and Accountability), applicants may propose a variety of unique project-level performance measures for their individual programs that would best help them understand their program's progress towards their unique goals and objectives and assess their students' performance. However, we are requiring three performance measures that are aligned with the desired program outcomes. Although we agree that one metric would be optimal for cross-site comparability, PEP grantees represent a diverse array of programs that would make a single specific metric difficult, if not impossible, to implement. For example, some programs operate only after school or in the summer, and others are school-based physical education programs. Because of this diverse array of programs, many grantees will not have the ability to increase the minutes of physical activity offered to students. Also, grantees are not required to undertake all six of the PEP program elements, and, as such, we cannot hold all grantees accountable for elements that they will not address as part of their funded project.

We are also interested in measuring changes in students' physical activity habits throughout the day and in multiple settings, not just in the activities funded under the PEP program. We believe that measuring changes to students' overall activity level will not only measure improvements in programming, but also changes in students' behavior. As such, we prefer to assess student-level outcomes, such as the minutes spent in physical activity, fitness levels, and improvements in nutritional intake. These outcome measures are also the logical outcomes of the adoption of healthier lifestyles, as we hope that there will be increases in the percentage of students who practice healthy habits. We also believe these outcomes will serve as a proxy for a teacher's effectiveness in imparting lessons that students understand and, in turn, apply to their daily lives, and are reflected in healthier activity and nutritional choices.

Changes: None.

Comment: Due to a concern about program quality and the need to ensure that programs are comprehensive and not just focused on equipment purchases for physical activity, one commenter suggested that grantees be required to demonstrate their progress during the period of the grant using at least one indicator of change, such as the development of a school- or district-level curriculum, or changes as assessed by the PECAT and HECAT, or SHI.

Discussion: We agree with the commenter that projects should be comprehensive in nature, improve physical education, and enhance physical activity opportunities for youth, as well as help students develop lifelong healthy habits, rather than just support equipment purchases. All grantees will be required to use the PECAT if they are developing or purchasing a new curriculum for physical education or the HECAT if they are developing or adopting a new curriculum for nutrition education. All applicants will also be required to undertake the SHI or a comparable local needs assessment, submit their scores as part of their application, and create a program designed to address their greatest needs in programming and policy. Although the SHI is designed to help schools assess their policy and practice environments, it is not designed as an evaluation tool and may not be used for this purpose. Grantees will be required to undertake the SHI at the end of their project to determine if they have made the changes that they had desired (and to assess any unplanned consequences). The SHI should be used only as a program management tool—not to assess accountability—because a grantee's progress, as measured by the SHI, may or may not reflect the results of the grantee's project. Similarly, the PECAT and HECAT are tools designed to help schools and CBOs assess curricula and choose improvement areas based on their needs, rather than as tools to evaluate a project's progress. Not all grantees will need to develop or adopt new curricula; for example, some grantees may have recently adopted a new curriculum while others may be part of a larger organization that has control over the curriculum used.

We encourage grantees to track their progress towards implementing changes identified through these tools, or the adoption of any curriculum; grantees are welcome to include these process measures as part of their own performance goals and objectives. We believe that the required performance measures will appropriately assess the desired student-level outcomes related to changing curriculum, practice, and policy.

Changes: None.

Comment: Two commenters suggested that the Department add two new measures to this requirement. These new measures would assess students' progress towards meeting State standards on competency and proficiency in motor skills and movement forms and physical activity-related knowledge, as measured by the National Association of Sport and Physical Education's (NASPE) assessment tools. The commenter noted that NASPE's elementary school assessment tools are currently complete and tools for secondary schools will be complete in fall, 2010.

Discussion: We agree that it is important to assess students' progress towards meeting State standards on competency and proficiency in motor skills and movement forms and physical activity-related knowledge. Grantees may adopt metrics that assess students' competency and proficiency in motor skills and movement forms and students' physical activity related knowledge, but we do not believe it is appropriate to require them to do so. We continue to believe that the measures proposed in requirement 9 will appropriately assess the student-level outcomes that we seek to change through PEP, as they are designed to measure changes in student's knowledge, skills, and abilities related to physical activity and movement, as well as changes in their adoption of lifelong healthy habits.

Changes: None.

Comment: One commenter expressed concern about the validity of the 3-day physical activity recall (3DPAR) for middle school students required in measure 1, and proposed piloting a 1-day measure with a small group of grantees to determine feasibility, reliability, and validity.

Discussion: The 3DPAR is a validated self-report instrument designed to capture habitual physical activity of adolescents. The instrument can be completed during a single 30 minute session, making it ideal for school-based data collection. Particularly when combined with pedometer data, the 3DPAR provides a reasonably good estimate of the type and intensity of students' physical activity. It is important to gather three days of physical activity data through self-report to help identify not only the amount, but also the type, of physical activity. The 3DPAR is not meant to be used on three separate occasions; rather, students are asked to report their physical activity one time and to report about their physical activity from the past three days. The use of the 3DPAR in combination with the pedometer is designed to capture small changes in behavior because the pedometer measures activity continuously and we can determine time and intensity through pedometers.

We require that students in grades 5–12 complete the 3DPAR because it has been used successfully with middle school and high school students. Several recent studies have used the 3DPAR with this population, combined with an objective measure of physical activity such as data gathered via pedometer use.[2] [3]

With grantees using a uniform data collection and assessment methodology, we will be able to aggregate data to provide information that informs our national evaluation.

Changes: None.

Comment: One commenter stated that the 3DPAR methodology is too cumbersome to implement and recommended that the Department require the use of a pen and paper or computer-based seven-day recall survey instrument based on the Youth Risk Behavior Surveillance System (YRBSS) survey.

Discussion: Although a seven-day physical activity recall instrument is an option for grantees, we believe that the resources involved in implementing and completing a seven-day survey outweigh the relative benefits. Additionally, a seven-day recall instrument would not be appropriate for younger children, who have a harder time recalling the seven prior days. The YRBSS survey instrument has historically been used with high-school students and, although some States collect YRBS data from middle school students, we are uncertain about the validity and reliability of YRBS data collected at grade levels lower than middle school.

We recognize that some applicants and grantees will not have experience in implementing the 3DPAR. We intend to provide grantees with technical assistance to ensure relatively uniform data collection and to help students and staff understand what type of physical activity to include in the data collection.

Changes: None.

Comment: Several commenters expressed concern about the validity of the pedometer data required to be collected under measure 1. The first concern was about accurately reporting data because the data would be self-reported and could be reported inaccurately either inadvertently or deliberately by the teacher or the student. The second concern focused on the collection of pedometer data, which the commenter stated could be inflated by, for example, the student shaking the pedometer.

Discussion: The use of pedometers to assess students' physical activity during the day is well-validated and recommended by many physical activity researchers. Multiple studies conducted over the last decade have examined noncompliance, and the overwhelming finding is that the use of pedometers does not present data collection or aggregation challenges that compromise the validity and reliability of student-level self-reported data. A nationally-representative study of over 11,000 Canadian students used pedometers as its data collection methodology and did not find data collection methodology challenges with pedometers. This population-based study and other studies relied on self-report data and found this method to be acceptable and to produce valid and reliable data.

We will provide technical assistance to grantees to help them introduce pedometers during physical education lessons, including explaining how pedometers work, allowing students to explore moving with pedometers, teaching students how pedometers should be worn and taken care of, and how to record the data from the pedometers. Physical education teachers' prompts and reminders to students about wearing the pedometers during the data collection period are also important in helping students accurately collect their activity data.

Although self-reported data may be a challenge because of the potential for students to report socially desirable responses, self-report is still the most widely used method for assessing physical activity among all age groups. Combining the use of pedometers with a 3DPAR provides researchers, physical education teachers, and program coordinators with a good idea of young people's physical activity levels from a subjective (self-report 3DPAR) and objective (pedometer) method. This combination of strategies provides information regarding how much activity (through both pedometers and 3DPAR), as well as what types of activity (3DPAR) students are engaged in.

Changes: None.

Comment: Two commenters suggested that we allow grantees to collect data from a sample of students rather than collect pedometer data from all participants.

Discussion: Depending on the size of the project and the number of students served, grantees may use a sampling methodology and framework instead of assessing their whole target population. We have developed a sampling methodology that will be shared with grantees and, if the grantee decides to use sampling, we will provide technical assistance in setting up the sample and ensuring that the methodology is implemented correctly.

Changes: None.

Comment: A few commenters expressed concern that pedometers are not able to appropriately and adequately reflect physical activity for specific populations, such as young children, or specific activities, such as riding a recumbent bike, and requested information on "approved" pedometers to be used in these instances.

Discussion: Pedometers have been shown to be a cost-effective, noninvasive, valid, and reliable method of collecting information on students' activity levels while engaging in a variety of activities. Research shows that pedometers are reliable and valid for use with children, even children as young as kindergarten age and for adolescents because they measure the physical activity of youth in steps accurately on a consistent basis. Researchers in Canada implemented a nationwide study using pedometers with 5–19-year-olds, and were able to obtain reliable data from this age group.[4]

Additionally, for all ages, it is possible to use pedometers to determine moderate to vigorous physical activity. For example, one study showed that approximately 120 steps per minute equates to moderate activity.[5] [6] Another study showed that the number of steps taken per day was a significant predictor of activity time.[7]

There are many different kinds of pedometers made by a variety of manufacturers and, to the extent practicable, we will provide guidance in the application package on

[2] Ward DS, Dowda M, Trost SG, Felton GM, Dishman RK, and Pate RR. Physical activity correlates in adolescent girls who differ by weight status. *Obesity.* Jan 2006;14(1):97–105

[3] Dowda M, Pate RR, Felton GM, Saunders R,et al. Physical activities and sedentary pursuits in African American and Caucasian girls. *Res Q Exerc Sport.* Dec 2004;75(4):352–360.

[4] Craig, C.L., Cameron, C., Griffiths, J.M. and C. Tudor-Locke. Descriptive epidemiology of youth pedometer-determined physical activity: CANPLAY. *Medicine & Science in Sports & Exercise.* 2010; in press.

[5] "Moderate physical activity" is defined as a level of exercise that makes one sweat and breathe hard. During moderate activity, one can talk but not sing, and includes activities such as walking briskly, ballroom dancing, doubles tennis, or gardening. "Vigorous physical activity," is defined as a level of activity during which one can only talk with a pause between words, and includes activities such as singles tennis, jumping rope, or speed walking, jogging, or running.

[6] Graser, S.V., R.P. Pangrazi, and W.J. Vincent. Steps it up: Activity intensity using pedometers. *Journal of Physical Education, Recreation, and Dance.* 2009; 80(1): 22–24.

[7] Beighle and Pangrazi. Measuring Children's Activity Levels: The Association between Step-Counts and Activity Time. *Journal of Physical Activity and Health.* 2006; 1: 221–229.

specifications that may enhance the validity and reliability of pedometers for this population and provide an accurate overall depiction of physical activity across a student's day.[8] [9] [10] [11] [12] [13] [14]

Changes: None.

Comment: Some commenters expressed concern about the burden associated with collecting, reporting, and analyzing pedometer data; commenters stated that additional staff would be needed to facilitate the collection of these data. Two commenters suggested that some of the proposed GPRA measures for the program would be better collected by the national evaluator to mitigate burden to the local grant sites.

Discussion: Under PEP, applicants may propose to hire staff, including a project manager, program coordinator, or evaluator to support, within reason, activities commensurate with the scope of work and activities of the program. This would include efforts related to data collection and analysis. PEP does not allow applicants to propose a staffing plan that would supplant existing staffing requirements, but the program does allow for funding to supplement the existing program to carry out the tasks delineated in the project or evaluation design. We believe that these data are best collected by the grantee because they are able to structure their data collection appropriate to their particular site.

Changes: None.

Comment: We received some comments regarding the potential complexity of collecting pedometer data during out-of-school hours as well as the related burden on parents, students, and grantees that lack an appropriate project management structure.

Discussion: We acknowledge that the responsibility of collecting pedometer data during out-of-school hours will result in some additional burden on students and their families. We carefully considered issues of burden in developing the requirements for the program, and believe that the value of obtaining comprehensive information about changes in levels of student physical activity served by PEP grants outweighs the relatively limited burden on students and families.

Moreover, grantees can implement strategies to limit this burden for parents and students. For example, grantees could provide orientation sessions to both students and parents to introduce pedometer use to them and provide instruction on using the pedometer, how a pedometer should be worn and taken care of, as well as on how students should record the data from the pedometers. We will provide additional technical assistance to grantees on these and other strategies to enhance the validity and reliability of the data collected.

Finally, under PEP, grantees may propose to hire a project manager or program coordinator, as well as evaluation support, within reason and commensurate with their project's scope of work. PEP does not allow grantees to supplant existing staff requirements, but will allow funding to supplement an existing program to carry out new tasks delineated in the project, including the project evaluation.

Changes: None.

Comment: We received several comments concerning the durability of pedometers. These commenters expressed concern that requiring the use of pedometers would result in grantees wasting funds by purchasing replacement pedometers when they are lost, stolen, or broken.

Discussion: Like other types of equipment, pedometers can be lost, stolen, or broken. However, there are straps that are available to connect the pedometer to a belt loop or waistband to minimize loss. Student training in correct pedometer use and care before data collection begins may also help to minimize breakage. As an objective measure of physical activity, the pedometer is one of the most moderately priced options and one that requires minimal training to use. Pedometer use is also much less time and labor intensive than other objective measures of physical activity.

Changes: None.

Comment: We received several comments recommending that other tools be used instead of, or in addition to, pedometers to measure activity levels. Suggestions included using downloadable heart rate monitors, accelerometers, or a type of watch to appropriately measure physical activity levels. These commenters stated that such tools would be more accurate and effective than pedometers for recording and evaluating information about physical activity.

Discussion: Applicants are welcome to propose using other measurement tools in addition to pedometers. We have elected to use pedometers to measure physical activity under performance measure 1 because they are an accurate, feasible, and unobtrusive measure of physical activity, particularly in physical education. They can be put on quickly, and measure many types of activity, including walking, jogging, running, tennis, dancing, aerobics, and roller skating. Pedometers record physical activity of all intensities, and provide immediate concrete feedback to students. Some pedometers also measure the number of steps and activity time; this then allows the calculation of steps per minute, which can then be associated with intensity.[15]

Research also shows that pedometers can be used in large population-based assessments of physical activity, which implies that they are practical in a range of settings with different populations. Pedometers also tend to be more affordable and require little or no additional investments in complementary pieces of technology such as computers or handheld devices to upload the data.

Changes: None.

Comment: Several commenters shared a concern about the use of the 20-meter shuttle run as a performance measure. Specifically, some commenters expressed concern that grantees would be required to purchase a particular commercial fitness-assessment package to meet the requirement. Other commenters sought clarification about whether we intend for the 20-meter shuttle run to be implemented as a criterion- or norm-referenced test.

Discussion: The 20-meter shuttle run is a test that has been widely used in schools across the U.S. as part of physical education classes. It is not necessary for grantees to purchase a commercial package to collect and report data on this performance measure. The shuttle run provides a measure of students' cardio-respiratory fitness, due to its predictive validity and

[8] Eston, RG, Rowlands, AV, Ingledew, DK. Validity of heart rate, pedometry, and accelerometry for predicting the energy cost of children's activities. *J Appl Physiol.* 1998;84(1):362–371.

[9] Kilanowski, CK, Consalvi, AR, Epstein, LH. Validation of an electronic pedometer for measurement of physical activity in children. *Pediatr Exerc Sci.* 1999;11:63–68.

[10] Louie, L., Eston, R.G., Rowlands, A.V., Tong, K.K., Ingledew, D.K., & Fu, F.H. (1999). Validity of heart rate, pedometry, and accelerometry for estimating the energy cost of activity in Hong Kong Chinese boys. *Pediatr Exerc Sci.* 11, 229–239.

[11] Rowlands, AV, Eston, RG, Ingledew, DK. Measurement of physical activity in children with particular reference to the use of heart rate and pedometry. *Sports Med.* 1997;24(4):258–272.

[12] Beets, M, Patton, MM, Edwards, S. The accuracy of pedometer steps and time during walking in children. *Med Sci Sport Exer.* 2005;37(3):513–520.

[13] Schneider, PL, Crouter, SE, Lukajic, O, Bassett, DR. Accuracy and reliability of 10 pedometers for measuring steps over 400-m walk. *Med Sci Sport Exer.* 2003;35:1779–1784.

[14] Basset, DR, et al. Accuracy of five electronic pedometers for measuring distance walked. *Med Sci Sport Exer.* 1996, 28(8) 1071–1077.

[15] Graser, S.V., R.P. Pangrazi, and W.J. Vincent, Step it up: Activity intensity using pedometers. *Journal of Physical Education, Recreation, and Dance,* 2009. 80(1): 22–24.

correlation with maximal oxygen uptake, which indicates one's cardiovascular or aerobic capacity. The test measures aerobic capacity by having the student run back and forth over 20-meters at increasing rates of speed over specific periods of time.

We intend for grantees to implement the 20-meter shuttle run as a criterion-referenced test, rather than as a norm-referenced test, such as the 20-meter shuttle run test that is used as part of the President's Fitness Challenge. While grantees are not required to purchase any commercial package to meet this requirement, grantees may choose to use the 20-meter shuttle run test from a commercial package to satisfy the 20-meter shuttle run test requirement.

Changes: None.

Comment: Two commenters recommended that the Department permit, rather than require, grantees to use the 20-meter shuttle run for purposes of performance measure 2. One commenter recommended that the Department allow grantees to use the 1-mile walk/run as an alternative assessment to the 20-meter shuttle run.

Discussion: Research demonstrates that the 20-meter shuttle run is a better measure of cardio-respiratory fitness thanthe 1 mile walk/run.

Changes: None.

Comment: One commenter expressed concern as to the size and safety of some school's facilities for conducting the 20-meter shuttle run assessment.

Discussion: We recognize that many LEAs and CBOs face challenges in maintaining adequate facilities to implement physical education activities, but the space requirements necessary to implement the 20-meter shuttle run in a safe manner are minimal (*e.g.,* a volleyball court is approximately 20 meters in length). If the area is not wide enough for all students to complete the run simultaneously, the test can be completed in shifts, with half the class running at a time. This is not ideal, but it is an acceptable alternative if space is limited. Also, the shuttle run can be conducted outdoors if needed.

Changes: None.

Comment: One commenter suggested adding descriptive and clarifying language related to the second GPRA measure, including describing the shuttle run as a criterion-referenced health-related fitness testing protocol and identifying the measure as an assessment of student health-related fitness levels.

Discussion: We agree with the commenter. The 20-meter shuttle run is a criterion-referenced health-related fitness testing protocol used to assess student health-related fitness levels. Therefore, we have changed the language in the requirement accordingly.

Changes: We have changed the language in the requirement to refer to the criterion-referenced health-related fitness testing protocol when describing the shuttle run and referring to the GPRA measure as an assessment of student health-related fitness levels.

Consumption of Fruits and Vegetables

Comment: Some commenters objected to the proposed performance measure concerning daily consumption of fruits and vegetables, based on their opposition to the requirement contained in the absolute priority that nutrition education be required as part of each PEP-funded program. One commenter stated that fruit and vegetable consumption is not an outcome of effective physical education.

Discussion: After a careful review of comments received about the proposed absolute priority, we have elected to retain the requirement that projects include a component addressing healthy eating habits and good nutrition because we believe that a PEP project that incorporates both high-quality physical education and nutrition instruction strategies offers the best opportunity for students to acquire the information and skills necessary to help them understand the complementary relationship between physical education and nutrition, and the role that both can play in improving their health. We believe that the measure related to daily consumption of fruits and vegetables is an important measure that will provide data about project effectiveness.

Changes: None.

Comment: Several commenters recommended methods for collecting information on elementary and middle school students' nutritional intake. Suggestions included using a new nutrition survey, adapting nutrition-related questions from the YRBS, and administering a seven-day nutrition recall assessment, the Healthy Eating Index, or the USDA's MyPyramid nutrition tools. Two commenters suggested that the performance measures be revised to give grantees flexibility to select, depending on their local needs, the method to collect this information (such as through the use of site-, region-, or State-specific instruments).

Discussion: We appreciate the variety of recommendations provided by these commenters and carefully considered all the different tools suggested. We are not aware of any available tools that are free and publicly accessible, that would provide valid and reliable data for elementary and middle school students, and that are not associated with commercial products or curriculum, which the Department is prohibited from endorsing. Because we are unable to identify an appropriate data collection tool, we are not requiring a specific measurement tool for programs serving students in elementary or middle school. Instead, we will provide guidance to applicants on factors they should consider in selecting an appropriate assessment tool to collect data on the percentage of elementary and middle school students who consumed fruit two or more times per day and vegetables three or more times per day.

Changes: We have revised this requirement to clarify that we will not require programs serving elementary and middle school students to use a specific measurement tool, and that they may select an appropriate assessment tool for their population.

General Issues Related to Performance Measures

Comment: One commenter encouraged us to consider requiring all grantees to aggregate the data they collect on the required performance measures at the school level, as opposed to the district level, to increase and enhance accountability for school teachers and school personnel.

Discussion: All participating schools or other grant sites will be responsible for collecting data on the students served and aggregating those data. Grantees must provide to the Department (as part of their required annual and final reports) data that are aggregated across all students served in the grant. To minimize burden, we do not require that grantees provide data to the Department for required performance measures at the school building or classroom levels. While not required, grantees are welcome to use data collected at the school building and classroom levels to assess project progress.

Changes: None.

Comment: Two commenters questioned the need for counting out-of-school physical activity, stating that there has been little evidence of the relationship between school-based programs and a student's out-of-school physical activity.

Discussion: Because of the diversity of PEP programs, not all programs will be school-based or implemented during school hours. Some programs will occur during the after-school hours, on the weekend, or during the summer. Other programs may be primarily school-based

or combine in-school programming with programs and initiatives during out-of-school hours, sometimes in partnership with community groups. Our intent is to fund programs that begin to create systemic changes in students' environments, as well as changes in students' overall habits and behavior throughout the day.

Changes: None.

Comment: Several commenters stated that the requirement to collect data four times during the project period in addition to baseline data would be challenging and cumbersome. Some commenters stated that it would be difficult for grantees to begin data collection at the start of the grant period when initial implementation and professional development would be occurring.

Discussion: Although we recognize that taking time from service delivery to collect data may pose challenges for some grantees, we have used this data collection strategy and methodology for several years with several cohorts of PEP grantees. Generally, we have found that grantees have not been challenged by multiple data collections or the additional baseline data collection during the first year of the grant before program implementation begins. This data collection methodology allows us to standardize the way that data are collected and ensure that grantees are collecting enough data to evaluate program quality and student progress. The frequency of the data collection reduces potential confounds related to changes in student population or expected seasonal differences. The collection of baseline data before and follow-up data after the project is implemented provides data for grantees to assess the effectiveness of their individual PEP projects. If grantees are unable to collect baseline data at the time of their application, they may do so before large-scale implementation of their projects at the beginning of the project period.

Changes: None.

General Comments

Comment: Some commenters recommended that some of the terms used in the NPP be defined. Commenters suggested defining the terms "physical education," "quality physical education," "physical activity," and "physical fitness" to improve clarity.

Discussion: We agree that providing more information about these terms as they are used in the context of the PEP competition could be helpful to applicants. We will include this information in the application package for the program.

Changes: None.

Comment: One commenter expressed concern that some school districts do not have the expertise to prepare an application for a PEP grant based on the requirements proposed in the NPP, and suggested that LEAs be allowed to join together to prepare and submit an application for a PEP grant.

Discussion: Under the Department's existing general administrative regulations (34 CFR 75.127), applicants eligible to receive a PEP grant (LEAs or CBOs) may elect to submit an application on behalf of a consortium. All members of a consortium applying for a PEP grant must be either LEAs or CBOs. One eligible entity within the consortium must submit the application on behalf of the consortium and serve as the program's administrative and fiscal agent. We encourage applicants applying as a consortium to establish a partnership agreement or a memorandum of understanding to delineate roles, responsibilities, and expectations.

Changes: None.

Comment: One commenter expressed concern that the proposed priorities and requirements for PEP will entail outside-the-classroom responsibilities for physical education teachers and that these responsibilities might, in turn, reduce the effectiveness of those teachers in the classroom.

Discussion: We understand that physical education teachers already have significant responsibilities, and that activities related to implementing a PEP project are likely to increase those responsibilities. However, we do not expect that physical education teachers will be responsible for all aspects of implementing a funded PEP project. Applicants are free to request funding for project personnel, consistent with the scope of their proposed projects.

Changes: None.

Comment: Two commenters recommended increasing the focus on "shared-use" or "joint-use" agreements so as to enhance and encourage the use of school and community recreation facilities and community linkages.

Discussion: We generally agree that shared-use or joint-use agreements have the potential to expand options for increasing the opportunities for physical activity in a community. However, we believe that requirement 2, which requires a review of the broad policy context in which projects will operate, is preferable to imposing a requirement for all applicants to enact a particular policy, such as shared-use or joint-use agreements.

Additionally, we note that PEP funds must be used to provide services to students from kindergarten through the twelfth grade; other individuals are not permitted to use the equipment purchased with PEP grant funds during the grant period.

Changes: None.

Comment: One commenter suggested that we encourage teachers to utilize recreational facilities in the community as a way to increase links between schools and communities and to help students and their families become more aware of opportunities for physical activity in their communities.

Discussion: We agree that collaborative efforts between schools and communities are likely to produce the kind of benefits identified by the commenter. We believe that the competitive preference priority for partnerships will encourage coordinated, collaborative approaches that include strategies such as use of community recreational facilities by teachers and students.

Changes: None.

Comment: Two commenters encouraged the Department to make awards to communities with populations that are at risk for obesity and obesity-related health problems or to sites that experience other significant barriers to promoting physical activity for youth.

Discussion: We agree that the needs of an applicant's target population should be considered in selecting grantees. As indicated in the NIA, published elsewhere in this issue of the **Federal Register,** applications will be judged by peer reviewers against selection criteria that include documentation of the need for the proposed project.

Changes: None.

Comment: One commenter expressed concern that the page limit for a PEP application is insufficient to address all of the required priorities.

Discussion: The NPP did not propose a page limit for applications submitted under the PEP competition. We note that the NIA provides a recommended length for the project narrative section of the application, but applicants are not bound by that recommendation.

Changes: None.

Comment: One commenter suggested the Department award only one-year grants so that more schools might receive funding in a year.

Discussion: At the inception of PEP, we made only one-year grants under the program. Based on our experience in monitoring the implementation of early PEP projects and reviewing final reports for those early grants, we concluded that those projects consisted largely of

purchasing equipment that could be used to assist students in meeting State standards for physical education. Many funded projects lacked a comprehensive approach. Beginning in fiscal year 2004, we expanded the program to permit applicants to propose longer-term projects that are more comprehensive and incorporate strategies such as curriculum development (or revision), modification of policies, and professional development strategies. Many program applicants have incorporated some of these strategies in subsequent years. Based on this experience, we believe that continuing to support multi-year projects will provide the best opportunity for schools and communities to make meaningful and sustainable changes in their physical and nutrition education activities.

Changes: None.

Comment: Several commenters expressed concern about the number of proposed priorities and requirements, and the time commitment that would be required to implement the priorities and requirements, including obtaining needed assurances.

Discussion: We acknowledge that meeting the priorities and requirements will require PEP grantees to invest additional time in implementing their PEP projects. However, we believe that the absolute priority and requirements are necessary to encourage the development of comprehensive PEP projects that provide opportunities for schools and communities to make a significant contribution to improving the health status of the students they serve and to build systems and programs that are sustainable. Applicants are not required to address or implement the activities in the competitive preference priorities.

In the past, PEP projects have too often consisted primarily of large expenditures for equipment without convincing evidence that those project expenditures were coordinated with other related activities in the community, or were based on a careful assessment of gaps and needs. We have balanced the impact on grantees of additional requirements against the potential for creating a cohort of comprehensive and focused PEP projects, and believe that the additional investment of time and effort is justified.

Changes: None.

Comment: One commenter stated that grantees need to be able to use PEP grant funds to support a staff position so that the grant requirements can be met.

Discussion: PEP grantees have always been able to request funding for a project director or project coordinator position, and many grantees have done so. In that regard, applicants should ensure that their budget requests for proposed projects are closely aligned with the activities and strategies in their application, including funding for a project director or project coordinator, if such a position is needed.

Changes: None.

Comment: One commenter suggested we include a focus on infrastructure development and sustainability in PEP.

Discussion: We agree that infrastructure development and sustainability are important elements of a quality physical education program. Many of the elements of this program address both infrastructure development and sustainability, particularly those activities centered on updating nutrition and physical activity related policies; building linkages with Federal, State, and local initiatives; and updating physical education and nutrition curricula. In addition, applicants that opt to establish partnerships may strengthen their infrastructure and sustainability capabilities.

Changes: None.

Comment: Two commenters requested that we modify certain language used throughout the NPP. Specifically, these commenters stated that all references to the term "physical activity" should be changed to "physical education." The commenters also recommended that whenever the terms "nutrition" and "physical education" or "physical activity" appear, that "physical education" be placed first because the program's primary purpose is to improve physical education.

Discussion: There are differences between the terms "physical education" and "physical activity", and we believe that we have used each term to specifically reference either education or activity consistent with the context of the priorities, requirements, and definitions. We acknowledge that the intent of the program is to increase the percentage of students who meet their State standards for physical education; however, the program is also intended to help students adopt lifelong healthy habits, as evidenced by an increase in physical activity and better nutrition.

In this context, placing the terms "physical education" or "physical activity" before references to "nutrition" would be an artificial distinction that undercuts the concept of more coordinated, comprehensive PEP projects.

Changes: None.

Final Priorities: This priority is: *Absolute Priority.*

Under this priority, an applicant is required to develop, expand, or improve its physical education program and address its State's physical education standards by undertaking the following activities: (1) Instruction in healthy eating habits and good nutrition and (2) physical fitness activities that must include at least one of the following: (a) Fitness education and assessment to help students understand, improve, or maintain their physical well-being; (b) instruction in a variety of motor skills and physical activities designed to enhance the physical, mental, and social or emotional development of every student; (c) development of, and instruction in, cognitive concepts about motor skills and physical fitness that support a lifelong healthy lifestyle; (d) opportunities to develop positive social and cooperative skills through physical activity participation; or (e) opportunities for professional development for teachers of physical education to stay abreast of the latest research, issues, and trends in the field of physical education.

Competitive Preference Priority 1—Collection of Body Mass Index (BMI) Measurement

We will give a competitive preference priority to applicants that agree to implement aggregate BMI data collection, and use it as part of a comprehensive assessment of health and fitness for the purposes of monitoring the weight status of their student population across time. Applicants are required to sign a Program-Specific Assurance that will commit them to:

(a) Use the Centers for Disease Control and Prevention's (CDC) BMI-for-age growth charts to interpret BMI results (*http://www.cdc.gov/growthcharts*);

(b) Create a plan to develop and implement a protocol that will include parents in the development of their BMI assessment and data collection policies, including a mechanism to allow parents to provide feedback on the policy. Applicants are required to detail the following required components in their aggregate BMI data collection protocol: The proposed method for measuring BMI, who will perform the BMI assessment (*i.e.,* staff members trained to obtain accurate and reliable height and weight measurements), the frequency of reporting, the planned equipment to be used, methods for calculating the planned sampling frame (if the applicant would use sampling), the policies used to ensure student privacy during measurement, how the data will be secured to protect student confidentiality, who will have access to

the data, how long the data will be kept, and what will happen to the data after that time. Applicants that intend to inform parents of their student's weight status must include plans for notifying parents of that status, and must include their plan for ensuring that resources are available for safe and effective follow-up with trained medical care providers;

(c) Create a plan to notify parents of the BMI assessment and to allow parents to opt out of the BMI assessment and reasonable notification of their choice to opt out. Unless the BMI assessment is permitted or required by State law, LEA applicants are required to detail their policies for providing reasonable notice of the adoption or continued use of such policies directly to the parents of the students enrolled in the LEA's schools served by the agency. At a minimum, the LEA must provide such notice at least annually, at the beginning of the school year and within a reasonable period of time after any substantive change in such policies, pursuant to the Protection of Pupil Rights Amendment, 20 U.S.C. 1232h(c)(2)(A); and

(d) De-identify the student information (such as by removing the student's name and any identifying information from the record and assigning a record code), aggregate the BMI data at the school or district level, and make the aggregate data publicly available and easily accessible to the public annually. Applicants must describe their plan for the level of reporting they plan to use, depending on the size of the population, such as at the district level or the school level. Applicants must also detail in their application their plan for how these data will be used in coordination with other required data for the program, such as fitness, physical activity, and nutritional intake measures, and how the combination of these measures will be used to improve physical education programming and policy.

On June 18, 1991, 17 Federal Departments and Agencies, including the Department of Education, adopted a common set of regulations known as the Federal Policy for the Protection of Human Subjects or "Common Rule." See 34 CFR part 97. Applicants that engage in BMI data collection may be subject to the Department's Protection of Human Subjects regulations if the data are used in research funded by the Federal government or for any future research conducted by an institution that has adopted the Federal policy for all research of that institution. The regulations define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities." 34 CFR 97.102(d). Information on Human Subjects requirements is found at: *http://www.ed.gov/about/offices/list/ocfo/humansub.html.*

Applications that do not provide a Program-Specific Assurance signed by an Authorized Representative committing the applicant to completing previously listed tasks (a) through (d) during their project period are not eligible for additional points under competitive preference priority 1.

In implementing this priority, we encourage applicants to consult with their partners to determine if and how any of the partners could contribute to the data collection, reporting, or potential referral processes.

Competitive Preference Priority 2—Partnerships Between Applicants and Supporting Community Entities

We will give a competitive preference priority to an applicant that includes in its application an agreement that details the participation of required partners, as defined in this notice. The agreement must include a description of: (1) Each partner's roles and responsibilities in the project; (2) how each partner will contribute to the project, including any contribution to the local match; (3) an assurance that the application was developed after timely and meaningful consultation between the required parties, as defined in this notice; and (4) a commitment to work together to reach the desired goals and outcomes of the project. The partner agreement must be signed by the Authorized Representative of each of the required partners and by other partners as appropriate.

For an LEA applicant, this partnership agreement must include: (1) The LEA; (2) at least one CBO; (3) a local public health entity, as defined in this notice; (4) the LEA's food service or child nutrition director; and (5) the head of the local government, as defined in this notice.

For a CBO applicant, the partnership agreement must include: (1) The CBO; (2) a local public health entity, as defined in this notice; (3) a local organization supporting nutrition or healthy eating, as defined in this notice; (4) the head of the local government, as defined in this notice; and (5) the LEA from which the largest number of students expected to participate in the CBO's project attend. If the CBO applicant is a school, such as a parochial or other private school, the applicant must describe its school as part of the partnership agreement but is not required to provide an additional signature from an LEA or another school. A CBO applicant that is a school and serves its own population of students is required to include another CBO as part of its partnership and include the head of that CBO as a signatory on the partnership agreement.

Although partnerships with other parties are required for this priority, the eligible applicant must retain the administrative and fiscal control of the project.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Deputy Secretary for Safe and Drug-Free Schools establishes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Requirement 1—Align Project Goals With Identified Needs Using the School Health Index

Applicants must complete the physical activity and nutrition questions in Modules 1–4 of the CDC's SHI self-assessment tool and develop project goals and plans that address the identified needs. Modules 1–4 are School Health and Safety Policies and

Environment, Health Education, Physical Activity and Other Physical Activity Programs, and Nutrition Services. LEA applicants must use the SHI self-assessment to develop a School Health Improvement Plan focused on improving these issues, and design an initiative that addresses their identified gaps and weaknesses. Applicants must include their Overall Score Card for the questions answered in Modules 1–4 in their application, and correlate their School Health Improvement Plan to their project design. Grantees must also complete the same modules of the SHI at the end of the project period and submit the Overall Score Card from the second assessment in their final reports to demonstrate SHI completion and program improvement as a result of PEP funding.

If a CBO applicant (unless the CBO is a school) is in a partner agreement with an LEA or school, it must collaborate with its partner or partners to complete Modules 1–4 of the SHI.

Alternatively, if the CBO has not identified a school or LEA partner, the CBO is not required to do Modules 1–4 of the SHI but must use an alternative needs assessment tool to assess the nutrition and physical activity environment in the community for children. CBO applicants are required to include their overall findings from the community needs assessment and correlate their findings with their project design. Grantees will be required to complete the same needs assessment at the end of their project and submit their findings in their final reports to demonstrate the completion of the assessment and program involvement as a result of PEP funding.

Requirement 2—Nutrition- and Physical Activity-Related Policies

Grantees must develop, update, or enhance physical activity policies and food- and nutrition-related policies that promote healthy eating and physical activity throughout students' everyday lives, as part of their PEP projects. Applicants must describe in their application their current policy framework, areas of focus, and the planned process for policy development, implementation, review, and monitoring. Grantees will be required to detail at the end of their project period in their final reports the physical activity and nutrition policies selected and how the policies improved through the course of the project.

Applicants must sign a Program-Specific Assurance that commits them to developing, updating, or enhancing these policies during the project period. Applicants that do not submit such a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 3—Linkage With Local Wellness Policies

Applicants that are participating in a program authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition and WIC Reauthorization Act of 2004must describe in their applications their school district's established local wellness policy and how the proposed PEP project will align with, support, complement, and enhance the implementation of the applicant's local wellness policy. The LEA's local wellness policy should address all requirements in the Child Nutrition Act of 1966.

CBO applicants must describe in their applications how their proposed projects would enhance or support the intent of the local wellness policies of their LEA partner(s), if they are working in a partnership group.

If an applicant or a member of its partnership group does not participate in the school lunch program authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition and WIC Reauthorization Act of 2004, it will not necessarily have a local wellness policy and, thus, is not required to meet this requirement or adopt a local wellness policy. However, we encourage those applicants to develop and adopt a local wellness policy, consistent with the provisions in the Richard B. Russell National School Lunch Act and the Child Nutrition and WIC Reauthorization Act of 2004 in conjunction with its PEP project.

Applicants must sign a Program-Specific Assurance that commits them to align their PEP project with the district's Local Wellness Policy, if applicable. Applicants to whom this requirement applies that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 4—Linkages With Federal, State, and Local Initiatives

If an applicant is implementing the CDC's Coordinated School Health program, it must coordinate project activities with that initiative and describe in its application how the proposed PEP project would be coordinated and integrated with the program.

If an applicant receives funding under the USDA's Team Nutrition initiative (Team Nutrition Training Grants), the applicant must describe in its application how the proposed PEP project supports the efforts of this initiative.

An applicant for a PEP project in a community that receives a grant under the Recovery Act Communities Putting Prevention to Work—Community Initiative must agree to coordinate its PEP project efforts with those under the Recovery Act Communities Putting Prevention to Work—Community Initiative.

Applicants and PEP-funded projects must complement, rather than duplicate, existing, ongoing or new efforts whose goals and objectives are to promote physical activity and healthy eating or help students meet their State standards for physical education.

Applicants must sign a Program-Specific Assurance that commits them to align their PEP project with the Coordinated School Health program, Team Nutrition Training Grant, Recovery Act Communities Putting Prevention to Work—Community Initiative, or any other similar Federal, State, or local initiatives. Applicants that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 5—Updates to Physical Education and Nutrition Instruction Curricula

Applicants that plan to use grant-related funds, including Federal and non-Federal matching funds, to create, update, or enhance their physical education or nutrition education curricula are required to use the Physical Education Curriculum Analysis Tool (PECAT) and submit their overall PECAT scorecard, and the curriculum improvement plan from PECAT. Also, those applicants that plan to use grant-related funds, including Federal and non-Federal matching funds to create, update, or enhance their nutrition instruction in health education must complete the healthy eating module of the Health Education Curriculum Analysis Tool (HECAT). Applicants must use the curriculum improvement plan from the HECAT to identify curricular changes to be addressed during the funding period. Applicants must also describe how the HECAT assessment would be used to guide nutrition instruction curricular changes. If an applicant is not proposing to use grant-related funds for physical education or nutrition instruction curricula, it would not need to use these tools.

Requirement 6—Equipment Purchases

Purchases of equipment with PEP funds or with funds used to meet the program's matching requirement must be aligned with the curricular components of the proposed physical education and nutrition program. Applicants must commit to aligning the students' use of the equipment with PEP elements applicable to their projects, identified in the absolute priority in this notice, and any applicable curricula by signing a Program-Specific Assurance. Applicants that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 7—Increasing Transparency and Accountability

Grantees must create or use existing reporting mechanisms to provide information on students' progress, in the aggregate, on the key program indicators, as described in this notice and required under the Government Performance and Results Act, as well as on any unique project-level measures proposed in the application. Grantees that are educational agencies or institutions are subject to applicable Federal, State, and local privacy provisions, including the Family Educational Rights and Privacy Act—a law that generally prohibits the non-consensual disclosure of personally identifiable information in a student's education record. All grantees must comply with applicable Federal, State, and local privacy provisions. The aggregate-level information should be easily accessible by the public, such as posted on the grantee's or a partner's Web site. Applicants must describe in their application the planned method for reporting.

Applicants must commit to reporting information to the public by signing a Program-Specific Assurance. Applicants that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 8—Participation in a National Evaluation

Applicants must provide documentation of their commitment to participate in the Department's national evaluation. An LEA applicant must include a letter from the research office or research board approving its participation in the evaluation (if approval is needed), and a letter from the Authorized Representative agreeing to participate in the evaluation.

Requirement 9—Required Performance Measures and Data Collection Methodology

Grantees must collect and report data on three GPRA measures using uniform data collection methods. Measure one assesses student physical activity levels: The percentage of students served by the grant who engage in 60 minutes of daily physical activity. Grantees are required to use pedometers for students in grades K–12 and an additional 3-Day Physical Activity Recall (3DPAR) instrument to collect data on students in grades 5–12.

Measure two focuses on student health-related fitness levels: The percentage of students served by the grant who achieve age-appropriate cardiovascular fitness levels. Grantees are required to use the 20-meter shuttle run, a criterion-referenced health-related fitness testing protocol, to assess cardiovascular fitness in middle and high school students.

Measure three focuses on student nutrition: The percentage of students served by the grant who consume fruit two or more times per day and vegetables three or more times per day. Programs serving high school students are required to use the nutrition-related questions from the Youth Risk Behavior Survey to determine the number of students who meet these goals. Programs serving elementary and middle school students are not required to use a specific measurement tool, and may select an appropriate assessment tool for their population.

For each measure, grantees are required to collect and aggregate data from four discrete data collection periods throughout each year. During the first year, grantees have an additional data collection period prior to program implementation to collect baseline data.

Final Definitions

The Assistant Deputy Secretary for Safe and Drug-Free Schools applies the following definitions for this program.

We may apply one or more of these definitions in any year in which this program is in effect.

Head of local government means the head of, or an appropriate designee of, the party responsible for the civic functioning of the county, city, town, or municipality would be considered the head of local government. This includes, but is not limited to, the mayor, city manager, or county executive.

Local public health entity means an administrative or service unit of local or State government concerned with health and carrying some responsibility for the health of a jurisdiction smaller than the State (except for Rhode Island and Hawaii, because these States' health departments operate on behalf of local public health and have no sub-State unit). The definition applies to the State health department or the State public health entity in the event that the local public health entity does not govern health and nutrition issues for the local area.

Organization supporting nutrition or healthy eating means a local public or private non-profit school, health-related professional organization, local public health entity, or local business that has demonstrated interest and efforts in promoting student health or nutrition. This term includes, but is not limited to LEAs (particularly an LEA's school food or child nutrition director), grocery stores, supermarkets, restaurants, corner stores, farmers' markets, farms, other private businesses, hospitals, institutions of higher education, Cooperative Extension Service and 4H Clubs, and community gardening organizations, when such entities have demonstrated a clear intent to promote student health and nutrition or have made tangible efforts to do so. This definition does not include representatives from trade associations or representatives from any organization representing any producers or marketers of food or beverage product(s).

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities and requirements, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priorities and requirements justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits

We fully discussed the costs and benefits of this regulatory action in the

notice of proposed priorities, requirements, and definitions. After review, we determined that, although grantees may anticipate costs in developing infrastructure partnerships, supporting integrated, comprehensive programming and policies, and building data and accountability systems and processes, the benefits of the priorities, requirements, and definitions justify the costs.

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action will affect are small LEAs or nonprofit organizations applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the priorities, requirements, and definitions would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the priorities, requirements, and definitions would impose no burden on small entities in general. Eligible applicants will determine whether to apply for funds, and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to spur improvement in physical education planning without additional Federal funding.

The U.S. Small Business Administration Size Standards defines as "small entities" for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 203,635 nonprofit organizations that had an educational mission and reported revenue to the IRS by July 2009, 200,342 (or about 98 percent) had revenues of less than $5 million. In addition, there are 12,484 LEAs in the country that meet the definition of small entity. However, given program history, the Secretary believes that only a small number of these entities would be interested in applying for funds under this program, thus reducing the likelihood that this final regulatory action would have a significant economic impact on small entities.

Further, the action may help small entities determine whether they have the interest, need, or capacity to implement activities under the program and, thus, prevent small entities that do not have such an interest, need, and capacity from absorbing the burden of applying.

This regulatory action would not have a significant economic impact on small entities once they receive a grant because they would be able to meet the costs of compliance using the funds provided under this program and with any funds they might obtain from external parties to fulfill the matching requirements of the program.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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 14, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–14730 Filed 6–15–10; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Carol M. White Physical Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215F.

Dates:

Applications Available: June 18, 2010.

Deadline for Transmittal of Applications: July 19, 2010.

Deadline for Intergovernmental Review: September 16, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Carol M. White Physical Education Program (PEP) provides grants to local educational agencies (LEAs) and community-based organizations (CBOs) to initiate, expand, and improve physical education for students in grades K–12. Grant recipients must implement programs that help students make progress toward meeting State standards.

Priorities: These priorities are from the notice of final priorities, requirements, and definitions for this program, published elsewhere in this issue of the **Federal Register**.

Absolute 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 absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

The priority is:

Under this priority, an applicant is required to develop, expand, or improve its physical education program and address its State's physical education standards by undertaking the following activities: (1) instruction in healthy eating habits and good nutrition and (2) physical fitness activities that must include at least one of the following: (a) Fitness education and assessment to help students understand, improve, or maintain their physical well-being; (b) instruction in a variety of motor skills and physical activities designed to enhance the physical, mental, and social or emotional development of every student; (c) development of, and

instruction in, cognitive concepts about motor skills and physical fitness that support a lifelong healthy lifestyle; (d) opportunities to develop positive social and cooperative skills through physical activity participation; or (e) opportunities for professional development for teachers of physical education to stay abreast of the latest research, issues, and trends in the field of physical education.

Within this absolute priority, we are particularly interested in applications that address the following invitational priority.

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.

This priority is:

Projects that propose to align their programs with the goals and principles of the U.S. Department of Agriculture's (USDA) HealthierUS School Challenge (HUSSC) initiative.

Background. The USDA's HUSSC initiative was established in 2004 to recognize those schools participating in the National School Lunch Program that have created healthier school environments through promotion of nutrition and physical activity. Schools can apply for recognition at four levels of performance, Bronze, Silver, Gold, and Gold of Distinction. To qualify for an award, a school must submit a formal application to the USDA's Food and Nutrition Service and demonstrate that they meet basic criteria set forth by USDA. These criteria reflect the recommendations of the 2005 Dietary Guidelines for Americans and the Institute of Medicine's published recommendations for foods that should be served in schools, outside of the organized school lunch meals. HealthierUS Schools must also have a local school wellness policy as mandated by Congress. We believe that the intent of the HUSSC initiative complements the priorities and requirements in this notice, as well as helps schools meet the goals established by First Lady Michelle Obama's Let's Move! initiative focused on improving school food. Additional information about the HUSSC initiative is available at the USDA's Web site at: *http://www.fns.usda.gov/tn/healthierus/index.html.*

Competitive Preference Priorities: There are two competitive preference priorities for this competition. For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(ii) we will award up to an additional 5 points to an application that meets these priorities.

Competitive Preference Priority 1—Collection of Body Mass Index (BMI) Measurement

Under 34 CFR 75.105(c)(2)(i), we will award an additional 2 points to an application that meets this priority.

This priority is:

We will give a competitive preference priority to applicants that agree to implement aggregate BMI data collection, and use it as part of a comprehensive assessment of health and fitness for the purposes of monitoring the weight status of their student population across time. Applicants are required to sign a Program-Specific Assurance that will commit them to:

(a) Use the Centers for Disease Control and Prevention's (CDC) BMI-for-age growth charts to interpret BMI results (*http://www.cdc.gov/growthcharts*);

(b) Create a plan to develop and implement a protocol that will include parents in the development of their BMI assessment and data collection policies, including a mechanism to allow parents to provide feedback on the policy. Applicants are required to detail the following required components in their aggregate BMI data collection protocol: the proposed method for measuring BMI, who will perform the BMI assessment (*i.e.,* staff members trained to obtain accurate and reliable height and weight measurements), the frequency of reporting, the planned equipment to be used, methods for calculating the planned sampling frame (if the applicant would use sampling), the policies used to ensure student privacy during measurement, how the data will be secured to protect student confidentiality, who will have access to the data, how long the data will be kept, and what will happen to the data after that time. Applicants that intend to inform parents of their student's weight status must include plans for notifying parents of that status, and must include their plan for ensuring that resources are available for safe and effective follow-up with trained medical care providers;

(c) Create a plan to notify parents of the BMI assessment and to allow parents to opt out of the BMI assessment and reasonable notification of their choice to opt out. Unless the BMI assessment is permitted or required by State law, LEA applicants are required to detail their policies for providing reasonable notice of the adoption or continued use of such policies directly to the parents of the students enrolled in the LEA's schools served by the agency. At a minimum, the LEA must provide such notice at least annually, at the beginning of the school year and within a reasonable period of time after any substantive change in such policies, pursuant to the Protection of Pupil Rights Amendment, 20 U.S.C. 1232h(c)(2)(A); and

(d) De-identify the student information (such as by removing the student's name and any identifying information from the record and assigning a record code), aggregate the BMI data at the school or district level, and make the aggregate data publicly available and easily accessible to the public annually. Applicants must describe their plan for the level of reporting they plan to use, depending on the size of the population, such as at the district level or the school level. Applicants must also detail in their application their plan for how these data will be used in coordination with other required data for the program, such as fitness, physical activity, and nutritional intake measures, and how the combination of these measures will be used to improve physical education programming and policy.

On June 18, 1991, 17 Federal Departments and Agencies, including the Department of Education, adopted a common set of regulations known as the Federal Policy for the Protection of Human Subjects or "Common Rule." See 34 CFR part 97. Applicants that engage in BMI data collection may be subject to the Department's Protection of Human Subjects regulations if the data are used in research funded by the Federal government or for any future research conducted by an institution that has adopted the Federal policy for all research of that institution. The regulations define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities." 34 CFR 97.102(d). Information on Human Subjects requirements is found at: *http://www.ed.gov/about/offices/list/ocfo/humansub.html.*

Applications that do not provide a Program-Specific Assurance signed by an Authorized Representative committing the applicant to completing previously listed tasks (a) through (d) during their project period are not

eligible for additional points under competitive preference priority 1.

In implementing this priority, we encourage applicants to consult with their partners to determine if and how any of the partners could contribute to the data collection, reporting, or potential referral processes.

Competitive Preference Priority 2—Partnerships Between Applicants and Supporting Community Entities

Under 34 CFR 75.105(c)(2)(i), we will award an additional 3 points to an application that meets this priority.

This priority is:

We will give a competitive preference priority to an applicant that includes in its application an agreement that details the participation of required partners, as defined in this notice. The agreement must include a description of: (1) Each partner's roles and responsibilities in the project; (2) how each partner will contribute to the project, including any contribution to the local match; (3) an assurance that the application was developed after timely and meaningful consultation between the required parties, as defined in this notice; and (4) a commitment to work together to reach the desired goals and outcomes of the project. The partner agreement must be signed by the Authorized Representative of each of the required partners and by other partners as appropriate.

For an LEA applicant, this partnership agreement must include: (1) The LEA; (2) at least one CBO; (3) a local public health entity, as defined in this notice; (4) the LEA's food service or child nutrition director; and (5) the head of the local government, as defined in this notice.

For a CBO applicant, the partnership agreement must include: (1) The CBO; (2) a local public health entity, as defined in this notice; (3) a local organization supporting nutrition or healthy eating, as defined in this notice; (4) the head of the local government, as defined in this notice; and (5) the LEA from which the largest number of students expected to participate in the CBO's project attend. If the CBO applicant is a school, such as a parochial or other private school, the applicant must describe its school as part of the partnership agreement but is not required to provide an additional signature from an LEA or another school. A CBO applicant that is a school and serves its own population of students is required to include another CBO as part of its partnership and include the head of that CBO as a signatory on the partnership agreement.

Although partnerships with other parties are required for this priority, the eligible applicant must retain the administrative and fiscal control of the project.

Requirements

The Assistant Deputy Secretary for Safe and Drug-Free Schools establishes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Requirement 1—Align Project Goals With Identified Needs Using the School Health Index

Applicants must complete the physical activity and nutrition questions in Modules 1–4 of the CDC's SHI self-assessment tool and develop project goals and plans that address the identified needs. Modules 1–4 are School Health and Safety Policies and Environment, Health Education, Physical Activity and Other Physical Activity Programs, and Nutrition Services. LEA applicants must use the SHI self-assessment to develop a School Health Improvement Plan focused on improving these issues, and design an initiative that addresses their identified gaps and weaknesses. Applicants must include their Overall Score Card for the questions answered in Modules 1–4 in their application, and correlate their School Health Improvement Plan to their project design. Grantees must also complete the same modules of the SHI at the end of the project period and submit the Overall Score Card from the second assessment in their final reports to demonstrate SHI completion and program improvement as a result of PEP funding.

If a CBO applicant (unless the CBO is a school) is in a partner agreement with an LEA or school, it must collaborate with its partner or partners to complete Modules 1–4 of the SHI.

Alternatively, if the CBO has not identified a school or LEA partner, the CBO is not required to do Modules 1–4 of the SHI but must use an alternative needs assessment tool to assess the nutrition and physical activity environment in the community for children. CBO applicants are required to include their overall findings from the community needs assessment and correlate their findings with their project design. Grantees will be required to complete the same needs assessment at the end of their project and submit their findings in their final reports to demonstrate the completion of the assessment and program involvement as a result of PEP funding.

Requirement 2—Nutrition- and Physical Activity-Related Policies

Grantees must develop, update, or enhance physical activity policies and food- and nutrition-related policies that promote healthy eating and physical activity throughout students' everyday lives, as part of their PEP projects. Applicants must describe in their application their current policy framework, areas of focus, and the planned process for policy development, implementation, review, and monitoring. Grantees will be required to detail at the end of their project period in their final reports the physical activity and nutrition policies selected and how the policies improved through the course of the project.

Applicants must sign a Program-Specific Assurance that commits them to developing, updating, or enhancing these policies during the project period. Applicants that do not submit such a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 3—Linkage With Local Wellness Policies

Applicants that are participating in a program authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition and WIC Reauthorization Act of 2004 must describe in their applications their school district's established local wellness policy and how the proposed PEP project will align with, support, complement, and enhance the implementation of the applicant's local wellness policy. The LEA's local wellness policy should address all requirements in the Child Nutrition and WIC Reauthorization Act of 2004.

CBO applicants must describe in their applications how their proposed projects would enhance or support the intent of the local wellness policies of their LEA partner(s), if they are working in a partnership group.

If an applicant or a member of its partnership group does not participate in the school lunch program authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition and WIC Reauthorization Act of 2004, it will not necessarily have a local wellness policy and, thus, is not required to meet this requirement or adopt a local wellness policy. However, we encourage those applicants to develop and adopt a local wellness policy, consistent with the provisions in the Richard B. Russell National School Lunch Act and the Child Nutrition and

WIC Reauthorization Act of 2004 in conjunction with its PEP project.

Applicants must sign a Program-Specific Assurance that commits them to align their PEP project with the district's Local Wellness Policy, if applicable. Applicants to whom this requirement applies that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 4—Linkages With Federal, State, and Local Initiatives

If an applicant is implementing the CDC's Coordinated School Health program, it must coordinate project activities with that initiative and describe in its application how the proposed PEP project would be coordinated and integrated with the program.

If an applicant receives funding under the USDA's Team Nutrition initiative (Team Nutrition Training Grants), the applicant must describe in its application how the proposed PEP project supports the efforts of this initiative.

An applicant for a PEP project in a community that receives a grant under the Recovery Act Communities Putting Prevention to Work—Community Initiative must agree to coordinate its PEP project efforts with those under the Recovery Act Communities Putting Prevention to Work-Community Initiative.

Applicants and PEP-funded projects must complement, rather than duplicate, existing, ongoing or new efforts whose goals and objectives are to promote physical activity and healthy eating or help students meet their State standards for physical education.

Applicants must sign a Program-Specific Assurance that commits them to align their PEP project with the Coordinated School Health program, Team Nutrition Training Grant, Recovery Act Communities Putting Prevention to Work—Community Initiative, or any other similar Federal, State, or local initiatives. Applicants that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 5—Updates to Physical Education and Nutrition Instruction Curricula

Applicants that plan to use grant-related funds, including Federal and non-Federal matching funds, to create, update, or enhance their physical education or nutrition education curricula are required to use the Physical Education Curriculum Analysis Tool (PECAT) and submit their overall PECAT scorecard, and the curriculum improvement plan from PECAT. Also, those applicants that plan to use grant-related funds, including Federal and non-Federal matching funds to create, update, or enhance their nutrition instruction in health education must complete the healthy eating module of the Health Education Curriculum Analysis Tool (HECAT). Applicants must use the curriculum improvement plan from the HECAT to identify curricular changes to be addressed during the funding period. Applicants must also describe how the HECAT assessment would be used to guide nutrition instruction curricular changes. If an applicant is not proposing to use grant-related funds for physical education or nutrition instruction curricula, it would not need to use these tools.

Requirement 6—Equipment Purchases

Purchases of equipment with PEP funds or with funds used to meet the program's matching requirement must be aligned with the curricular components of the proposed physical education and nutrition program. Applicants must commit to aligning the students' use of the equipment with PEP elements applicable to their projects, identified in the absolute priority in this notice, and any applicable curricula by signing a Program-Specific Assurance. Applicants that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 7—Increasing Transparency and Accountability

Grantees must create or use existing reporting mechanisms to provide information on students' progress, in the aggregate, on the key program indicators, as described in this notice and required under the Government Performance and Results Act, as well as on any unique project-level measures proposed in the application. Grantees that are educational agencies or institutions are subject to applicable Federal, State, and local privacy provisions, including the Family Educational Rights and Privacy Act—a law that generally prohibits the non-consensual disclosure of personally identifiable information in a student's education record. All grantees must comply with applicable Federal, State, and local privacy provisions. The aggregate-level information should be easily accessible by the public, such as posted on the grantee's or a partner's Web site. Applicants must describe in their application the planned method for reporting.

Applicants must commit to reporting information to the public by signing a Program-Specific Assurance. Applicants that do not submit a Program-Specific Assurance signed by the applicant's Authorized Representative are ineligible for the competition.

Requirement 8—Participation in a National Evaluation

Applicants must provide documentation of their commitment to participate in the Department's national evaluation. An LEA applicant must include a letter from the research office or research board approving its participation in the evaluation (if approval is needed), and a letter from the Authorized Representative agreeing to participate in the evaluation.

Requirement 9—Required Performance Measures and Data Collection Methodology

Grantees must collect and report data on three GPRA measures using uniform data collection methods. Measure one assesses student physical activity levels: The percentage of students served by the grant who engage in 60 minutes of daily physical activity. Grantees are required to use pedometers for students in grades K–12 and an additional 3-Day Physical Activity Recall (3DPAR) instrument to collect data on students in grades 5–12.

Measure two focuses on student health-related fitness levels: The percentage of students served by the grant who achieve age-appropriate cardiovascular fitness levels. Grantees are required to use the 20-meter shuttle run, a criterion-referenced health-related fitness testing protocol, to assess cardiovascular fitness in middle and high school students.

Measure three focuses on student nutrition: The percentage of students served by the grant who consume fruit two or more times per day and vegetables three or more times per day. Programs serving high school students are required to use the nutrition-related questions from the Youth Risk Behavior Survey to determine the number of students who meet these goals. Programs serving elementary and middle school students are not required to use a specific measurement tool, and may select an appropriate assessment tool for their population.

For each measure, grantees are required to collect and aggregate data from four discrete data collection periods throughout each year. During the first year, grantees have an

additional data collection period prior to program implementation to collect baseline data.

Program Authority: 20 U.S.C. 7261–7261f.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99, and 299. (b) The notice of final eligibility requirements for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369). (c) The notice of final priorities, requirements, and definitions published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $39,729,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2010 and in subsequent years from the list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000-$750,000.

Estimated Average Size of Awards: $427,000.

Estimated Number of Awards: 93.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) LEAs, including charter schools that are considered LEAs under State law, and CBOs, including faith-based organizations provided that they meet the applicable statutory and regulatory requirements.

(b) The Secretary limits eligibility under this discretionary grant competition to LEAs or CBOs that do not currently have an active grant under the PEP program. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

2. (a) *Cost Sharing or Matching:* In accordance with section 5506 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Federal share of the project costs may not exceed (i) 90 percent of the total cost of a program for the first year for which the program receives assistance; and (ii) 75 percent of such cost for the second and each subsequent year.

(b) *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. Funds made available under this program must be used to supplement, and not supplant, any other Federal, State, or local funds available for physical education activities in accordance with section 5507 of the ESEA.

3. *Other:* An application for funds under this program may provide for the participation, in the activities funded, of (a) students enrolled in private nonprofit elementary schools or secondary schools, and their parents and teachers; or (b) home-schooled students, and their parents and teachers.

IV. Application and Submission Information

1. *Address to Request Application Package:* Carlette Huntley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 10071 PCP, Washington, DC 20202. Telephone: (202) 245–7871. You can also obtain an application package via the Internet. To obtain a copy via internet, use the following address: *http://www.ed.gov/programs/whitephysed/applicant.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 under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: June 18, 2010.

Deadline for Transmittal of Applications: July 19, 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 of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 16, 2010.

4. *Intergovernmental Review:* This program 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 program.

5. *Funding Restrictions:* Funds may not be used for construction activities or for extracurricular activities, such as team sports and Reserve Officers' Training Corps program activities (See section 5503 (c) of the ESEA).

In accordance with section 5505(b) of the ESEA, not more than five percent of grant funds provided under this program to an LEA or CBO for any fiscal year may be used for administrative expenses.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice. Information about prohibited activities and use of funds also is included in the application package for this competition.

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 grants under the Carol M. White Physical Education Program—CFDA Number 84.215F must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Competition Manager for this program, Carlette Huntley at 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 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carlette Huntley, U.S. Department of Education, 400 Maryland Avenue, SW., room 10071, Potomac Plaza Center, Washington, DC 20202–6450. FAX: (202) 245–7166. 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 84.215F), 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 84.215F), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is equitable distribution of awards among LEAs and CBOs serving urban and rural areas. (*See* 20 U.S.C. 7261e(b).)

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* There are reporting requirements under this program, including under section 5505(a) of the ESEA and 34 CFR 75.118 and 75.720. In accordance with section 5505(a) of the ESEA, grantees under this program are required to submit an annual report that—

(1) Describes the activities conducted during the preceding year; and

(2) Demonstrates that progress has been made toward meeting State standards for physical education.

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).

This annual report must also address progress toward meeting the performance and efficiency measures established by the Secretary for this program and described in the next section of this notice.

At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720. For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for collecting data to use in assessing the effectiveness of PEP.

(a) The percentage of students served by the grant who engage in 60 minutes of daily physical activity.

(b) The percentage of students served by the grant who achieve age-appropriate cardiovascular fitness levels.

(c) The percentage of students served by the grant who consume fruit two or more times per day and vegetables three or more times per day.

(d) The cost (based on the amount of the grant award) per student who achieves the level of physical activity required to meet the physical activity measures above (percentage of students who engage in 60 minutes of daily physical activity).

These measures constitute the Department's measures of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these measures in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their performance and final reports about progress toward these measures. For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

VII. Agency Contact

For Further Information Contact: Carlette Huntley, U.S. Department of Education, 550 12th Street, SW., room 10071, Potomac Center Plaza,

Washington, DC 20202–6450. Telephone: 202–245–7871 or by e-mail: *Carlette.Huntley@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 14, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–14731 Filed 6–15–10; 4:15 pm]

BILLING CODE 4000–01–P

Federal Register

Friday,
June 18, 2010

Part IV

The President

Notice of June 17, 2010—Continuation of the National Emergency With Respect To the Risk of Nuclear Proliferation Created By the Accumulation of Weapons-usable Fissile Material In the Territory of the Russian Federation

Federal Register
Vol. 75, No. 117
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Presidential Documents

Title 3—

The President

Notice of June 17, 2010

Continuation of the National Emergency With Respect To the Risk of Nuclear Proliferation Created By the Accumulation of Weapons-usable Fissile Material In the Territory of the Russian Federation

On June 21, 2000, the President issued Executive Order 13159 (the "order") blocking property and interests in property of the Government of the Russian Federation that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons that are directly related to the implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993, and related contracts and agreements (collectively, the "HEU Agreements"). The HEU Agreements allow for the downblending of highly enriched uranium derived from nuclear weapons to low enriched uranium for peaceful commercial purposes. The order invoked the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the risk of nuclear proliferation created by the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation.

The national emergency declared on June 21, 2000, must continue beyond June 21, 2010, to provide continued protection from attachment, judgment, decree, lien, execution, garnishment, or other judicial process for the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and subject to U.S. jurisdiction. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the risk of nuclear proliferation created by the accumulation of weapons-usable fissile material in the territory

of the Russian Federation. This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
June 17, 2010.

[FR Doc. 2010–15058
Filed 6–17–10; 2:00 pm]
Billing code 3195–W0–P

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Federal Register

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S. 3473/P.L. 111–191
To amend the Oil Pollution Act of 1990 to authorize advances from Oil Spill Liability Trust Fund for the Deepwater Horizon oil spill. (June 15, 2010; 124 Stat. 1278)
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